

Department of Legislative Services
Maryland General Assembly
2015 Session

FISCAL AND POLICY NOTE
Revised

House Bill 121

(Delegate Anderson, *et al.*)

Judiciary

Judicial Proceedings

**Criminal Procedure - Drug-Related Offenses - Departure From Mandatory
Minimum Sentences**

This bill authorizes courts to depart from specified mandatory minimum sentences under certain circumstances for repeat offenders of specified crimes generally involving the manufacture, sale, and distribution of controlled dangerous substances (CDS). The bill specifies that savings realized as a result of the bill's provisions must revert to the general fund to fund drug treatment programs.

The bill applies prospectively.

Fiscal Summary

State Effect: Potential decrease in general fund expenditures, beginning in FY 2018, due to the bill's authorization of judicial departure from some mandatory minimum sentencing provisions. Whether that decrease is significant over time depends on the bill's effect on plea bargaining and sentencing practices, which cannot be accurately predicted at this time; the most significant contributing factor that determines the magnitude of the bill's reduction in general fund expenditures is the extent to which sentences are reduced under the bill. In any event, due to the length of the sentences that are subject to the bill, any significant savings are likely to be realized after 2020 and beyond. Minimal increase in expenditures for the Maryland State Commission on Criminal Sentencing Policy (MSCCSP) for computer programming costs. Revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Specifically, the bill authorizes a court to depart from specified mandatory minimum sentences if the court finds (and states on the record) that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant's chances of successful rehabilitation (1) imposing the mandatory minimum sentence would result in substantial injustice to the defendant and (2) the mandatory minimum sentence is unnecessary for public protection.

The bill authorizes courts to depart from:

- the minimum two-year, nonsuspendable, nonparolable sentence applicable to a repeat offender convicted of specified crimes involving CDS;
- the minimum 10-year sentence and maximum fine of \$100,000 applicable to a repeat offender (or conspirator) convicted of specified crimes involving narcotic drugs;
- the minimum 25-year sentence and maximum fine of \$100,000 applicable to a third-time offender (or conspirator) convicted of specified crimes involving narcotic drugs;
- the minimum 40-year sentence and maximum fine of \$100,000 applicable to a fourth-time offender (or conspirator) convicted of specified crimes involving narcotic drugs;
- the minimum 10-year sentence and maximum fine of \$100,000 applicable to a second-time offender (or conspirator) convicted of specified crimes involving narcotic drugs and Schedule I and II hallucinogenic substances;
- the minimum 25-year sentence and maximum fine of \$100,000 applicable to a third-time offender (or conspirator) convicted of specified crimes involving narcotic drugs and Schedule I and II hallucinogenic substances; and
- the minimum 40-year sentence and maximum fine of \$100,000 applicable to a fourth-time offender (or conspirator) convicted of specified crimes involving narcotics and Schedule I and II hallucinogenic substances.

The bill clarifies that a person convicted of any of the covered offenses is not prohibited from participation in a specified drug treatment program because of the length of the sentence.

The bill's provisions only apply prospectively, and may not be applied or interpreted to have any effect on or application to any crime committed before the bill's October 1, 2015 effective date.

Current Law:

Primary Crimes Involving Controlled Dangerous Substances

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. For information on primary crimes (other than possession) involving CDS, please refer to the **Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances**.

A volume dealer, as defined by the amount of specified substances, is subject to a maximum fine of \$100,000 and is subject to a mandatory minimum nonsuspendable, nonparolable sentence of five years.

Drug Treatment Program

Under the Health-General Article, if a court finds either during a criminal case or during a period of probation, that a defendant has an alcohol or drug dependency, the court may commit the defendant to a drug or alcohol treatment program as an alternative to incarceration. The commitment can be made as a condition of release, after conviction, or any other time the defendant voluntarily agrees to participate in treatment.

Sentence Review and Modification

Under § 8-102 of the Criminal Procedure Article, 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.

Maryland Rule 4-345 authorizes a court to correct an illegal sentence at any time. The sentencing court has revisory power over a sentence in case of fraud, mistake, or irregularity. 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 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. A court

may, however, correct an evident mistake in announcing the sentence if the correction is made on the record, following the sentencing proceeding, before the dependent leaves the courtroom.

Maryland Rule 4-345 also requires the State's Attorney to give notice to each victim and victim's representative who has filed an official request to be notified that states (1) that a motion to modify or reduce a sentence has been filed; (2) that either the motion has been denied without a hearing or the date, time, and location of the hearing; and (3) if a hearing is to be held, that the victim or victim's representative may attend and testify. 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 notice requirement has been met. If the court grants the motion, it must prepare or dictate into the record which is a statement of the reasons on which the ruling is based.

Background: According to the Department of Public Safety and Correctional Services (DPSCS), in fiscal 2014, 1,107 offenders were received whose "most serious" offense corresponds with offenses addressed under the bill. However, DPSCS advises that it is impossible to determine which of these offenses specifically relate to drug manufacturing. In addition, this data does not precisely reflect the court's imposition of mandatory minimum sentences. Thus, DPSCS advises that although bill could reduce sentence length and ultimately its inmate population, it cannot accurately estimate the extent of the bill's impact on future sentencing or when such an impact may occur.

State Expenditures: The bill authorizes departure from, but does not eliminate, the mandatory minimum sentences listed above. Thus, the effect of the bill on actual sentencing practices (and plea bargaining) is unknown. However, it is assumed that the authorized departure from some mandatory minimum sentences reduces general fund expenditures for incarceration costs due to some individuals being committed to DPSCS facilities for shorter periods of time. The information and assumptions used in this analysis are listed below:

- mandatory minimum sentences are nonparolable and nonsuspendable; thus, they are more likely to be served than maximum sentences;
- even when a maximum sentence is imposed, a portion of the sentence may be suspended according to judicial discretion;
- because the offenders affected by this bill are repeat offenders, it is unlikely they are released on parole any sooner than they would be under current law; and

- because offenders typically serve 50% of a nonviolent sentence, it is unlikely that this bill results in a longer sentence being served.

The actual number of convicted persons the bill may affect, or the effect on their actual sentences served, is unknown. The bill's impact on correctional costs for DPSCS could begin as early as fiscal 2018, but would likely not affect the terms of some inmates (sentenced after October 1, 2015) until 2020 and beyond.

Persons serving a sentence longer than 18 months are incarcerated in State correctional facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$3,100 per month. Excluding overhead, the average cost of housing a new State inmate (including variable health care costs) is about \$770 per month. Excluding all health care, the average variable costs total \$200 per month.

For illustrative purposes only, if this bill results in a one-year reduction of actual time served for 100 affected inmates, an eventual savings of \$3,720,000 accrues for DPSCS. Given the number of persons now serving sentences for drug-related offenses, over time, the bill likely leads to more significant reductions in State correctional costs, but only to the extent that sentencing patterns for other offenses are not altered.

Expenditures for MSCCSP increase by up to \$10,000 in fiscal 2016 only to reprogram the Maryland Automated Guidelines System to reflect the judicial departures from mandatory minimum sentences.

Additional Comments: The bill requires that the savings realized as a result of the Act's provisions revert to the general fund to be used for funding drug treatment programs. However, the bill provides no mechanism for tracking such savings and does not create a special fund into which any such savings must be directed. Absent the creation of a special fund and a tracking mechanism, it is unclear whether any savings can be distributed in the way prescribed by the bill.

Additional Information

Prior Introductions: HB 992 of 2007, a similar bill, passed the House with amendments and the Senate but was vetoed by the Governor. Its cross file, SB 624, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: None.

Information Source(s): Maryland State Commission on Criminal Sentencing Policy, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Maryland Association of County Health Officers, Office of the Public Defender, Department of Public Safety and Correctional Services, State's Attorneys' Association, Department of Legislative Services

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mar/kdm Revised - House Third Reader - March 31, 2015
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Analysis by: Kathleen P. Kennedy
and Elizabeth Bayly

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

Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances

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.

Exhibit 1 contains the applicable sentences for these crimes.

Exhibit 1
Penalties for Distribution of Controlled Dangerous Substances
and Related Offenses

Offense

Current Penalty

CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)

First-time Offender – CDS (other than Schedule I or II narcotic drugs and other specified CDS)	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
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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
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CDS (Schedule I or II Narcotic Drug)

First-time Offender – Schedule I or II narcotic drug	Maximum penalty of 20 years imprisonment and/or \$25,000 fine
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Second-time Offender – Schedule I or II narcotic drug	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000
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Third-time Offender – Schedule I or II narcotic drug	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Schedule I or II narcotic drug	40-year mandatory minimum sentence and a fine of up to \$100,000
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CDS (Specified Drugs)

First-time Offender – Specified Drugs	Maximum penalty of 20 years imprisonment and/or a fine of up to \$20,000
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Second-time Offender – Specified Drugs	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000
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Third-time Offender – Specified Drugs	25-year mandatory minimum sentence and a fine of up to \$100,000
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Fourth-time Offender – Specified Drugs	40-year mandatory minimum sentence and a fine of up to \$100,000
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Note: All mandatory minimum sentences listed in the exhibit are nonsuspendable and nonparolable.

Source: Department of Legislative Services
