

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 877
Judiciary

(Delegate Hettleman, *et al.*)

Crimes - Controlled Dangerous Substances - Sentences

This bill (1) repeals the mandatory minimum sentence of five years for an individual convicted as a volume dealer and establishes that a conviction is a felony with a maximum sentence of five years imprisonment *or* the maximum fine of \$100,000 *or* both incarceration and the fine; (2) repeals the mandatory minimum sentence of 20 years for an individual convicted as a drug kingpin and repeals the prohibition on parole; and (3) repeals the mandatory minimum sentence of five years for subsequent convictions of manufacturing, distributing, dispensing, or possessing with intent to distribute a controlled dangerous substance (CDS) in a school vehicle or near school property. Existing maximum fines and incarceration penalties remain unchanged by the bill.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures, as discussed below. Revenues are not affected.

Local Effect: Potential minimal increase in local expenditures, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: Under Maryland law, a person may not (1) distribute or dispense a CDS or (2) possess a CDS in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a CDS.

Volume Dealers

A person may not manufacture, distribute, dispense, or possess specified large quantities of certain CDS:

- 50 pounds or more of marijuana;
- 448 grams or more of cocaine;
- 448 grams or more of any mixture containing a detectable amount of cocaine, as scientifically measured using representative sampling methodology;
- 448 grams or more of any cocaine base (also known as “crack”);
- 28 grams or more of morphine or opium or any of their derivatives, salts, isomers, or salts of an isomer;
- any mixture containing 28 grams or more of morphine or opium or any of their derivatives, salts, isomers, or salts of an isomer, as scientifically measured using representative sampling methodology;
- 5 grams or more of fentanyl or any structural variation of fentanyl that is scheduled by the U.S. Drug Enforcement Administration (DEA);
- any mixture containing 28 grams or more of fentanyl or any structural variation of fentanyl that is scheduled by DEA, as scientifically measured using representative sampling methodology;
- 1,000 dosage units or more of lysergic acid diethylamide (LSD);
- any mixture containing the equivalent of 1,000 dosage units of LSD;
- 16 ounces or more of phencyclidine (PCP) in liquid form;
- 448 grams or more of any mixture containing PCP;
- 448 grams or more of methamphetamine; or
- any mixture containing 448 grams or more of methamphetamine, as scientifically measured using representative sampling methodology.

To determine the quantity of CDS involved in individual acts of manufacturing, distributing, dispensing or possessing CDS, the acts may be aggregated if each act occurred within a 90-day period.

Violators are subject to a mandatory minimum sentence of five years and a fine of up to \$100,000. Additionally, an individual is not eligible for parole during the period of the mandatory minimum sentence.

Drug Kingpins

“Drug kingpin” means an organizer, supervisor, financier, or manager who acts as a coconspirator in a conspiracy to manufacture, distribute, dispense, transport in, or bring into the State a CDS.

A drug kingpin who conspires to do any of these specified acts in large amounts as specified under the volume dealer statute (§ 5-612 of the Criminal Law Article) is guilty of a felony. A violator is subject to a mandatory minimum sentence of 20 years imprisonment, a maximum sentence of 40 years imprisonment, and/or a fine of up to \$1 million. Additionally, an individual is not eligible for parole during the period of the mandatory minimum sentence.

CDS Distribution Near School Property

A person may not manufacture, distribute, dispense, or possess with intent to distribute a CDS or conspire to do so in a school vehicle or in, on, or within 1,000 feet of real property owned by or leased to an elementary or secondary school, or county board and used for elementary or secondary education. These provisions apply regardless of whether or not school was in session at the time of the crime or the real property was being used for other purposes at the time of the crime.

Violators are guilty of a felony and for a first conviction, subject to a maximum sentence of 20 years imprisonment and/or a fine up to \$20,000. For each subsequent conviction, violators are subject to a mandatory minimum sentence of 5 years imprisonment, a maximum sentence of 40 years imprisonment, and/or a fine of up to \$40,000. Sentences imposed for violations must be consecutive to any other sentence. Additionally, for subsequent convictions, an individual is not eligible for parole during the period of the mandatory minimum sentence.

Background: The Judiciary advises that for fiscal 2018, there were a total of 119 violations and 0 convictions in the District Court, and 65 violations and 1 conviction in the circuit courts for the volume drug dealer offense under § 5-612 of the Criminal Law Article. In the same period, there were 7 violations and 0 convictions in the District Court and 19 violations with 3 convictions in the circuit courts for the drug kingpin offense under § 5-613 of the Criminal Law Article. For the offense of manufacturing, distributing, or possessing with intent to distribute near a school or on school property under § 5-627 of the Criminal Law Article, there were 176 violations and 0 convictions in the District Court and 354 violations with 28 convictions in the circuit courts.

The Maryland State Commission on Criminal Sentencing Policy advises that it received information from the circuit courts for 18 individuals sentenced as a volume drug dealer,

1 individual sentenced as a drug kingpin, and 10 individuals sentenced for manufacturing, distributing, or possessing with intent to distribute near a school or on school property.

In fiscal 2018, the Division of Correction reports that it conducted 29 intakes for individuals convicted and serving sentences as volume dealers or drug kingpins or for CDS distribution near school property (it is unclear how many, if any, of these sentences were for subsequent violations). The sentences for these specified offenses averaged 7.37 years while the inmate's total confinement averaged 12.56 years (including sentences for other offenses). Additionally, during fiscal 2018, the Division of Parole and Probation reports that it conducted 7 intakes for volume dealers, 2 intakes for drug kingpins, and 6 intakes for CDS distribution near school property (it is unclear how many, if any, of these sentences were for subsequent violations).

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

State Expenditures: General fund expenditures may decrease minimally as a result of the bill's repeal of mandatory minimum sentences for specified offenses to the extent that more people are sentenced to shorter periods of imprisonment. The Maryland Parole Commission advises that the repeal of the prohibition on parole for drug kingpins is not expected to materially affect parole practices or general fund expenditures.

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.

Local Expenditures: Expenditures may increase minimally as a result of the bill's repeal of mandatory minimum sentences for specified offenses, to the extent that more people are

sentenced to shorter periods of imprisonment to be served in local detention facilities. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$40 to \$170 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Charles, Frederick, and Montgomery 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

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sb/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.

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.

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

<u>Offense</u>	<u>Current Penalty</u> ^{1,2}
CDS (Other than Schedule I or II Narcotic Drugs and Other Specified CDS) ³	
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
CDS (Schedule I or II Narcotic Drug and Specified Drugs) ⁴	
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

¹Repeat 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.

²Chapter 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.

³*e.g.*, marijuana

⁴*e.g.*, cocaine and heroin

Source: Department of Legislative Services
