

Department of Legislative Services

Maryland General Assembly

2023 Session

FISCAL AND POLICY NOTE

First Reader

Senate Bill 464

(Senators Folden and Gallion)

Judicial Proceedings

Criminal Law - Fentanyl and Fentanyl Analogues - Penalty

This bill increases, from 10 years to 20 years, the maximum incarceration penalty for a violation of § 5-608.1 of the Criminal Law Article, which generally prohibits a person from knowingly distributing or possessing with the intent to distribute (1) a mixture that contains heroin and a detectable amount of fentanyl or any analogue of fentanyl or (2) fentanyl or any analogue of fentanyl.

Fiscal Summary

State Effect: Potential minimal increase in incarceration expenditures due to the bill's penalty provision. Revenues are not affected.

Local Effect: The bill does not materially affect local incarceration expenditures or the workload of the circuit courts. Revenues are not affected.

Small Business Effect: None.

Analysis

Current 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.

Unless specifically exempted, or listed on another schedule, specified opium derivatives, including their salts, isomers, and salts of isomers, whenever their existence is possible within the specific chemical designation, are deemed Schedule I CDS. Heroin is an opium derivative and is listed as a Schedule I CDS. Fentanyl is a Schedule II opioid. Both substances are narcotics.

Section 5-602 of the Criminal Law Article prohibits a person from distributing, dispensing, or possessing with the intent to distribute or dispense a CDS. Section 5-608.1 of the Criminal Law Article prohibits a person from knowingly violating § 5-602 with (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. A violator is guilty of a felony and is subject to imprisonment for up to 10 years in addition to any other penalty imposed for a violation of § 5-602. A sentence imposed for a violation of this prohibition must be served consecutively to any other sentence imposed.

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

- distribute, dispense, or possess with the intent to distribute a 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.

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

¹ 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.

² 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.

³ *e.g.*, cannabis.

⁴ *e.g.*, cocaine and heroin.

Source: Department of Legislative Services

State Expenditures: General fund expenditures may increase minimally as a result of the bill's increased maximum incarceration penalty due to people being committed to State correctional facilities for longer periods of time. The number of people sentenced under the bill is expected to be minimal.

The Department of Public Safety and Correctional Services reports that in fiscal 2022, the Division of Corrections received three inmates with an average sentence of 7.6 years and the Division of Parole and Probation conducted 19 intakes for a violation of § 5-608.1.

The Maryland State Commission on Criminal Sentencing Policy reports that for fiscal 2022, there were 12 individuals sentenced for 12 counts of a violation of § 5-608.1 in the circuit courts.

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 \$4,970 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: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

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

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