

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 612
Judiciary

(Delegate Impallaria, *et al.*)

Criminal Law - Distribution of Heroin or Fentanyl Resulting in Death

This bill creates a crime for the direct or indirect distribution of heroin or fentanyl, the use of which is a contributing cause in the death of another. A violation is a felony with a maximum penalty of 30 years imprisonment. A sentence imposed under the bill must be separate from and consecutive to a sentence for any crime based on the act establishing the violation. The bill establishes complete immunity from prosecution for a person if evidence for prosecution of the crime is solely obtained as a result of the person's seeking, assisting, or providing medical assistance.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures due to the bill's penalty provisions. Impact may occur in the near term and may be delayed to future years depending on how sentences are imposed. Enforcement can be handled with existing resources. No effect on revenues.

Local Effect: Enforcement can be handled with existing resources. No effect on revenues.

Small Business Effect: None.

Analysis

Current Law: While the possession, distribution, and manufacturing of heroin or fentanyl may be subject to criminal prosecution, as specified, contributing to the cause of death of another by distribution of heroin or fentanyl is not a specific crime under State law.

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

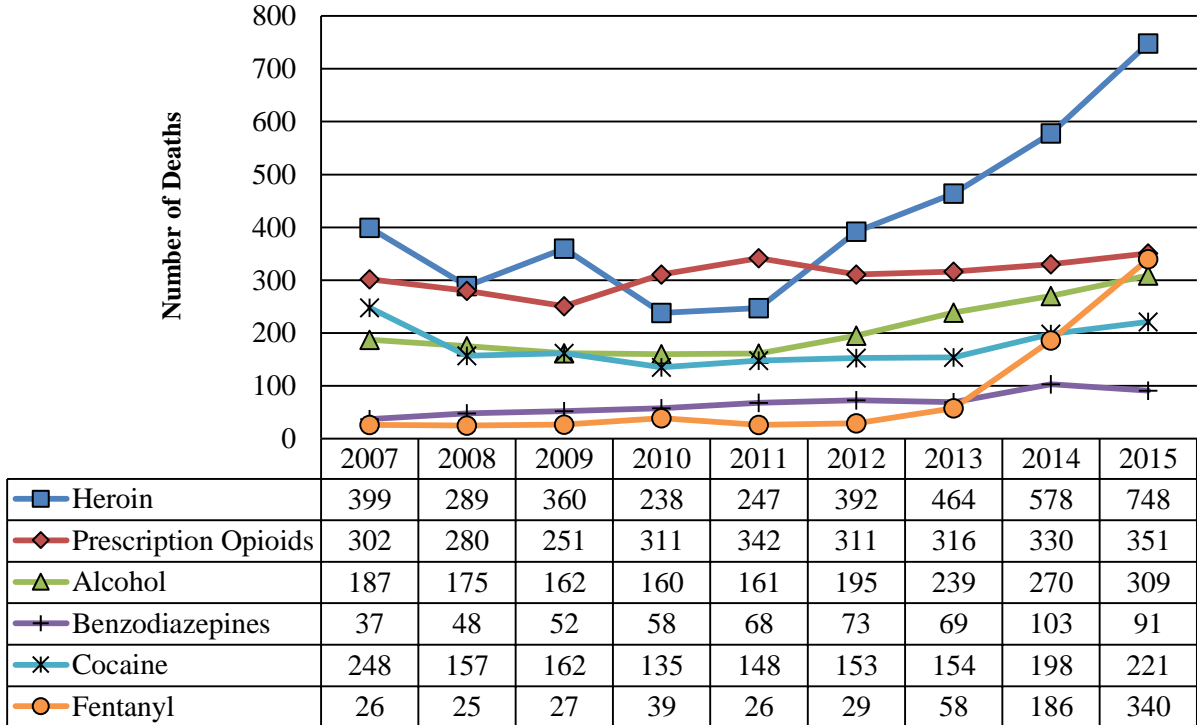
medical use. Under the federal Controlled Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision. Heroin is a Schedule I substance and fentanyl is a Schedule II substance.

For information on crimes involving the distribution of CDS, please refer to the **Appendix – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses**.

Chapter 401 of 2014, the “Good Samaritan Law,” established that a person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person experiencing a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for specified violations if the evidence for the criminal prosecution was obtained solely as a result of the person’s seeking, providing, or assisting with the provision of medical assistance. Additionally, a person who experiences a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for certain violations if the evidence for the criminal prosecution was obtained solely as a result of another person’s seeking medical assistance. The law also establishes that the act of seeking, providing, or assisting with the provision of medical assistance for another person may be used as a mitigating factor in a criminal prosecution. The violations covered by Chapter 401 include possession, but not distribution, of a CDS.

Background: According to a 2016 report of the Department of Health and Mental Hygiene (DHMH), *Drug and Alcohol-Related Intoxication Deaths in Maryland*, drug- and alcohol-related intoxication deaths in Maryland increased for the fifth year in a row, totaling 1,259 deaths in 2015 – a 21% increase since 2014 and an all-time high. Of all intoxication deaths, 1,089 deaths (86%) were opioid-related, including deaths related to heroin, prescription opioids, and nonpharmaceutical fentanyl. Opioid-related deaths increased by 23% between 2014 and 2015 and have more than doubled since 2010. Heroin- and fentanyl-related deaths have risen particularly sharply. The number of heroin-related deaths increased by 29% between 2014 and 2015 and has more than tripled between 2010 and 2015. The number of fentanyl-related deaths increased by 83% between 2014 and 2015 and has increased nearly twelvefold since 2012. **Exhibit 1** shows trends in drug- and alcohol-related intoxication deaths in Maryland from 2007 through 2015.

Exhibit 1
Total Number of Drug- and Alcohol-related Intoxication Deaths
By Selected Substances in Maryland
2007-2015



Source: Department of Health and Mental Hygiene

Preliminary data from DHMH indicates that the number of intoxication deaths increased at an even steeper rate in 2016, with 1,468 deaths from January through September 2016 compared to 904 deaths during the same period in 2015 (a 62% increase). Additionally, for January through September 2016, the number of heroin-related deaths increased 72% and the number of fentanyl-related deaths increased nearly fourfold compared to the same period in 2015.

State Expenditures: This analysis assumes that relevant provisions of Chapter 515 of 2016 (also known as the Justice Reinvestment Act) take effect October 1, 2017. Chapter 515 reduces the maximum incarceration penalties for specified underlying crimes that establish a violation under the bill.

General fund expenditures may increase significantly as a result of the bill's incarceration penalty due to a potentially significant additional number of people being committed to State correctional facilities. General fund expenditures may also increase significantly

beyond the five years addressed in this analysis due to a potentially significant number of people being committed to State correctional facilities for longer periods of time. The increase in expenditures is dependent on the sentence imposed for the underlying crime that establishes the violation under the bill. The bill requires that the sentence imposed for the crime created by the bill be separate from and consecutive to the sentence for the underlying crime. Sentences that could be imposed for an underlying drug-related crime range from 5 to 40 years imprisonment (under Chapter 515). Also, others who are not sentenced for an underlying crime could be prosecuted for violating the provisions of the new crime created by the bill and receive a sentence. As a result, the bill may have an immediate fiscal impact and a delayed fiscal impact, depending on when the separate and consecutive sentence required by the bill is imposed.

This analysis is based on the following information and assumptions:

- In 2015, DHMH advises that there were 748 heroin-related deaths and 340 fentanyl-related deaths in Maryland, and in 2016, between January and September, there were 918 heroin-related deaths and 738 fentanyl-related deaths.
- The number of heroin-related deaths increased by 29% and the number of fentanyl-related deaths increased by 83% between 2014 and 2015.
- Presumably, for most, if not all of these deaths, there is a person guilty of distributing heroin or fentanyl and he or she could be sentenced under the bill's penalty provisions.
- Given the significant increase in the number of heroin- and fentanyl-related deaths, and the fact that the bill establishes a new crime for which there is no close comparison in terms of impact, it is not possible to accurately estimate the number of convictions nor the length of time served under the bill's penalty provisions. However, due to the high number of heroin- and fentanyl-related deaths in Maryland in 2015 and from January through September of 2016, a potentially significant number of individuals may be subject to the bill's penalty provision, thus increasing general fund incarceration expenditures by a potentially significant amount.

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 \$3,600 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 \$800 per month. Excluding all health care, the average variable costs total \$210 per month.

Additional Information

Prior Introductions: HB 222 of 2015 received a favorable report with amendments from the House Judiciary Committee but was recommitted to the House Judiciary Committee, after which no further action was taken. Its cross file, SB 303, was withdrawn after receiving a hearing in the Senate Judicial Proceedings Committee.

Cross File: None.

Information Source(s): Baltimore City; Harford, Montgomery, and Talbot counties; 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 - February 26, 2017
md/kdm

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Appendix – Penalties for Distribution of Controlled Dangerous Substances and Related Offenses

Under Title 5, Subtitle 6 of the Criminal Law Article, a person may not:

- distribute, dispense, or possess with the intent to distribute a controlled dangerous substance (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 CDS 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 applicable sentences for these crimes under current law, and under Chapter 515 of 2016 (also known as the “Justice Reinvestment Act”), which repealed mandatory minimum penalties applicable to a repeat drug offender (or conspirator) convicted of distribution of CDS and related offenses and established new maximum penalties. The changes take effect October 1, 2017.

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

Offense	Current Penalty ¹	New Penalty ²
CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)		
First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender	2-year mandatory minimum sentence. Maximum penalty of 5 years imprisonment and/or \$15,000 fine	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
CDS (Schedule I or II Narcotic Drug & Specified Drugs)		
First-time Offender	Maximum penalty of 20 years imprisonment and/or \$25,000 fine	Maximum penalty of 20 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 20 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 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)
Fourth-time Offender	40-year mandatory minimum sentence and a fine of up to \$100,000	Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)

CDS: controlled dangerous substance

¹Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized. 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.

²Under Chapter 515 of 2016, effective October 1, 2017, the authorization to double penalties for repeat offenders is made applicable only when the person has also been previously convicted of a crime of violence. Additionally, a person serving a term of confinement that includes a mandatory minimum sentence, imposed on or before September 30, 2017, for specified crimes generally involving the manufacture, sale, and distribution of CDS may apply to the court for a modification or reduction of the mandatory minimum sentence, regardless of whether the defendant filed a timely motion for reconsideration or if a motion for reconsideration was denied by the court (the court is authorized to depart from the specified mandatory minimum sentences).

Source: Department of Legislative Services