

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 213

(Senator Simonaire, *et al.*)

Judicial Proceedings

Anne Arundel County - Drug-Free Zones Pilot Program - Public Parks and
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 dangerous substance in a public park or recreation area is subject to specified enhanced penalties. A person who conspires to commit any of these offenses in a public park or recreation area is also subject to the enhanced penalties.

The bill takes effect on October 1, 2011, and terminates on September 30, 2014.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures in FY 2012 through 2015 due to the bill's incarceration penalty. State revenues are not affected.

Local Effect: Minimal increase in Anne Arundel County revenues due to the bill's monetary penalties. Anne Arundel County expenditures increase by \$11,000 in FY 2012 for the county to post signs in public parks and recreation areas in order to comply with the bill's signage requirements.

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 public park or recreation area in Anne Arundel County. Conspiring to commit any of these offenses in a

public park or 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 public park or 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 *2009 Uniform Crime Report*, there were 719 arrests for drug sales or manufacturing in Anne Arundel County in 2009, giving the county the fourth-highest total in this category of arrests. In fiscal 2010, the Division of Correction (DOC) conducted intake on 999 individuals statewide for distribution of a controlled dangerous substance and 1,218 individuals for possession of a controlled dangerous substance with the intent to distribute. Both offenses had an average sentence of 53 months.

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 2012 through fiscal 2015 as a result of the bill's incarceration penalty due to people being committed to 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 \$2,920 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 about \$390 per month. Excluding all medical care, the average variable costs total \$170 per month.

Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or DOC. Prior to fiscal 2010, the State reimbursed counties for part of their incarceration costs, on a per diem basis, after a person has served 90 days. Currently, the State provides assistance to the counties for locally sentenced inmates and for inmates who are sentenced to and awaiting transfer to the State correctional system. A \$45 per diem grant is provided to each county for each day between 12 and 18 months that a sentenced inmate is confined in a local detention center. Counties also receive an additional \$45 per day grant for inmates who have been sentenced to the custody of DOC but are confined in a local facility. The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in DOC facilities. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

Local Revenues: Anne Arundel County revenues increase minimally as a result of the bill's monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Anne Arundel County advises that it will cost \$11,000 in fiscal 2012 for the county to post signs designating a public park or recreation area as a "drug free zone."

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 incarceration 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 public park or recreation area in Anne Arundel County, does not make such a distinction.

Additional Information

Prior Introductions: SB 671 of 2010, a substantially similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1080, received a hearing in the House Judiciary Committee, but no further action was taken.

Cross File: None.

Information Source(s): Anne Arundel County, Commission on Criminal Sentencing Policy, Department of Natural Resources, Judiciary (Administrative Office of the Courts), Department of State Police, Office of the Public Defender, Department of Public Safety and Correctional Services, Department of Legislative Services

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