

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1215
(Delegate Wivell)
Judiciary

Criminal Procedure - Alcohol and Drug Offenses - Immunities - Limitations

This bill requires a person who receives immunity from criminal arrest, charge, or prosecution for various alcohol and drug offenses under circumstances specified in § 1-210(c) of the Criminal Procedure Article to be referred to substance use disorder treatment services regulated by the Behavioral Health Administration. The bill also prohibits a person from receiving this immunity if the person has previously received immunity and failed to participate in the referred services. In addition, the bill prohibits a person from receiving immunity under § 1-210(c) more than twice.

Fiscal Summary

State Effect: General fund expenditures increase significantly for the Office of the Public Defender (OPD) to hire staff, as discussed below. Potential minimal increase in general fund expenditures for the Department of Public Safety and Correctional Services (DPSCS). General and federal fund expenditures for the Maryland Department of Health (MDH) increase due to additional treatment services, with a corresponding impact on federal fund revenues. Minimal increase in general fund revenues from fines imposed in the District Court.

Local Effect: Local revenues and expenditures increase if local jurisdictions provide treatment services under the bill. Potential minimal increase in local revenues from fines imposed in the circuit courts. Local expenditures may increase for additional prosecutions and additional incarcerations.

Small Business Effect: The bill has a meaningful impact on small business treatment providers who receive referrals and provide treatment services under the bill.

Analysis

Current Law: Under § 1-210(c) of the Criminal Procedure Article, a person who reasonably believes that the person is experiencing a medical emergency after ingesting or using alcohol or drugs must be immune from criminal arrest, charge, or prosecution for a violation of § 5-601 (possession of a controlled dangerous substance), § 5-619 (drug paraphernalia), § 5-620 (controlled paraphernalia), § 10-114 (underage possession of alcohol), § 10-116 (obtaining alcohol for underage consumption), or § 10-117 (furnishing for or allowing underage consumption of alcohol) of the Criminal Law Article if the evidence for the criminal arrest, charge, or prosecution was obtained solely as a result of the person seeking or receiving medical assistance. Such a person may not be sanctioned for violation of a condition of pretrial release, probation, or parole if the evidence of the violation was obtained solely as a result of the person seeking medical assistance.

State Revenues: General fund revenues increase minimally from fines imposed in District Court cases that are prosecuted due to the bill's elimination of statutory immunity.

State Expenditures:

Office of the Public Defender

Based on data from the Opioid Operational Command Center's Maryland Overdose Data Dashboard, in the 12 months ending in October 2022, there were 8,836 emergency medical services naloxone administrations and 8,652 hospital emergency department visits, for a total of 17,488 overdose responses. According to OPD, if 30% of these combined responses result in new OPD cases, the bill generates an estimated 5,246 new District Court matters for the office. Using a more ideal caseload standard of 400 matters per attorney (rather than the 2005 OPD caseload standards of 600 to 728 cases per District Court attorney) results in the need for 13 additional attorneys. OPD further advises that should 3,935 (75%) of these cases require a social worker to connect them to appropriate treatment services in the community to reduce their incarceration and/or timely resolve their case, 8 social workers are required. Finally, administrative support would be needed; using OPD's standard ratio of 1 administrative employee for every 3 attorneys generates the need for 4 administrative employees. The fiscal impact for the staff required (as estimated by OPD) is approximately \$2.2 million in fiscal 2024 and increases to \$3.1 million by fiscal 2028.

The Department of Legislative Services agrees that additional staff is necessary but advises that without actual experience under the bill, the magnitude of expected caseloads and corresponding staffing needs is unclear. Information is not readily available on the numbers of cases that do not proceed through the criminal justice system because of the statutory immunity. Law enforcement response and charging practices will also be factors in these cases. *For illustrative purposes only*, the cost to hire one District Court attorney for the

first full fiscal year is approximately \$121,400. The cost to hire one social worker for the first full fiscal year is approximately \$105,800, and the cost for one administrative employee for the full fiscal year is approximately \$65,200.

Judiciary

The Judiciary advises that it does not anticipate a significant operational or fiscal impact on the trial courts as a result of the bill.

Maryland Department of Health

MDH did not respond to a request for information on the fiscal and operational impact of the bill. However, general and federal fund Medicaid expenditures (and corresponding federal fund revenues) increase to support additional treatment services and to the extent that Medicaid recipients receive additional treatment services under the bill.

Department of Public Safety and Correctional Services

General fund expenditures may increase minimally for incarceration of individuals who are no longer immune from prosecution (and subsequently, conviction and sentencing) under the bill. Given the penalties for the applicable offenses, the most likely sources for additional DPSCS incarceration expenditures are incarcerations in Baltimore City and increased payments to counties for reimbursement of inmate costs.

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.

Local Fiscal Effect: Local expenditures increase to the extent that a local jurisdiction, (including a local health department or behavioral health authority) provides treatment services under the bill. Local revenues increase as local jurisdictions provide billable services, bill for them, and receive reimbursement revenues. Local revenues may increase minimally from fines imposed in the circuit courts.

Depending on charging practices and caseloads for individuals no longer eligible for immunity, expenditures may increase for State's Attorneys' offices to handle additional prosecutions. Local expenditures increase if the bill results in additional incarcerations.

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 \$90 to \$300 per inmate in recent years.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): 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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