

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 388 (Delegate Simmons)
Judiciary

Judicial Proceedings

Criminal Law - Narcotic Drugs - Enhanced Penalties

This bill adds as an eligible condition for a third-strike mandatory minimum 25-year sentence for specified offenses relating to manufacturing, distributing, possessing with intent to distribute, or dispensing a narcotic drug, a minimum 180-day confinement based on a conviction for a prior drug conspiracy or for a similar offense under the laws of another state or federal law.

Fiscal Summary

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

Local Effect: Minimal increase in revenues due to a potential increase in fines from enhanced sentencing for some limited number of drug convictions from cases heard in the circuit courts.

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 is specified hallucinogenic drugs – including PCP, LSD, and MDMA (also commonly known as “ecstasy”) – 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 of narcotics offenses relating to manufacturing, distributing, possessing with intent to distribute, dispensing, or conspiring to commit these offenses.

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 as specified. Time served by appellant for his conviction for conspiracy to distribute cocaine did not count because that crime is not

included. The sentence received by Mr. Harris for distribution of cocaine was vacated and the case was remanded for resentencing on that count.

According to the Commission on Criminal Sentencing Policy, the Maryland Sentencing Guidelines Database indicates that five persons were sentenced to the mandatory minimum 25-year sentence as a third-time offender for the covered offenses in fiscal 2007 and two persons in fiscal 2008.

State Expenditures: The bill may lead to a greater frequency of so-called third-strike trials and convictions with lengthy mandatory minimum imprisonment penalties attached. Accordingly, general fund expenditures may 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 variable medical care and variable operating costs) is \$342 per month. Excluding all medical care, the average variable costs total \$164 per month.

Additional Information

Prior Introductions: HB0584 LR1560 2008 JUD

Cross File: None.

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

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