

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

House Bill 626  
Judiciary

(Delegate Anderson)

Judicial Proceedings

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Criminal Law - Controlled Dangerous Substance - Manufacture

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This bill removes the prohibition against the manufacture of a controlled dangerous substance from the provision that prohibits distributing and dispensing a controlled dangerous substance and places it with the provision that prohibits the manufacture, distribution, or possession of certain items used to produce controlled dangerous substances. This bill establishes that a violation of the prohibition against manufacturing, distributing, or possessing certain items used to produce a controlled dangerous substance is an “underlying crime” for purposes of defining a criminal gang.

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Fiscal Summary

**State Effect:** None. Although expanding the list of “underlying crimes” may result in the prosecution and incarceration of additional individuals for participation in a gang, it is not expected to significantly affect operations or finances for the Judiciary or the Department of Public Safety or Correctional Services. Moving the prohibition against the manufacture of controlled dangerous substances to a different part of the Code is a technical change only.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law:** A person is prohibited from: (1) manufacturing, distributing, or dispensing a controlled dangerous substance or (2) possessing a controlled dangerous substance in sufficient quantity that reasonably indicates under all circumstances an

intent to manufacture, distribute, or dispense a controlled dangerous substance. (*See* Criminal Law Article § 5-602.)

A person may not manufacture, distribute, or possess a machine, equipment, instrument, device, or a combination of them that is adapted to produce a controlled dangerous substance under circumstances that reasonably indicate an intent to use it to produce, sell, or dispense a controlled dangerous substance. (*See* Criminal Law Article § 5-603.)

A violator of either of the above provisions is guilty of a felony and subject to maximum penalties of five years imprisonment and/or a fine of \$15,000. A subsequent offender under these prohibitions must be sentenced to imprisonment for at least two years, which term is nonsuspendable and nonparolable.

When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of 20 years imprisonment 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 second-time offender or conspirator convicted again of those same primary crimes involving a Schedule I or Schedule II narcotic drug, 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 offender or a conspirator with three or more prior 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 other drugs, a convicted person is subject to maximum penalties of 20 years imprisonment 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 second-time offender or conspirator convicted again of those same primary crimes involving the specified other 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 offender or a conspirator with three or more prior separate convictions for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

A volume dealer, as defined by the amount of specified substances, is subject to a maximum fine of \$100,000 and a mandatory minimum nonsuspendable, nonparolable sentence of five years. (*See* Criminal Law Article §§ 5-607 through 5-609 and 5-612.)

“Criminal gang” is defined as a group or ongoing association of three or more persons whose members:

- individually or collectively engage in a pattern of criminal gang activity;
- have as one of their primary objectives or activities the commission of one or more underlying crimes; and
- have in common an identifying sign, symbol, name, leader, or purpose.

An underlying crime includes all “crimes of violence” as defined in State law and felony violations of specified crimes, including manufacturing or distributing a controlled dangerous substance.

A person is prohibited from (1) participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity; or (2) knowingly or willfully directing or participating in the commission of an underlying crime (or act by a juvenile that would be an underlying crime if committed by an adult) committed for the benefit of, at the direction of, or in association with a criminal gang. A violator is guilty of a felony and subject to maximum penalties of 10 years imprisonment or 20 years if death to a victim occurs, and/or a \$100,000 fine. A sentence imposed under this section may run consecutive to or concurrently with a sentence for any crime establishing a violation of this Act. (*See* Criminal Law Article § 9-804.)

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - March 8, 2009  
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