

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 946

(Senator Smith)

Judicial Proceedings

**Controlled Dangerous Substances - Volume Dealers and Drug Kingpins -
Cannabis**

This bill establishes reduced penalties for cannabis-related violations of the prohibitions on being a volume dealer under § 5-612 of the Criminal Law Article and a drug kingpin under § 5-613 of the Criminal Law Article. The bill also specifies in statute that with the exception of a violation involving cannabis, a violation of the volume dealer statute is a felony.

Fiscal Summary

State Effect: Potential minimal increase in general fund revenues from fines imposed in cases heard in the District Court. Potential minimal decrease in general fund expenditures due to the bill's incarceration penalty provisions.

Local Effect: Potential decrease in revenues from fines imposed in cases that shift from the circuit courts to the District Court and lower fines imposed in cannabis-related circuit court cases. The bill is not anticipated to materially affect local expenditures.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Alteration of Penalties Under the Bill

Volume Dealer

Currently, a person who violates the volume dealer statute under § 5-612 of the Criminal Law Article, regardless of the controlled dangerous substance (CDS) involved, is subject to imprisonment for up to 20 years (with a mandatory minimum of sentence of 5 years) and a fine of up to \$100,000. While not specified in statute, the Maryland Sentencing Guidelines Offense Table currently specifies that a violation of § 5-612 of the Criminal Law Article is a felony. Under the bill, a person who violates the volume dealer statute (§ 5-612 of the Criminal Law Article) by manufacturing, distributing, dispensing, or possessing 50 pounds or more of cannabis (the quantity of cannabis specified under existing statute) is guilty of a misdemeanor and on conviction is subject to a maximum sentence of five years imprisonment and/or a \$50,000 fine.

Drug Kingpin

Currently, a violation of § 5-613, regardless of the CDS involved, is a felony punishable by imprisonment for up to 40 years (with a mandatory minimum sentence of 20 years) and/or a fine of up to \$1 million. Under the bill, a person who violates the drug kingpin statute (§ 5-613 of the Criminal Law Article) by conspiring to manufacture, distribute, dispense, transport, or bring into the State 50 pounds or more of cannabis (the quantity of cannabis specified under existing statute) is guilty of a felony and on conviction is subject to a maximum sentence of 10 years imprisonment and/or a \$100,000 fine.

Current Law – Volume Dealer (§ 5-612 of the Criminal Law Article)

A person may not manufacture, distribute, dispense, or possess:

- 50 pounds or more of cannabis;
- 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 (commonly known as “crack”);
- 28 grams or more of morphine or opium or any of their derivatives, salts, isomers, or salts of an isomer;

- 28 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of morphine or opium or any of their derivatives, salts, isomers, or salts of an isomer;
- 5 grams or more of fentanyl or any structural variation of fentanyl that is scheduled by the U.S. Drug Enforcement Administration (DEA);
- 28 grams or more of any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of fentanyl or any structural variation of fentanyl that is scheduled by DEA;
- 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 a detectable amount, as scientifically measured using representative sampling methodology, of PCP;
- 448 grams or more of methamphetamine; or
- 448 grams or more any mixture containing a detectable amount, as scientifically measured using representative sampling methodology, of methamphetamine.

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

Violators are subject to a nonsuspendable and nonparolable minimum sentence of five years, a maximum incarceration penalty of 20 years, and a fine of up to \$100,000.

Current Law – Drug Kingpin (§ 5-613 of the Criminal Law Article)

“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 manufacture, distribute, dispense, transport in, or bring into the State a CDS in an amount specified under the volume dealer statute (see above) is guilty of a felony. A violator is subject to a nonsuspendable and nonparolable minimum sentence of imprisonment for 20 years, a maximum sentence of 40 years imprisonment without the possibility of parole, and/or a fine of up to \$1 million.

State Revenues: General fund revenues may increase minimally from fines imposed in cases that shift from the circuit court to the District Court because of the bill’s classification of a volume dealer offense involving cannabis as a misdemeanor.

State Expenditures: General fund expenditures may decrease minimally due to the bill's elimination of mandatory minimum sentences and reduction of the maximum incarceration penalties for cannabis-related volume dealer and drug kingpin violations.

According to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP), during fiscal 2022, 28 individuals were sentenced for 28 counts in the State's circuit courts for being a volume dealer; no individuals were sentenced in the State's circuit courts for being a drug kingpin during fiscal 2022. MSCCSP data does not distinguish the quantity and type of CDS involved in these cases. Information is not readily available on the sentences imposed in these cases.

Additional Comments: In *Johnson v. State*, 467 Md. 362 (2020), the Court of Appeals (now the Supreme Court of Maryland) held that § 5-612 of the Criminal Law Article, which prohibits the manufacture, distribution, dispensation, or possession of specified CDS in specified amounts, unambiguously provides for a minimum term of imprisonment of 5 years. The court also determined that legislative history shows that the maximum term of imprisonment for a violation of § 5-612 is 20 years.

Additional Information

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

Designated Cross File: HB 135 (Delegates Moon and Williams) - Judiciary.

Information Source(s): Baltimore, 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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Analysis by: Amber R. Gundlach

Direct Inquiries to:
(410) 946-5510
(301) 970-5510