

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 247
Judiciary

(Delegate Anderson, *et al.*)

**Crimes - Possession of Controlled Dangerous Substances - Penalties -
Distribution to County Residential Drug Abuse Treatment Services Funds**

This bill requires that all fines and forfeitures imposed by a court for violations of specified prohibitions against possessing or administering a controlled dangerous substance be remitted to a county residential drug abuse treatment services fund. The bill requires each county to establish such a fund, which may be used only for the provision of residential drug abuse treatment services in the county.

The bill also increases monetary penalties, and provides for mandatory minimum fines, applied to convictions for possessing or administering a controlled dangerous substance.

Fiscal Summary

State Effect: Potential significant general fund revenue decrease from redirecting some criminal fine revenues to the counties. It is assumed that reprogramming costs for the Judiciary are minimal and could be offset by incorporating those changes with other reprogramming needs.

Local Effect: Potential significant new revenues from fines assessed and collected in the District Court. However, county general funds would also lose some indeterminate amounts now deposited to the local general funds from the circuit courts to the counties' residential drug abuse treatment services fund. It is assumed that administrative responsibilities for the counties could lead to some reorganization of county finance offices. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: Potential meaningful revenue increases for privately operated residential drug treatment services facilities in every county.

Analysis

Bill Summary: The bill provides that each County Residential Drug Abuse Treatment Services Fund is a special, nonlapsing fund, which must be managed and administered, as specified, by the chief financial officer of each county. Each fund is subject to State or county audit. Fund disbursements must supplement and may not supplant any other funds appropriated in the State or county budget for residential drug abuse treatment services.

The bill provides for mandatory minimum fines for the specified misdemeanor offenses involving a controlled dangerous substance, other than marijuana, as follows: (1) for a first offense, \$500; (2) for a second offense, \$1,000; and (3) for a third or subsequent offense, \$2,000. The bill does not alter the current maximum penalties of imprisonment for four years and/or a fine of \$25,000.

For a person whose violation involves the use or possession of marijuana, the mandatory minimum monetary penalties are established as follows: (1) for a first offense, \$250; (2) for a second offense, \$500; and (3) for a third or subsequent offense, \$1,000. The bill establishes a maximum monetary penalty of \$2,500 for offenses involving marijuana and eliminates the current law maximum imprisonment penalty of one year. The bill does not alter the current provisions allowing a maximum penalty for use or possession of marijuana as a medical necessity.

In addition, the bill allows, upon a finding on the record, that the mandatory minimum fine may be reduced for a reason of indigency. In such an instance, the convicted person must pay a fine in an amount determined by ability to pay by the court and perform community service.

Current Law: A person may not (1) possess or administer to another a controlled dangerous substance, unless obtained directly or by prescription or order from an authorized provider acting in the course of professional practice; or (2) obtain or attempt to obtain a controlled dangerous substance, or procure or attempt to procure the administration of a controlled dangerous substance by fraud, deceit, misrepresentation, or subterfuge; the counterfeiting or alteration of a prescription or a written order; the concealment of a material fact; the use of a false name or address; falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider; or making, issuing, or presenting a false or counterfeit prescription or written order.

Information that is communicated to a physician in an effort to obtain a controlled dangerous substance in violation of these provisions is not a privileged communication.

A violator is guilty of a misdemeanor and subject to maximum penalties of imprisonment for four years and/or a fine of \$25,000. A person whose violation involves the use or possession of marijuana is subject to maximum penalties of imprisonment for one year and/or a fine of \$1,000. In a prosecution for the use or possession of marijuana, the defendant may introduce and the court must consider as a mitigating factor any evidence of medical necessity. If the court finds that the person used or possessed marijuana because of medical necessity, the maximum penalty that the court may impose is a fine of \$100.

Chapter 237 of 2004 provided for the evaluation of nonviolent offenders for drug or alcohol dependency and for the diversion of such defendants to treatment services rather than incarceration. Chapter 237 provided for diversion of inmates by State's Attorneys and the Parole Commission to substance abuse treatment and provided direct access by courts to substance abuse evaluation, referral, and treatment.

Additionally, the 2004 Act established the Maryland Substance Abuse Treatment Fund as a nonlapsing fund to be used for evaluation and treatment of criminal defendants for drug or alcohol abuse problems. Finally, this enactment required each county to have a local drug and alcohol abuse council to develop a local plan to meet the county's needs for drug and alcohol abuse evaluation, prevention, and treatment services and to review funding requests for the provision of services.

Search and seizure provisions apply to property used or intended to be used to violate controlled dangerous substance, gambling, gun, and explosives laws. Procedures vary for the search, seizure, and forfeiture of property depending on whether the offense involves controlled dangerous substances, gambling, guns, or explosives. With regard to controlled dangerous substance violations, raw materials, equipment, books, records, research, motor vehicles, other vehicles or vessels, real property, money, contraband, negotiable instruments, as well as other items of value may be subject to search, seizure, and forfeiture. Once the property is seized, a law enforcement authority must file a complaint seeking forfeiture. The owner of the seized property is entitled to notice and opportunity for hearing on the forfeiture claim. The courts are authorized to mitigate the impact of forfeiture or return all seized property to the owner. The courts are also authorized to take appropriate measures to safeguard and maintain forfeited property.

Once forfeiture is authorized, the governing body where the property was seized may keep the property for official use or dispose of or sell the property. If the property is sold by a State law enforcement unit, then proceeds from the sale must be deposited into the general fund of the State. If the property is sold by a local law enforcement unit, then

proceeds from the sale must be deposited into the general fund of the political subdivision that has jurisdiction over the law enforcement unit.

Background: Detailed information, including locator information, relating to all the local drug and alcohol abuse councils created as a result of Chapter 237 of 2004 can be found at the web site of Maryland's Alcohol and Drug Abuse Administration (ADAA). There are 94 public and private certified residential drug abuse treatment entities in Maryland, including low, medium, and high intensity facilities. The list of certified facilities statewide is available in ADAA's web-based resource directory: <http://maryland-adaa.org/resource/>.

The existing District Court and circuit court cashier systems use antiquated operating systems platforms that are no longer supported by the software vendor. The fiscal 2009 budget allowance for a Revenue Collections Systems Replacement Project for the Judiciary is \$832,311. This project will implement an enterprise revenue collection system and integrate with the existing AOC Back Office System, as well as the Case Management Modernization Project. To date, the requirements analysis has been completed and design is underway to rewrite the circuit court accounting system within the enterprise architecture. In fiscal 2009, the system will be expanded to support the District Court. The total project cost is estimated to be \$1,955,960.

Most of the county circuit court law libraries in the State receive operating budget money from fines and forfeited recognizances assessed in the circuit courts. Under the Courts Article, § 7-507, with certain exceptions, 50% of the fines imposed by and recognizances forfeited to each circuit court must be distributed to the clerk of the circuit court, to be used under the direction of the judges of the circuit court to augment the court library

State Fiscal Effect: There are several inherent difficulties in determining the potential fiscal impacts of this bill. All mainly stem from the fact that the fine revenues currently being assessed or collected for the offenses covered under this bill is unknown – statewide as well as for individual counties. For instance, the Administrative Office of the Courts (AOC) reports that the Maryland District Court processed 27,134 cases statewide involving the covered offenses in fiscal 2007. In the most recent data compiled for the circuit courts, nearly 20,000 such cases were processed by all the circuit courts in fiscal 2006. Neither of these totals for cases processed reflects convictions, fines assessed, or fines collected. In addition, none of the fine revenues currently collected and recorded by the antiquated systems of the courts reflect the specific statutory offense connected with the fine assessed, nor whether the offender is a first-time or repeat offender.

The State Commission on Criminal Sentencing Policy reports that the sentencing guidelines databases do not always reflect fines assessed for individual convictions. In

any case, the guidelines database for fiscal 2006 indicates that 475 persons were convicted in the circuit courts for possession of marijuana, and that an additional 791 persons were convicted in other (non-marijuana) possession cases that same year. The limited guidelines worksheet data for single count convictions shows an average fine assessed during this period of \$454 (with a low of \$100 and a high of \$2,500).

Accordingly, although this bill could result in increases in fine revenues from a limited number of drug crime offenses due to mandatory minimum fine provisions, all fine revenue collected for those offenses and any forfeiture revenue cannot be reliably quantified.

In any case, AOC believes this bill would result in reprogramming costs for the circuit courts and the District Court. The AOC's one-time reprogramming cost estimate for the District Court is approximately \$40,000 and for the circuit courts is about \$11,100. These costs could decrease (or be eliminated) if the systems replacement project cited above has been completed. In any event, DLS advises that if other legislation is passed requiring computer reprogramming changes, economies of scale could be realized by the Judiciary. This would reduce the costs associated with this bill and other legislation affecting the Judiciary.

Assuming that this bill would not lead to widespread changes in sentencing practices for the covered offense, based on convictions recorded by the sentencing commission in fiscal 2006, approximately 1,300 persons could be subject to mandatory minimum fines for these offenses in the District Court. All fine revenues from those convictions would now be redirected to county residential drug abuse treatment services funds rather than the State general fund. The amount of such a State revenue loss cannot be reliably estimated without any actual experience under the bill, but based on current data related to single count convictions for possession of a controlled dangerous substance, it could be over \$1 million annually.

Local Fiscal Effect: This bill would redirect revenues now deposited to county general funds by the circuit courts to a newly created county residential drug abuse treatment services fund. The magnitude of such an occurrence in each county cannot be reliably estimated, but it could be significant in some jurisdictions. A brief survey of local jurisdictions by DLS found two recurring themes: (1) the offices of each county's chief financial officer is not now structured or organized to make the disbursements mandated under the bill; and (2) the county law libraries that now rely on revenue from fines imposed in the circuit courts to offset operating expenses would be negatively impacted.

DLS assumes that county finance offices could be organized to handle the bill's responsibilities, but it is unclear whether the provisions of this bill would supersede the

provisions of the Courts Article directing a portion of fine revenue to some county law libraries.

In any case, it is assumed that this bill would:

- redirect unquantifiable increased fine revenues in the District Court to the counties, rather than the State general fund, only for deposit to a county residential drug abuse treatment services fund;
- redirect unquantifiable increased fine revenues in the circuit courts now deposited to a county general fund only for deposit to a county residential drug abuse treatment services fund; and
- increase operating revenues to public and private residential drug abuse treatment services facilities.

Additional Comments: The fiscal 2009 budget allowance for the case management modernization project for the courts includes \$1,240,000 for system analysis, design, development, and implementation; \$357,000 for operations and maintenance; and \$600,000 to conduct an independent validation and verification review of the case management system. Total project cost is estimated to be \$14,365,226.

Additional Information

Prior Introductions: None.

Cross File: SB 86 (Senator Brochin) –Judicial Proceedings.

Information Source(s): State’s Attorneys’ Association, Wicomico County, Allegany County, Montgomery County, Talbot County, Judiciary (Administrative Office of the Courts, Maryland District Court), Department of Health and Mental Hygiene (Alcohol and Drug Abuse Administration), Commission on Criminal Sentencing Policy, Department of Public Safety and Correctional Services, Department of Legislative Services

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