

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 517

(Delegate Simmons, *et al.*)

Judiciary

Judicial Proceedings

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Criminal Law - Narcotic Drugs - Enhanced Penalties

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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.

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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.

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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, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000 if the offender (1) has served at least 180 days confinement for a qualifying offense, as specified in statute; and (2) has been convicted twice of specified offenses, if the convictions arise from separate occasions. 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 ruling 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 more than 180 days in confinement for a qualifying offense under the third-time offender statute. The time the appellant served for conspiracy to distribute cocaine did not count since that offense is not specified as a

qualifying offense under the third-time offender statute. The sentence received by the appellant 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 \$2,750 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.

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### **Additional Information**

**Prior Introductions:** HB 388 of 2009 passed the House and received a hearing in the Senate Judicial Proceedings Committee. No further action was taken.

**Cross File:** None.

**Information Source(s):** Charles and Frederick counties, Commission on Criminal Sentencing Policy, State's Attorneys' Association, Department of Legislative Services

**Fiscal Note History:** First Reader - February 12, 2010  
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