

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 315

(Senator Hough, *et al.*)

Judicial Proceedings

Criminal Law - Homicide, Kidnapping, and Drug Offenses - Penalties

This bill increases the maximum incarceration penalties for second-degree murder, manslaughter, and kidnapping. The bill also prohibits a person from distributing heroin mixed with fentanyl, establishes penalties for violations of this prohibition, and requires that a sentence imposed for a violation of this prohibition be served consecutively to any other sentence imposed.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) due to the bill's incarceration penalties. Revenues are not affected.

Local Effect: The bill does not materially affect local finances, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The bill increases the maximum incarceration penalty for second-degree murder and kidnapping from 30 years to 40 years and increases the maximum incarceration penalty for manslaughter from 10 years to 15 years.

The bill also prohibits a person from violating the State's prohibition on distribution of a controlled dangerous substance with a mixture that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl. Violators are guilty of a misdemeanor, punishable by imprisonment for up to five years in addition to any other penalty imposed for the

distribution of a controlled dangerous substance violation. A sentence imposed for the fentanyl offense must be served consecutively to and not concurrent with any other sentence imposed.

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.

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.

Manslaughter: 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 two years and/or a fine of \$500.

Kidnapping: A person may not, by force or fraud, carry or cause a person to be carried in or outside the State with the intent to have the person carried or concealed in or outside the State. Violators are guilty of kidnapping, a felony punishable by imprisonment for up to 30 years. Kidnapping does not include the act of a parent in carrying a minor child of that parent in or outside the State.

Distribution of a Controlled Dangerous Substance: With specified exceptions, a person may not distribute or dispense a controlled dangerous substance or possess a controlled dangerous substance in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.

Controlled dangerous substances are listed on one of five schedules (Schedules I through V) in the Criminal Law Article depending on their potential for abuse and acceptance for medical use. Schedule I substances include opium derivatives, such as heroin.

In general, an individual who distributes a Schedule I or Schedule II narcotic drug is guilty of a felony, punishable by imprisonment for up to 20 years and/or a fine of up to \$25,000 for a first offense. Repeat offenders are subject to enhanced penalties.

Background: **Exhibit 1** contains the following information for the offenses whose penalties are altered by the bill: number of intakes, number of individuals for whom the offense was their most serious offense, and the average sentence for the most serious offense group during fiscal 2015.

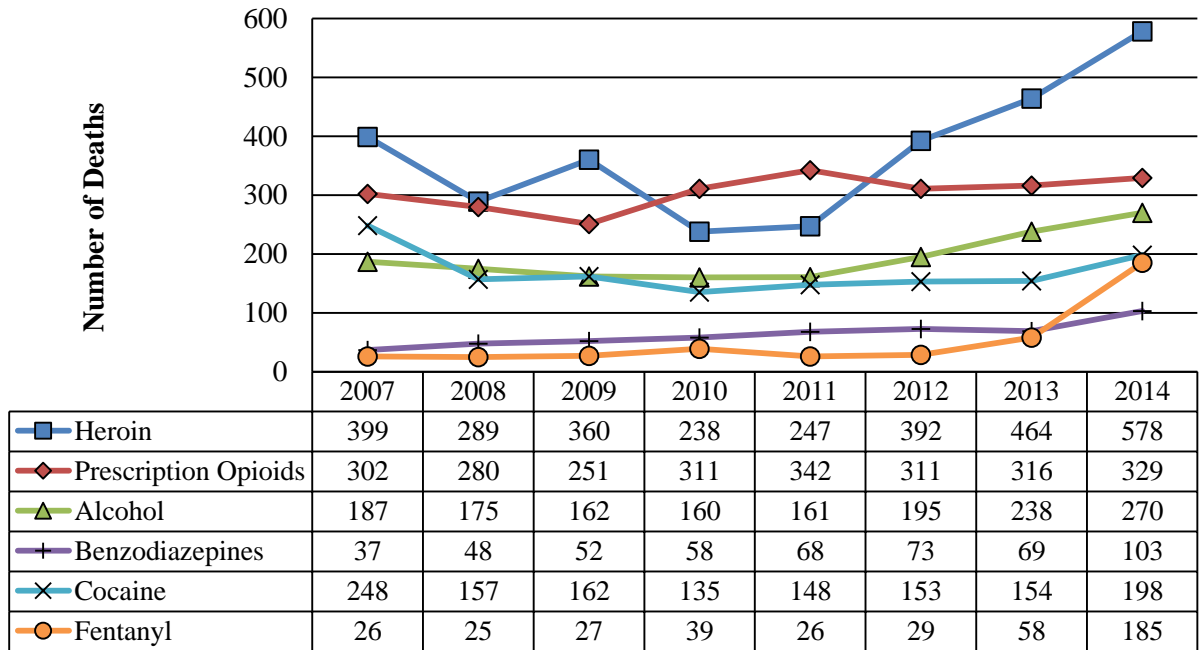
Exhibit 1
Intakes and Average Sentences for Offenses with Increased Penalties under SB 315
Fiscal 2015

<u>Offense</u>	<u>Number of Intakes</u>	<u>Number of Individuals – Most Serious Offense</u>	<u>Average Sentence – Most Serious Offense</u>
Second-degree Murder	104	95	295 months (24.6 years)
Manslaughter	19	18	104 months (8.7 years)
Kidnapping	14	11	261.7 months (21.8 years)

Source: Department of Public Safety and Correctional Services

According to the Department of Health and Mental Hygiene (DHMH), 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 intoxication deaths, 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. Heroin-related deaths more than doubled between 2010 and 2014, and they increased by 25% between 2013 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 2** shows trends in drug- and alcohol-related intoxication deaths in Maryland from 2007 through 2014.

Exhibit 2
Drug- and Alcohol-related Intoxication Deaths by Selected Substances
2007-2014



Source: Department of Health and Mental Hygiene

Additionally, the number of heroin-related emergency department visits in Maryland more than quadrupled between 2010 and 2014, escalating from 346 to 1,564 over that five-year period.

State Expenditures: General fund expenditures increase, perhaps significantly, as a result of (1) the bill's creation of a new criminal offense and (2) the bill's increase of existing incarceration penalties. However, the extent of the bill's fiscal impact depends on judicial sentencing behavior.

General fund expenditures increase as a result of the bill's creation of a new criminal offense for distribution of heroin mixed with fentanyl, subject to a maximum penalty of imprisonment for up to five years, to be served consecutively to any other sentence imposed for the distribution of a controlled dangerous substance violation.

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 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 (which includes murder, manslaughter, and kidnapping) 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.

The average sentence for individuals for whom manslaughter was their most serious offense was 104 months (8.7 years) in fiscal 2015, which represents approximately 87% of the current 10-year maximum penalty. Applying the 75% MSR percentage generates an average sentence of 6.5 years with MSR. Using the proposed 15-year maximum penalty results in an average sentence of 13 years without MSR and 9.8 years with MSR. This results in an increase in the average sentence with MSR of 3.3 years per inmate incarcerated for manslaughter as the most serious offense (18 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 (with MSR) results in additional general fund expenditures of \$7,920 per inmate sentenced for manslaughter under the bill. DPSCS does not experience the fiscal impact of this increase in time served until fiscal 2023, when the first cohort of inmates sentenced for second-degree murder under the bill begin to serve additional time (with MSR) under the bill.

The average sentence for individuals for whom kidnapping was their most serious offense was 261.7 months (21.8 years) in fiscal 2015, which represents approximately 72.7% of the current 30-year maximum penalty. Applying the 75% MSR percentage generates an

average sentence of 16.35 years with MSR. Using the proposed 40-year maximum penalty results in an average sentence of 29.1 years without MSR and 21.8 years with MSR. This results in an increase in the average sentence with MSR of 5.45 years per inmate incarcerated for kidnapping as the most serious offense (11 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 (with MSR) results in additional general fund expenditures of \$13,080 per inmate sentenced for manslaughter under the bill. DPSCS does not experience the fiscal impact of this increase in time served until fiscal 2033, when the first cohort of inmates sentenced for kidnapping under the bill begin to serve additional time (with MSR) under the bill.

This illustrative example does not account for additional applicable variables, such as parole, sentences for more serious offenses imposed on individuals convicted of these offenses, and individuals convicted of multiple counts of these offenses.

The Office of the Public Defender (OPD) advises that the bill increases OPD caseloads and preparation time. OPD also advises that the enhanced penalties under the bill decrease the likelihood of cases being resolved prior to trial. The Department of Legislative Services advises that the bill is not likely to significantly impact OPD caseloads/workloads given the seriousness of the offenses involved and the likelihood that a person charged with the new fentanyl-related offense is also likely to be charged with distribution of a controlled dangerous substance under existing statute.

Local Expenditures: The fentanyl-related offense created by the bill appears to be predicated on the commission of a distribution of a controlled dangerous substance (heroin) offense. Assuming that individuals convicted of the fentanyl-related offense serve sentences totaling over 18 months, the bill does not materially affect local finances.

Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. A \$45 per diem State 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 the State but are confined in a local facility. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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