

Department of Legislative Services  
Maryland General Assembly  
2019 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 812  
Judiciary

(Delegates Kipke and Chisholm)

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**Criminal Law - Controlled Dangerous Substances - Penalty**

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This bill establishes a crime for distributing a controlled dangerous substance (CDS) if (1) a reasonable person would believe that the distribution of the CDS would likely cause the death of another and (2) distribution of the CDS causes the death of another. A violation constitutes a felony with a maximum penalty of 15 years imprisonment, in addition to any other penalty imposed. A sentence imposed for a conviction of this offense must be served consecutively to any other sentence imposed.

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**Fiscal Summary**

**State Effect:** Minimal increase in general fund incarceration expenditures in the short term due to the bill's penalty provisions. In future years, the effect on expenditures is more significant, as discussed below. No effect on revenues.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law/Background:** 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 crimes involving the distribution of CDS, please refer to the **Appendix – Penalties for Distribution of Controlled Substances and Related Offenses**.

**State Expenditures:** General fund expenditures increase minimally as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for longer periods of time.

Maximum incarceration penalties for distribution of CDS range from 5 to 40 years (as shown in the Appendix). In fiscal 2018, the Judiciary reports that there were 923 convictions for distributing or possessing with intent to distribute CDS, and the Division of Correction reports that there were 790 intakes with an average sentence of 12.44 years for individuals convicted of distributing or possessing with the intent to distribute CDS. However, the number of deaths resulting from CDS distributed in those instances is unknown.

General fund expenditures increase, potentially significantly, beyond the 5-year period 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 sentences imposed for underlying crimes of distribution of CDS and related offenses. 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. As noted above, sentences that could be imposed for an underlying drug-related crime range from 5 to 40 years imprisonment. As a result, the bill may have a fiscal impact during the 5-year period addressed in this analysis, and a potentially significant delayed fiscal impact, depending on when the separate and consecutive sentences required by the bill are imposed.

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 \$3,800 per month. Persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to local detention facilities. For persons sentenced to a term of between 12 and 18 months, the sentencing judge has the discretion to order that the sentence be served at a local facility or a State correctional facility. The State provides assistance to the counties for locally sentenced inmates and for (1) inmates who are sentenced to and awaiting transfer to the State correctional system; (2) sentenced inmates confined in a local detention center between 12 and 18 months; and (3) inmates who have been sentenced to the custody of the State but are confined in or who receive reentry or other prerelease programming and services from a local facility.

The State does not pay for pretrial detention time in a local correctional facility. Persons sentenced in Baltimore City are generally incarcerated in State correctional facilities. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 3, 2019  
mag/kdm

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

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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.

Chapter 515 of 2016 (also known as the “Justice Reinvestment Act”) 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 took effect October 1, 2017.

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

Offense	Current Penalty <sup>1,2</sup>
<b>CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS)<sup>3</sup></b>	
First-time Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
Repeat Offender	Maximum penalty of 5 years imprisonment and/or \$15,000 fine
<b>CDS (Schedule I or II Narcotic Drug and Specified Drugs)<sup>4</sup></b>	
First-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Second-time Offender	Maximum penalty of 20 years imprisonment and/or \$15,000 fine
Third-time Offender	Maximum penalty of 25 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)
Fourth-time Offender	Maximum penalty of 40 years imprisonment and/or a \$25,000 fine (parole eligibility at 50% of sentence)

CDS: controlled dangerous substance

<sup>1</sup>Repeat offenders are subject to twice the term of imprisonment and/or fines that are otherwise authorized. Under Chapter 515 of 2016, effective October 1, 2017, this authorization is made applicable only when the person has also been previously convicted of a crime of violence.

<sup>2</sup>Chapter 569 of 2017 prohibits a person from knowingly distributing or possessing with the intent to distribute (1) a mixture of CDS that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or (2) fentanyl or any analogue of fentanyl. In addition to any other penalty imposed, a person is subject to imprisonment for up to 10 years. A sentence imposed for a violation of this prohibition must be served consecutively to any other sentence imposed.

<sup>3</sup>*e.g.*, marijuana

<sup>4</sup>*e.g.*, cocaine and heroin

Source: Department of Legislative Services

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