

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 283
Judiciary

(Delegate Kerr, *et al.*)

Criminal Law - Kratom - Prohibition

This bill adds mitragynine and 7-hydroxymitragynine (chemicals in kratom) to the list of Schedule I Controlled Dangerous Substances (CDS) under State law.

Fiscal Summary

State Effect: Minimal increase in general fund revenues and expenditures due to the bill's expanded application of existing penalty provisions.

Local Effect: Minimal increase in local revenues and expenditures due to the bill's expanded application of existing penalty provisions.

Small Business Effect: Minimal.

Analysis

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. 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.

No distinction is made in State law regarding penalties relating to CDS, regardless of the schedule the substance is on, with the exception of marijuana.

A person may not possess or administer a CDS unless the CDS is obtained directly or by prescription or order from an authorized provider acting in the course of professional practice. A person may not obtain or attempt to obtain a CDS, or procure or attempt to procure the administration of a CDS, by specified methods, including by fraud, counterfeit prescription, or concealment of fact. With certain exceptions, violators are guilty of a misdemeanor and subject to the following penalties: (1) for a first conviction, imprisonment for up to one year and/or a fine of up to \$5,000; (2) for a second or third conviction, imprisonment for up to 18 months and/or a fine of up to \$5,000; and (3) for a fourth or subsequent conviction, imprisonment for up to two years and/or a fine of up to \$5,000. The authorization to double penalties for repeat offenders applies only when the person has also been previously convicted of a crime of violence.

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

Background: Kratom is an herbal extract that comes from the leaves of an evergreen tree (*Mitragyna speciosa*) grown in Southeast Asia. Kratom leaves can be chewed, and dry kratom can be swallowed or brewed. Kratom extract can be used to make a liquid product. Liquid kratom is marketed as a muscle pain reliever, appetite suppressor, and as a treatment for cramps and diarrhea.

Mitragynine, a chemical contained in kratom, works like opioid drugs, such as codeine and morphine. Some practitioners of Asian traditional medicine consider kratom to be a substitute for opium. The effects of kratom vary by dosage. At low doses, kratom acts as a stimulant, making users feel more energetic. At higher doses, it reduces pain and may bring on euphoria. At very high doses, kratom acts as a sedative.

According to the National Conference of State Legislatures, as of April 2018, at least six states (Alabama, Arkansas, Indiana, Tennessee, Vermont, and Wisconsin) and four cities (Denver, San Diego, Sarasota, and Washington, DC) had banned kratom, and Illinois and Louisiana had banned the sale of kratom to minors.

In a statement released on February 6, 2018, the U.S. Food and Drug Administration (FDA) advised that it has received information regarding 44 reported deaths associated with kratom. FDA expressed particular concern about the use of kratom to treat opioid withdrawal. According to FDA, an analysis of fatal cases raises concern that kratom is being used in combination with other drugs that affect the brain, including illicit drugs, prescription opioids, benzodiazepines, as well as various over-the-counter medications.

State Revenues: General fund revenues increase minimally as a result of the bill's expanded application of existing penalty provisions from cases heard in the District Court.

State Expenditures: General fund expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties due to more people being committed to State correctional facilities and increased payments to counties for reimbursement of inmate costs. The number of people convicted of crimes relating to kratom is expected to be minimal.

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 \$3,700 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 Revenues: Revenues increase minimally as a result of the bill's expanded application of existing monetary penalty provisions from cases heard in the circuit courts.

Local Expenditures: Expenditures increase minimally as a result of the bill's expanded application of existing incarceration penalties. 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. Enforcement can be handled with existing budgeted resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 147 (Senator Young) - Judicial Proceedings.

Information Source(s): Howard, Montgomery, and Prince George’s counties; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State’s Attorneys’ Association; Maryland Department of Health; Department of Public Safety and Correctional Services; Department of State Police; U.S. Food and Drug Administration; Mayo Clinic; National Conference of State Legislatures; WebMD; Department of Legislative Services

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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

Offense	Current Penalty ^{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
