

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 34
Judiciary

(Delegates Cassilly and Szeliga)

**Criminal Law - Illegal Distribution of Controlled Dangerous Substance Near
Methadone Clinic - Penalties**

This bill prohibits a person from manufacturing, distributing, dispensing, or possessing with intent to distribute a controlled dangerous substance (CDS) in violation of the Maryland Controlled Dangerous Substances Act (MCDSA), or conspiring to commit such a violation, in, on, or within 1,000 feet of real property owned or leased by an entity licensed by the Department of Health and Mental Hygiene (DHMH) as a methadone clinic or as a provider of opioid maintenance therapy or treatment. A violator is guilty of a felony and on conviction is subject to imprisonment for a minimum of 5 years and a maximum of 20 years, and/or a fine of up to \$20,000. A subsequent offender is subject to imprisonment for a minimum of 5 years and a maximum of 30 years, and/or a fine of up to \$30,000.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures due to the bill's penalty provisions. Enforcement can be handled with existing resources. Revenues are not affected.

Local Effect: Potential significant increase in revenues due to the bill's penalty provisions. Enforcement can be handled with existing resources.

Small Business Effect: None.

Analysis

Bill Summary: The bill's prohibitions and penalties apply regardless of whether the real property was open and providing services at the time of the violation.

The mandatory minimum sentence imposed under the bill is nonsuspendable and nonparolable. Sentences must be imposed consecutively and may not be merged with any other conviction under MCDSA.

A map or certified copy of a map made by a county or municipality to depict the location and boundaries of the area within 1,000 feet of the entity described in the bill, and that is approved as an official record by the county or municipality, may be admitted as *prima facie* evidence of the location and boundaries. The map or certified copy must be filed and maintained with the county or municipality as an official record and may be revised by the county or municipality. Other evidence may also be used or admissible, including maps or diagrams other than those approved by the county or municipality.

Current Law: 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 involving CDS (other than possession), please refer to the **Appendix – Additional Primary Crimes Involving Controlled Dangerous Substances**.

In addition, under MCDSA, a person may not manufacture, distribute, dispense, or possess with intent to distribute CDS in a school vehicle or in, on, or within 1,000 feet of real property owned or leased to an elementary school, secondary school, or a county board and used for elementary or secondary education. This prohibition applies regardless of whether the school was in session or whether the real property was being used for other than school purposes at the time of the violation.

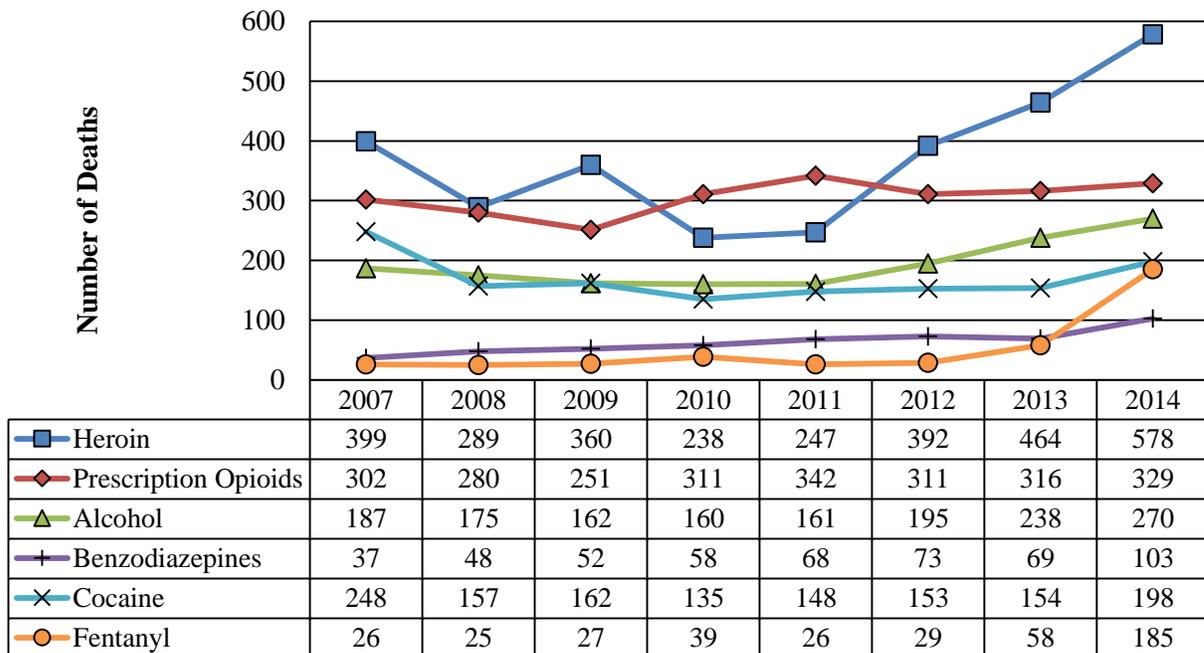
A map or certified copy of a map made by a county or municipality to depict the location and boundaries of the area within 1,000 feet of the school property, and that is approved as an official record by the county or municipality, may be admitted as *prima facie* evidence of the location and boundaries. The map or certified copy must be filed and maintained with the county or municipality as an official record and may be revised by the county or municipality. Other evidence may also be used or admissible, including maps or diagrams other than those approved by the county or municipality.

Background: DHMH's 2015 report, titled *Drug and Alcohol-Related Intoxication Deaths in Maryland*, indicated that drug- and alcohol-related intoxication deaths in Maryland totaled 1,039 in 2014, a 21% increase since 2013 and a 60% increase since 2010. Of all of the intoxication deaths that occurred, 887 deaths (86%) were opioid-related, including deaths related to heroin, prescription opioids, and nonpharmaceutical fentanyl. Opioid-related deaths increased by 76% between 2010 and 2014.

Preliminary data from DHMH shows that the number of intoxication deaths continued to increase in 2015, with 889 deaths from January through September 2015 compared to 767 deaths during the same period in 2014 (a 16% increase).

Exhibit 1 shows trends in drug-and alcohol-related intoxication deaths in Maryland from 2007 to 2014.

Exhibit 1
Drug- and Alcohol-related Intoxication Deaths by Selected Substances
2007-2014



Source: Department of Health and Mental Hygiene

According to DHMH, “opioid maintenance therapy” (OMT) is the use of narcotic drugs to treat opioid use disorders; the term “methadone clinic” refers to facilities that administer this treatment. The Behavioral Health Administration (BHA) and the Office of Health Care Quality license and provide joint oversight over OMT programs.

BHA advises that there are 74 licensed OMT programs in the State; almost half are located in Baltimore City (32 OMTs). Baltimore City has significantly more OMT programs than other jurisdictions in the State. Anne Arundel County has eight licensed OMT programs; the remaining counties have five or fewer programs each.

BHA also notes that, with the exception of references in the Health Occupations Article, the terms “methadone clinic” and “opioid maintenance therapy or treatment” are not defined in statute. Additionally, BHA is in the process of promulgating regulations to change the term “opioid maintenance therapy” to “opioid treatment services.” The term “methadone clinic” is not defined in regulation.

State Expenditures: The Judiciary advises that although the bill may result in increased case filings, courts are not significantly impacted.

The Office of the Public Defender (OPD) advises that the bill broadens a class of defendants, and therefore increases the number of cases OPD must handle. However, given that the bill addresses a subset of an existing offense category, it is unlikely that the bill has a significant impact on OPD workloads.

The Maryland State Commission on Criminal Sentencing Policy advises that sentencing guidelines must be revised to conform to the bill’s provisions but that these revisions can be handled with existing resources.

According to the Department of Public Safety and Correctional Services (DPSCS), in fiscal 2015, there were 307 offenders for which “distribution of CDS” was the “most serious” offense; the average sentence for these offenders was 80 months. Additionally, there were 535 offenders for which “possession with intent to distribute CDS” was the “most serious” offense; the average sentence for these offenders was 70 months. DPSCS advises that a limited number of these intakes may represent convictions for the offense established under the bill; DPSCS does not have information as to how many of these intakes resulted from offenses committed in the location described by the bill. Therefore, the number of individuals convicted as a result of the bill, and the corresponding sentences imposed, cannot be reliably estimated at this time. DPSCS advises that the bill likely has no substantive impact on the intake population in the near term, as the offense established under the bill relates to a subset of an existing offense category.

However, the Department of Legislative Services notes that (1) under the bill, a person may be convicted of the offense established under the bill *in addition to* the underlying offense (distribution of CDS); (2) the bill establishes mandatory minimum sentences; and (3) the bill requires sentences to be imposed consecutively to any other sentence imposed.

Therefore, general fund expenditures may increase significantly as a result of the bill’s incarceration penalties due to people being committed to State correctional facilities for longer periods of time. 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, if a person is convicted for an offense under the bill, and is convicted of the underlying offense (distribution of CDS), the person would serve at least an additional five years. Assuming the variable inmate costs of \$200 per month excluding health care, State costs could increase by at least \$12,000 for each person imprisoned under the bill. However, total costs could be significantly more based on several factors: (1) the number of individuals convicted under the bill; (2) whether the conviction is in addition to any other underlying convictions; (3) judicial sentencing behavior; and (4) prosecutorial discretion.

Local Revenues: Revenues may increase, potentially significantly, as a result of the bill's monetary penalty provisions from cases heard in the circuit courts. Revenues in Baltimore City, in particular, may increase significantly given the number of licensed OMT programs located in the city.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore City; Kent, Montgomery, Washington, and Worcester counties; Governor's Office of Crime Control and Prevention; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; State's Attorneys' Association; Department of Health and Mental Hygiene; Department of Public Safety and Correctional Services; Department of State Police; Department of Legislative Services

Fiscal Note History: First Reader - January 15, 2016
md/kdm

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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 (CDS)
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. Pursuant to Chapter 490 of 2015, a court may depart from the listed mandatory minimum sentences under specified circumstances.

Source: Department of Legislative Services
