

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 285  
Judiciary

(Delegate Waldstreicher, *et al.*)

---

Criminal Law - Controlled Dangerous Substances - Penalties

---

This bill establishes that a person convicted of the misdemeanor of possessing or administering a controlled dangerous substance is subject to maximum penalties of imprisonment for 90 days or a fine of \$500 if the violation involves an amount of the substance equal to or less than one-tenth of a gram.

---

Fiscal Summary

**State Effect:** Potential decrease in general fund expenditures due to changes in sentencing provisions based on the quantity of controlled dangerous substances. This may shift some incarcerations to local detention facilities rather than State facilities. Whether this decrease is significant over time depends on the bill's effect on plea bargaining and sentencing practices, especially with regard to persons charged with multiple offenses, which cannot be accurately predicted at this time. Potential minimal revenue increases as more drug cases shift from the circuit courts to the District Court.

**Local Effect:** Potential significant increase in local expenditures related to detention facilities. Potential decrease in revenues as more drug cases shift from the circuit courts to the District Court.

**Small Business Effect:** None.

---

Analysis

**Current Law:** Drug possession is a misdemeanor, punishable by maximum penalties of imprisonment for four years and/or a fine of \$25,000. A violation involving 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. A finding of medical necessity allows a court to impose a maximum fine of \$100.

**State Fiscal Effect:** In fiscal 2008, the Division of Correction (DOC) had a drug offense intake (as the most serious offense) of 4,247 persons for the covered offenses as shown below. This includes Baltimore City intakes with sentences less than 18 months.

<u>DOC CDS Offense Category</u>	<u>Intake</u>	<u>Average Sentence</u>
Possession	1,950	9.4 months
Possession w/Intent to Distribute	1,039	50.4 months
Distribution	926	53.2 months
Conspire to Distribute	125	35.1 months
Possession Marijuana	91	6.7 months
Distribution Marijuana	9	14.1 months
Other CDS Offenses	107	30.1 months
<b>Total</b>	<b>4,247</b>	<b>30.4 months</b>

The Division of Parole and Probation’s fiscal 2008 intake for persons who drew probation rather than imprisonment for similar offenses was as follows:

<u>Probation CDS Offense Category</u>	<u>Intake</u>
Possession	6,672
Possession w/Intent to Distribute	2,256
Distribution	1,747
Conspire to Distribute	429
Possession Marijuana	2,634
Distribution Marijuana	118
Other CDS Offenses (including paraphernalia)	563
<b>Total</b>	<b>14,419</b>

Because it is unknown what controlled dangerous substance, or the amounts of the substance(s), were at issue for any of the convictions and sentences cited above, it is difficult to know the extent to which this bill decreases average incarceration terms and overall State incarceration costs.

In any case, it is assumed that this bill, by itself, does not affect the number of drug arrests or convictions in the State annually. However, because the bill significantly

reduces the amount of incarceration time imposed by a court for some unknown number of drug offenders, it causes a significant number of offenders outside of Baltimore City to serve their sentences in local detention facilities. It is also assumed that, under the bill's maximum 90-day sentencing provision for some possession cases, more sentencing proceedings result in no additional incarceration time under a sentencing order of "time served."

Accordingly, general fund expenditures for incarceration costs may decrease due to some people being committed to DOC facilities for shorter periods of time and some persons now sentenced to DOC facilities being sentenced to local facilities. This latter effect may also result in increased payments to counties for reimbursement of inmate costs. The actual number of convicted persons (prospectively) this may affect, or the effect on their actual sentences served, is unknown.

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. Excluding overhead, the average cost of housing a DOC inmate (including variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. The State reimburses counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. State per diem reimbursements for fiscal 2010 are estimated to range from \$23 to \$71 per inmate depending upon the jurisdiction. Persons sentenced to such a term in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Given the number of persons now serving sentences for drug-related offenses, over time, the provisions of this bill would tend to lead to significant reductions in State correctional costs, but only to the extent that sentencing patterns for other offenses are not altered. The bill's impact on correctional costs for DOC could begin as early as fiscal 2010, and would tend to grow over time.

The bill is not expected to significantly impact the operations of State's Attorneys or the overall operations of the Public Defender. The Commission on Criminal Sentencing Policy advises that alterations to the classifications of offenses within its databases could be accommodated with existing budgeted resources.

**Local Revenues:** Because this bill shifts some unknown number of cases from the circuit courts to the District Court, revenues decrease. However, local governments may realize increased payments from the State for reimbursement of inmate costs.

**Local Expenditures:** Expenditures increase significantly as a result of a potential increase in the number of persons sentenced to local detention facilities rather than State facilities. Counties pay the full cost of incarceration for people in their facilities for the first 90 days of the sentence, plus part of the per diem cost after 90 days. Per diem operating costs of local detention facilities are expected to range from \$46 to \$141 per inmate in fiscal 2010.

---

### **Additional Information**

**Prior Introductions:** The provisions of this bill were included in HB 845 of 2008, which received a favorable with amendments report from the House Judiciary Committee, passed second reader, and was recommitted to committee. No further action was taken. Its cross file, SB 552 of 2008, received a hearing before the Senate Judicial Proceedings Committee and had no further action taken on it.

**Cross File:** None.

**Information Source(s):** Judiciary (Maryland District Court), Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - February 6, 2009  
mcp/kdm

---

Analysis by: Guy G. Cherry

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510