

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 237

(Senator Shank, *et al.*)

Judicial Proceedings

Criminal Law - Selling a Controlled Dangerous Substance to a Minor - Causing Death

This bill creates a new criminal offense prohibiting a person age 18 or older from selling a controlled dangerous substance to a minor when the minor dies as a direct result of the use or ingestion of the substance. Under the bill, “sell” means to transfer or exchange for money or its equivalent. A violator is guilty of a felony and subject to a maximum sentence of 20 years imprisonment. A sentence imposed for this offense is separate from any sentence imposed for a crime based on the act establishing the violation. A conviction for this offense may not merge with a conviction for manufacturing, distributing, possessing with the intent to distribute, or dispensing a controlled dangerous substance.

Fiscal Summary

State Effect: Potential minimal increase in State expenditures due to the bill’s incarceration penalty. Revenues are not affected.

Local Effect: None. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

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 based on the age of the recipient. 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 defendant is guilty of a misdemeanor and the maximum penalties for a violation are one year imprisonment and/or a \$1,000 fine. If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. The use or possession of any other controlled dangerous substance is a misdemeanor with maximum penalties of four years imprisonment and/or a \$25,000 fine.

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.

Controlled Dangerous Substances Violations That Occur Near Schools

As previously mentioned, the law generally does not make a distinction for controlled dangerous substances violations based on the age of the recipient. However, the 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 or conspire to commit any of these crimes in a school vehicle or in, on, or within 1,000 feet of real property used for elementary or secondary education that is owned by or leased to an elementary school, secondary school, or county board. 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.

Murder and Manslaughter

To be first degree murder, the murder must be (1) a willful, deliberate, and premeditated killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of, or attempt to perpetrate any of several specified offenses, none of which involve controlled dangerous substances. Unless specified criteria are met that qualify an individual for the death penalty, violators are subject to sentences of life imprisonment, or life imprisonment without the possibility of parole.

Murder that is not in the first degree is considered second degree murder. Violators are subject to a maximum penalty of 30 years imprisonment.

Manslaughter is a common law offense. The meanings accorded to involuntary and voluntary manslaughter are judicially determined and based on case law. Manslaughter is distinguished from murder by the absence of malice aforethought, express or implied. The absence of intention to kill or to commit any unlawful act which might reasonably produce death or great bodily harm is generally the distinguishing factor between voluntary and involuntary manslaughter. A person who commits manslaughter is guilty of a felony and subject to maximum penalties of (1) imprisonment for 10 years; or (2) imprisonment in a local correctional facility for 2 years and/or a fine of \$500.

Under the common law theory of felony murder, a person who, regardless of intent, causes the death of another while committing or attempting to commit a felony may be found guilty of murder. Under this theory, the commission of or attempt to commit the underlying felony is sufficient to supply the element of malice required for a charge of murder.

State Expenditures: General fund expenditures increase minimally 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 \$2,920 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.

Additional Comments: The statute for possessing or administering a controlled dangerous substance contains an express exception for a controlled dangerous substance obtained through a legitimate prescription or from an authorized provider in the course of professional practice. This bill does not contain such a provision. It is unclear if this exception would apply to instances covered by this bill since the provisions of the bill are contained in a new and separate section of the statute and the bill uses the term “sell” not “possess” or “administer.”

Additional Information

Prior Introductions: None.

Cross File: HB 359 (Delegate Hough, *et al.*) - Judiciary.

Information Source(s): Baltimore, Garrett, Howard, and Montgomery counties; Commission on Criminal Sentencing Policy; 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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