

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1313

(The Speaker)(By Request - Justice Reinvestment  
Coordinating Council)

Judiciary and Health and Government  
Operations

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Justice Reinvestment Act - Criminal Penalties

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This bill increases the maximum incarceration penalty for second-degree murder from 30 years to 40 years. The bill also eliminates mandatory minimum sentences and reduces criminal penalties for specified offenses relating to the distribution of controlled dangerous substances (CDS).

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Fiscal Summary

**State Effect:** Potential significant decrease in general fund expenditures due to the bill's reduced incarceration penalties for specified offenses relating to the distribution of CDS, which may eventually offset any potential increase in general fund expenditures due to the bill's increased incarceration penalty for second-degree murder. Revenues are not affected.

**Local Effect:** Local revenues decrease, potentially significantly, due to the bill's reduced monetary penalties for specified offenses relating to the distribution of CDS.

**Small Business Effect:** None.

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Analysis

**Bill Summary/Current Law:**

*Second-degree Murder:* A murder that is not in the first degree under § 2-201 of the Criminal Law Article is considered second-degree murder, a felony punishable by

imprisonment for up to 30 years. The bill increases the maximum penalty to 40 years imprisonment.

A murder is in the first degree if it is (1) a deliberate, premeditated, and willful killing; (2) committed by lying in wait; (3) committed by poison; or (4) committed in the perpetration of or an attempt to perpetrate specified crimes, including first-degree arson, burglary in the first through third degrees, kidnapping, carjacking, rape, or a first- or second-degree sexual offense.

*Distribution of Controlled Dangerous Substances:* Under existing 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 CDS;
- manufacture a CDS or manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a CDS with the intent to use it to produce, sell, or dispense a CDS;
- 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 CDS with the intent to distribute the CDS.

**Exhibit 1** shows the current applicable sentences for these crimes and the bill's proposed changes.

**Exhibit 1**  
**Penalties for Distribution of Controlled Dangerous Substances (CDS)**  
**and Related Offenses**

<u>Type of CDS</u>	<u>Offense</u>	<u>Current Penalty</u>	<u>Proposed Penalty</u>
<b>CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)</b>	First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine	No change
	Repeat Offender	2-year mandatory minimum sentence Maximum penalty of 5 years imprisonment and/or \$15,000 fine	No mandatory minimum sentence
<b>Schedule I or II Narcotic Drug</b>	First-time Offender	Maximum penalty of 20 years imprisonment and/or \$25,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
	Second-time Offender	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
	Third-time Offender	25-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 8 years imprisonment and/or \$25,000 fine
	Fourth-time Offender	40-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 10 years imprisonment and/or \$25,000 fine

<u>Type of CDS</u>	<u>Offense</u>	<u>Current Penalty</u>	<u>Proposed Penalty</u>
<b>CDS (Specified Drugs)</b>	First-time Offender – Specified Drugs	Maximum penalty of 20 years imprisonment and/or \$20,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
	Second-time Offender – Specified Drugs	10-year mandatory minimum sentence (20 years maximum imprisonment) and a fine of up to \$100,000	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
	Third-time Offender – Specified Drugs	25-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 8 years imprisonment and/or \$25,000 fine
	Fourth-time Offender – Specified Drugs	40-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 10 years imprisonment and/or \$25,000 fine

Note: All existing mandatory minimum sentences listed in the exhibit are nonsuspendable and nonparolable. Pursuant to Chapter 490 of 2015, a court may depart from the listed mandatory minimum sentences under specified circumstances.

Source: Department of Legislative Services

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**Background:** Chapter 42 of 2015 established the Justice Reinvestment Coordinating Council (JRCC) in the Governor’s Office of Crime Control and Prevention. JRCC consisted of representatives from several State agencies, the State legislature, and the criminal justice system. JRCC was required to (1) using a data-driven approach, develop a statewide framework of sentencing and corrections policies to further reduce the State’s incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism and (2) request technical assistance from the Council of State Governments Justice Center and the Public Safety Performance Project of the Pew Center on the States to develop the policy framework. JRCC was also required to convene an advisory stakeholder group and conduct roundtable discussion forums for public input from all geographic regions of the State.

In its December 2015 final report, JRCC made several recommendations regarding sentencing and corrections policies, which it presented as a consensus package of reforms. Senate Bill 1005/House Bill 1312 of 2016 reflect these consensus recommendations.

JRCC also listed three nonconsensus policy items for legislative consideration: (1) eliminating mandatory minimum sentences for all drug offenses; (2) increasing the penalty for second-degree murder from 30 years to 40 years; and (3) revising commercial drug penalties. This bill reflects these nonconsensus items.

*Mandatory Minimum Sentences for Drug Offenses:* JRCC noted that mandatory minimum sentences were enacted in order to provide consistency in sentencing throughout the State and to provide a strong deterrent; however JRCC members expressed concerns that mandatory minimum sentences were being used as a mechanism for prosecutorial discretion and to compel plea deals for defendants, and that such mandatory minimum sentences foster bias and disproportionately affect African Americans.

*Second-degree Murder:* Participants of JRCC's victim/advocate roundtable voiced concerns that the current maximum penalty was not effectively holding homicide offenders accountable. Increasing the penalty for second-degree murder from 30 years to 40 years would require that defendants serve at least 20 years before becoming eligible for parole.

*Commercial Drug Penalties:* JRCC noted that possession with intent to distribute narcotics is the number one offense for which offenders are sentenced to prison, with 462 individuals sentenced in fiscal 2014 to an average sentence of 63 months. Based on such data as well as research showing that longer prison terms do not reduce recidivism, JRCC discussed reducing the maximum sentences for commercial drug offenders with enhancements for repeat offenders in accordance with a specific schedule: 5 years maximum imprisonment for a first or second conviction; 8 years maximum imprisonment for a third conviction; and 10 years maximum imprisonment for a fourth and subsequent conviction.

**State Expenditures:** General fund expenditures decrease, potentially significantly, due to the elimination of mandatory minimum sentences and the reduction of maximum incarceration penalties for specified offenses relating to the distribution of CDS. Although general fund expenditures likely increase due to the increased incarceration penalty for second-degree murder, this increase is unlikely to be felt for several years, and may eventually be offset, to some extent, by the reduced incarceration penalties for specified CDS offenses. The extent of the bill's impact, however, depends on judicial sentencing behavior.

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 \$3,300 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 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*, according to the Department of Public Safety and Correctional Services (DPSCS), the average sentence for individuals for whom second-degree murder was their most serious offense was 295 months (24.6 years) in fiscal 2015, which represents approximately 82% of the current 30-year maximum penalty. DPSCS has historically advised that an inmate incarcerated for a crime of violence serves an average of 75% of the inmate's sentence before being released on mandatory supervised release (MSR), assuming the inmate is not granted parole. Applying this percentage to the current average sentence results in an average sentence served of 18.4 years with MSR. Using the proposed 40-year maximum penalty results in an average sentence of 32.8 years without MSR and 24.6 years with MSR. This results in an increase in the average sentence with MSR of 6.2 years per inmate incarcerated for second-degree murder as the most serious offense (95 inmates in fiscal 2015). The average variable cost (excluding overhead and variable health care costs) of housing an inmate in a State correctional facility is \$200 per month or \$2,400 per year. Applying this cost to the additional time served results in additional general fund expenditures of \$14,880 per inmate sentenced for second-degree murder under the bill. DPSCS does not experience the fiscal impact of this increase in time served until fiscal 2035, when the first cohort of inmates sentenced for second-degree murder under the bill begin to serve additional time (with MSR) under the bill.

Additionally, according to DPSCS, in fiscal 2015, there were 307 intakes for individuals whose "most serious" offense was distribution of CDS, with an average sentence of 80 months; there were 535 intakes for individuals whose "most serious" offense was possession with intent to distribute CDS, with an average sentence of 70.2 months. DPSCS is unable to determine which of these offenders may be serving sentences that include mandatory minimum sentences and is unable to distinguish the type of CDS involved in the offense (*e.g.*, Schedule I or II narcotic drug or other CDS). *For illustrative purposes only*, for a first time offense, the bill establishes a maximum incarceration penalty of 5 years for distribution of Schedule I or II narcotic drugs and for distribution of other specified CDS. If all 307 individuals (whose most serious offense was distribution of CDS in fiscal 2015) received the maximum sentence of 5 years imprisonment instead of the average 80 months (6.7 years), general fund expenditures could decrease by \$1,228,000 (or \$4,000 per inmate). General fund expenditures could also decrease significantly due to reduced incarceration penalties for repeat offenders.

**Local Revenues:** Local revenues decrease, potentially significantly, due to the bill's reduced maximum monetary penalties for specified offenses relating to the distribution of CDS.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** SB 1006 (The President)(By Request - Justice Reinvestment Coordinating Council) - Judicial Proceedings.

**Information Source(s):** Department of Public Safety and Correctional Services, Judiciary (Administrative Office of the Courts), Maryland State Commission on Criminal Sentencing Policy, Office of the Public Defender, Justice Reinvestment Coordinating Council, Department of Legislative Services

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