

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 584 (Delegate Rosenberg)
(By Request – Committee to Revise Article 27 - Crimes and Punishments)

Judiciary

Criminal Law - Narcotic Drug - Enhanced Penalties

This bill adds as an eligible condition for a third-strike mandatory minimum sentence a minimum 180-day confinement based on a prior drug conspiracy, or specified drug crime, whether in Maryland or another state.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures due a potential increase in enhanced sentencing for some drug convictions. Any such effect would not be realized until some indeterminate future fiscal year. Revenues would not be affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A third-time offender or conspirator convicted of those same primary crimes involving a Schedule I or Schedule II narcotic drug, if certain 180-day confinement and conviction

prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A convicted fourth-time offender or a conspirator with three or more separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

When the controlled dangerous substance was specified hallucinogenic drugs – including PCP, LSD, and MDMA – a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$20,000. A repeat offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A third-time offender or conspirator convicted of those same primary crimes involving the specified hallucinogenic drugs, if certain confinement and conviction prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A convicted fourth-time offender or a conspirator with three or more separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

Background: This bill is in response to a holding by the Court of Special Appeals in *Harris v. State*, 169 Md. App 98 (2006). In that case, Gerald S. Harris, the appellant, had previously served more than 180 days as a result of a conviction for conspiracy to distribute cocaine and had been convicted of possession of heroin with intent to distribute, but served no prison time for that conviction. The appellant was convicted of distribution of cocaine and sentenced to a mandatory 25-year imprisonment without parole as a third-time offender under Md. Code (2002, 2003 Sup.), § 5-608(c) of the Criminal Law Article.

The Court of Special Appeals held that the 25-year mandatory sentence was illegal because the appellant had not served at least 180 days confinement in a correctional institution as a result of a conviction under § 5-608(a), § 5-609, or § 5-614 as required by § 5-608(c)(1)(i). Time served by appellant for his conviction for conspiracy to distribute cocaine did not count because that crime is not included in § 5-608(c)(1)(i). The sentence received by Mr. Harris for distribution of cocaine was vacated and the case was remanded for resentencing on that count.

The Committee to Revise Article 27 was appointed in 1991 by the Speaker and the President and charged with making both substantive and stylistic changes to the State's criminal law. The committee is composed of legislators, judges, lawyers representing both defendants and the State, and a victims' rights representative. In past sessions the

committee has successfully sponsored legislation to revise the laws on accessory before and after the fact, arson, assault, benefit of clergy, bribery of public officials, burglary, criminal penalty enhancements, destructive devices, disorderly conduct, escape, leased or rented goods, Medicaid fraud, offensive contact, prostitution, restitution, robbery, sabotage, trespass, and victims' rights.

State Expenditures: The bill could lead to a greater frequency of so-called third strike convictions with lengthy mandatory minimum imprisonment penalties attached. Accordingly, general fund expenditures could increase minimally due to more people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people affected by this change is expected to be relatively minimal.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,600 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$526 per month. Excluding medical care, the average variable costs total \$148 per month.

Additional Information

Prior Introductions: None.

Cross File: SB 249 (Senator Stone)(By Request – Committee to Revise Article 27 – Crimes and Punishments) – Judicial Proceedings.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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