

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 353
Judiciary

(Delegate Anderson, *et al.*)

Criminal Procedure - Drug-Related Offenses - Repeal of Mandatory Minimum Sentences

This bill substitutes maximum penalties for certain mandatory minimum drug-related offenses, provides an opportunity for a hearing for sentence modification or sentence review to persons serving mandatory minimum sentences affected by the bill, and expands eligibility for court-ordered drug treatment programs.

Fiscal Summary

State Effect: Minimal decrease in general fund expenditures for the Department of Public Safety and Correctional Services due to the bill's elimination of mandatory minimum sentences. The cumulative effect of this decrease may become significant over time. Potential minimal increase in general fund expenditures for the Department of Health and Mental Hygiene to conduct additional substance abuse evaluations as a result of the bill.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill substitutes maximum penalties for the mandatory minimum sentences prescribed for the offenses listed below. **Exhibit 1** details the changes to these sentences under the bill.

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance (CDS);
- 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.

Hearings for Individuals Serving a Mandatory Minimum Sentence

A person serving a mandatory minimum sentence repealed by the bill that was imposed on or before September 30, 2011, is eligible to be granted (1) one hearing before the court to modify or reduce the mandatory minimum sentence, even if the defendant did not timely file a motion for reconsideration or had a motion for consideration denied by the court; and (2) one sentence review of the mandatory minimum sentence. The court or panel may strike the restriction against parole or reduce the length of the sentence. In order to be granted a hearing or sentence review, the person must submit an application to the court or review panel on or before September 30, 2014.

Drug Treatment

The bill expands eligibility for court-ordered drug treatment by specifying that the following persons are not prohibited from participating in court-ordered drug treatment because of the length of their sentences: (1) a person convicted of a drug-related offense that does not involve Schedule I or Schedule II narcotic drugs or specified CDS; (2) a person convicted of conspiracy to commit a drug-related offense involving Schedule I or Schedule II narcotic drugs; and (3) a person convicted of conspiracy to commit a drug-related offense involving specified CDS.

Exhibit 1
Changes to Sentences for Drug-related Offenses Under HB 353

Offense	Current Penalty*	HB 353
Repeat Offender – CDS (other than Schedule I or II narcotic drugs and other specified CDS)	2-year mandatory minimum sentence Maximum penalty of 5 years imprisonment and/or \$15,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender (One Prior Conviction) – Schedule I or II narcotic drug	10 years mandatory minimum sentence Maximum penalty of 20 years and/or \$100,000 fine	Maximum penalty of 20 years imprisonment and/or \$100,000 fine
Repeat Offender (Two Prior Convictions) – Schedule I or II narcotic drug	25-year mandatory minimum and a fine of up to \$100,000	Maximum penalty of 25 years imprisonment and/or a \$100,000 fine
Repeat Offender (Three or More Prior Convictions) – Schedule I or II narcotic drug	40-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 40 years imprisonment and/or a \$100,000 fine
Repeat Offender (One Prior Conviction) – Specified Drugs	10-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 20 years imprisonment and/or a \$100,000 fine
Repeat Offender (Two Prior Convictions) – Specified Drugs	25-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 30 years imprisonment and/or a \$100,000 fine
Repeat Offender (Three or More Prior Convictions) – Specified Drugs	40-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 40 years imprisonment and/or a \$100,000 fine

*All mandatory minimum sentences listed in Exhibit 1 are nonsuspendable and nonparolable.

Current Law: 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.

Sentence Review and/or Modification

A person convicted of a crime by a circuit court and sentenced to serve a sentence that exceeds two years in a correctional facility is entitled to a single sentence review by a review panel. An application for review must be filed within 30 days of the sentencing. A person is not entitled to (1) a sentence review if the sentence was imposed by more than one circuit court judge; or (2) a review of an order requiring a suspended part of a sentence to be served if the sentence was wholly or partly suspended, the sentence was reviewed, and the suspended sentence or the suspended portion of the sentence was required to be served.

The minimum length of sentence required for review is calculated using the total period of the sentence and any unserved time of a prior or simultaneous sentence, including: (1) a sentence imposed by a circuit court; (2) a requirement by a circuit court that all or part of a suspended sentence be served; and (3) a prior or simultaneous sentence, suspended or not suspended, that has been imposed by a court or other authority of the State or another jurisdiction.

A panel of three or more trial judges of the judicial circuit in which the sentencing court is located conducts the review. A person has no right to have a sentence reviewed more than once. The judge who sentenced the convicted person may not be one of the members of the panel, but may sit with the panel in an advisory capacity.

If a hearing is held, the panel generally may increase, decrease, or otherwise modify the sentence by majority rule. However, a mandatory minimum sentence may be decreased only by a unanimous vote of the panel. Without holding a hearing, the panel may decide that the sentence under review should remain unchanged. The review panel must file a written decision within 30 days of the application's filing date.

In addition, Maryland Rules specify that upon a motion filed within 90 days after its imposition: (1) in the District Court, if an appeal has not been perfected or has been dismissed; and (2) in a circuit court, whether or not an appeal has been filed, a court has

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revisory power and control over a sentence, except that it may not revise the sentence after five years from the date the sentence was originally imposed and the court may not increase the sentence.

The court may correct an illegal sentence at any time. The court also has revisory power over a sentence in the case of fraud, mistake, or irregularity. In addition, the court may correct an evident mistake in the announcement of a sentence if the correction is made on the record before the defendant leaves the courtroom following the sentencing proceeding.

A review panel may increase, modify, or reduce a sentence only after notifying each party and the victim or the victim's representative. Before changing a sentence, the review panel must allow each party to be heard at the hearing and must allow the victim or the victim's representative to attend the hearing and address the panel. Under Maryland Rules, the court may modify, reduce, correct, or vacate a sentence only on the record in open court after hearing from the defendant, the State, and from each victim or victim's representative who requests an opportunity to be heard. The defendant may waive the right to be present. No hearing may be held on a motion to modify or reduce the sentence until the court has determined that the statutory victim notification requirement has been met. If the court grants the motion, it must prepare or dictate into the record a statement of the reasons on which the ruling is based.

Drug Treatment

Under §8-507 of the Health-General Article, a court is authorized to refer an individual to substance abuse treatment as an alternative to incarceration. A court that finds in a criminal case that a defendant has an alcohol or drug dependency may commit the defendant to a drug or alcohol treatment program. The commitment can be made as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment.

Background: According to the Maryland State Commission on Criminal Sentencing Policy, there were 19 convictions in fiscal 2010 for the mandatory minimum offenses affected by the bill.

State Expenditures: 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 \$2,920 per month. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Given the low number of convictions resulting in mandatory minimum sentences each year, any decrease in expenditures for the Department of Public Safety and Correctional

Services will be minimal at first. However, the cumulative effect of the elimination of mandatory minimum sentences may be significant, assuming all other variables remain constant (plea bargaining, sentencing practices, etc.).

In general, there are two components of the court-ordered drug treatment process, a court-ordered substance abuse evaluation and a court-ordered referral to substance abuse treatment. The bill expands eligibility for court-ordered drug treatment to include certain conspirators and offenders involved with substances other than Schedule I or II narcotics and other specified drugs. Of this newly eligible group, nonconspirator defendants for offenses covered by the bill involving marijuana are the most likely newly eligible defendants since (1) conspirators are not the most likely drug treatment candidates; and (2) according to ADAA statistics, marijuana is the most commonly abused substance among treatment participants that meets the expanded eligibility parameters. Therefore, while the expanded eligibility will likely result in additional ADAA substance abuse evaluations, any increase is likely to be minimal.

ADAA has a finite number of beds devoted to court commitment drug treatment (currently 110 beds). Thus, while this bill may make more convicted persons eligible for treatment referrals, the number of actual referrals made by a court in any given year is limited by available treatment slots. Accordingly, the number of annual court referrals for drug treatment are not expected to increase significantly under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Montgomery, Washington, and Worcester counties; Commission on Criminal Sentencing Policy; Department of Health and Mental Hygiene; 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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