

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1080
Judiciary

(Delegate Dwyer, *et al.*)

Anne Arundel County - Drug-Free Zones Pilot Program - Recreation Areas

This bill establishes a pilot program in Anne Arundel County during which a person who manufactures, distributes, dispenses, or possesses with intent to distribute a controlled substance in a “recreation area” is subject to specified enhanced penalties. A person who conspires to commit any of these offenses in a recreation area is also subject to the enhanced penalties. A “recreation area” is defined as property that is owned or operated by the State or Anne Arundel County and is maintained as a forest, park, public parkland, wildland, open area, or recreation area.

The bill goes into effect on October 1, 2010, and terminates on September 30, 2013.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures in FY 2011 through 2014 due to the bill’s incarceration penalty. State revenues are not affected.

Local Effect: Potential minimal increase in local revenues due to the bill’s monetary penalties. The bill is not expected to materially affect local expenditures.

Small Business Effect: None.

Analysis

Bill Summary: A person is prohibited from manufacturing, distributing, dispensing, or possessing with intent to distribute a controlled dangerous substance in a “recreation area” in Anne Arundel County. Conspiring to commit any of these offenses in a “recreation area” is also prohibited. Violators are guilty of a felony and subject to the

following maximum penalties: (1) for a first offense, a fine of \$20,000 and/or imprisonment for 20 years; and (2) for a subsequent offense, a fine of \$40,000 and/or imprisonment for 40 years and not less than 5 years. The 5-year mandatory minimum sentence for repeat offenders is nonsuspendable and nonparolable. Sentences imposed under these provisions are required to be served consecutively to any other sentence imposed, and a conviction under these provisions may not merge with a conviction for other specified provisions prohibiting a person from similar activities or engaging a minor in such activities.

The bill also allows Anne Arundel County to post signs designating a “recreation area” as a “drug free zone.” Such signs must be designed to provide notice of the provisions of this bill.

Current Law: Controlled dangerous substances are listed on one of five schedules (Schedule I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. No distinction is made in the law regarding the illegal possession of any controlled dangerous substance, regardless of which schedule it is on, with the exception of marijuana.

When the substance is marijuana, the maximum criminal penalties for an illegal possession or use violation are one-year imprisonment and/or a \$1,000 fine. A person charged with possession or use of marijuana or related paraphernalia may introduce evidence related to medical necessity and, if the person is convicted and the court finds there was medical necessity, the maximum punishment is limited to a fine of \$100.

For specified primary crimes involving controlled dangerous substances and paraphernalia, a person may not:

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance;
- manufacture a controlled dangerous substance or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with the intent to use it to produce, sell, or dispense a controlled dangerous substance;
- create, distribute, or possess with the intent to distribute a counterfeit substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance (any place resorted to for the purpose of illegally administering controlled dangerous substances or where such substances or controlled paraphernalia are illegally manufactured, distributed, dispensed, stored, or concealed); or

- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with the intent to distribute the controlled dangerous substance.

A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A subsequent offender under these prohibitions is subject to a mandatory minimum nonsuspendable, nonparolable sentence of two years imprisonment.

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 second-time 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 who is convicted again of those same primary crimes involving a Schedule I or Schedule II narcotic drug and meets certain confinement and conviction prerequisites, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A fourth-time offender or 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 is specified other 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 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 §§ 5-602 through 5-605, 5-607 through 5-609, and 5-612.)

Controlled Dangerous Substances Violations that Occur Near Schools

In general, current law does not make a distinction for controlled dangerous substances violations based on the age of the recipient. However, current law does make a distinction for drug activity that occurs near a school. A person may not manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance in violation or conspire to commit any of these crimes in a school vehicle or in, on, or within 1,000 feet of real property owned by or leased to an elementary school, secondary school, or county board and used for elementary or secondary education. A person who violates this section is guilty of a felony and on conviction is subject to maximum penalties of 20 years imprisonment and/or a \$20,000 fine. Repeat offenders are subject to a mandatory minimum sentence of five years imprisonment, which is nonsuspendable and nonparolable. The maximum penalties for repeat offenders are 40 years imprisonment and/or a \$40,000 fine. Any sentence imposed for this offense must be served consecutively to any other sentence imposed, and a conviction on this offense may not be merged with a conviction for a predicate offense.

Background: According to the *2008 Uniform Crime Report*, there were 851 arrests for drug sales or manufacturing in Anne Arundel County in 2008, giving the county the fourth-highest total in this category of arrests. In fiscal 2009, the Division of Correction (DOC) conducted intake on 841 individuals statewide for distribution of a controlled dangerous substance and 916 individuals for possession of a controlled dangerous substance with the intent to distribute. Both offenses had an average sentence of 49 months.

State Fiscal Effect: Given that the bill's provisions will only remain in effect for three years, this fiscal estimate is based on first-time offenders, not repeat offenders.

State Expenditures: General fund expenditures increase minimally from fiscal 2011 through fiscal 2014 as a result of the bill's incarceration penalty due to people being committed to Division of Correction (DOC) facilities for longer periods of time. The number of people convicted of this proposed crime is expected to be 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 \$2,750 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 \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

The Office of the Public Defender (OPD) advises that the bill would necessitate the hiring of 1.3 additional assistant public defenders, resulting in increased expenditures of \$114,500 in fiscal 2011. This estimate assumes that: (1) 25% of the 373 felony controlled dangerous substances cases OPD handled in Anne Arundel County in calendar 2009 will take place in a “recreation area” and be subject to the provisions of this bill; (2) each of these cases will require 20 additional hours of case-related work; and (3) caseloads remain consistent. Legislative Services disagrees with this assessment, since the bill authorizes prosecutors to charge a defendant with an additional offense/count stemming from the same set of events and this additional count will likely be tried at the same trial as the charge for the underlying drug offense.

Local Revenues: Revenues increase minimally as a result of the bill’s monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: The bill (1) requires the 20-year to 40-year sentences imposed or the minimum mandatory 5-year sentence for repeat offenders under the provisions of this bill to be served consecutively to any other sentence imposed; and (2) prohibits convictions for the offense created by this bill from merging with convictions for other specified controlled dangerous substances offenses. Since persons sentenced to local detention facilities are likely to be sentenced to only one year or less, it is unlikely that the bill will materially affect local expenditures.

Additional Comments: In general, State law provides significantly lower penalties for offenses involving controlled dangerous substances that are *not* listed on Schedules I or II. This bill, which provides specific penalties for currently illegal activity that takes place in a “recreation area” in Anne Arundel County, does not make such a distinction.

Additional Information

Prior Introductions: HB 416 of 2001, a similar bill, received an unfavorable report from the House Judiciary Committee.

Cross File: SB 671 (Senator Simonaire) - Judicial Proceedings. However, the bills are not identical.

Information Source(s): Judiciary (Administrative Office of the Courts); Commission on Criminal Sentencing Policy; Office of the Public Defender; Department of Natural Resources; Department of Legislative Services

Fiscal Note History: First Reader - March 7, 2010
ncs/kdm

Analysis by: Amy A. Devadas

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