

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 667 (Delegate Grossman)
 Judiciary

Criminal Law - Overdosing in Public - Prohibition

This bill prohibits a person from overdosing in a public place (excluding a hotel or motel room) or on a public conveyance. A violator is guilty of a misdemeanor, punishable by imprisonment for up to 60 days and/or a fine of up to \$500. The bill explicitly authorizes a court to refer a person who violates this prohibition to drug court or a substance abuse treatment program (if there is no drug court in the jurisdiction) in lieu of imposing a term of imprisonment or a fine.

Fiscal Summary

State Effect: General fund expenditures increase by at least \$122,900 in FY 2024 for one-time programming costs for the Judiciary and personnel for the Office of the Public Defender (OPD); ongoing expenditures reflect annualization, inflation, and the elimination of one-time costs. General fund revenues and expenditures increase to the extent that a court imposes a fine or incarceration rather than referring a person to drug court or drug treatment, as discussed below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
GF Revenue	-	-	-	-	-
GF Expenditure	\$122,900	\$121,400	\$126,800	\$132,400	\$139,300
Net Effect	(\$122,900)	(\$121,400)	(\$126,800)	(\$132,400)	(\$139,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Expenditures increase due to the bill’s penalty provision to the extent a court imposes incarceration rather than referring a person to a drug court or drug treatment. Revenues are not materially affected.

Small Business Effect: Potential meaningful effect on small business drug treatment programs that receive court referrals of patients under the bill.

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.

A person who violates prohibitions on the possession, administration, obtainment, and procurement of a CDS is guilty of a misdemeanor and is 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.

Pursuant to § 10-201 of the Criminal Law Article, “public conveyance” means a conveyance to which the public or a portion of the public has access to and a right to use for transportation, including an airplane, vessel, bus, railway car, school vehicle, and subway car. “Public place” means a place to which the public or a portion of the public has access and a right to resort for business, dwelling, entertainment, or other lawful purpose, including a list of specified locations. For purposes of prosecuting a violation of § 10-201 (disturbing the public peace and disorderly conduct), a public conveyance or a public place need not be devoted solely to public use.

Pursuant to § 13-3601 of the Health-General Article “overdose” means a condition, including extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death, resulting from the consumption or use of any CDS that require medical attention, assistance, or treatment, and clinical suspicion for drug overdose, including respiratory depression, unconsciousness, or altered mental state, without other conditions to explain the clinical condition.

Chapter 401 of 2014, the “Good Samaritan Law,” established that a person who, in good faith, seeks, provides, or assists with the provision of medical assistance for a person experiencing a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for specified violations if the evidence for the criminal prosecution was obtained solely as a result of the person’s seeking, providing, or assisting with the provision of medical assistance. Additionally, a person who experiences a medical emergency after ingesting or using alcohol or drugs must be immune from criminal prosecution for certain violations if the evidence for the criminal prosecution was obtained

solely as a result of another person's seeking medical assistance. The law also establishes that the act of seeking, providing, or assisting with the provision of medical assistance for another person may be used as a mitigating factor in a criminal prosecution.

State Revenues: General fund revenues increase, perhaps significantly, as a result of the bill's monetary penalty provision from cases heard in the District Court. However, the extent of this increase will depend upon the monetary value of fines imposed and collected and actual court sentencing practices in light of the bill's authorization to refer a person to drug court or drug treatment in lieu of imposing a fine.

The [Maryland Overdose Data Dashboard](#) published by the Opioid Operational Command Center indicates for the year ending October 2022 there were 8,610 non-fatal opioid-related hospital emergency department visits and 2,454 fatal overdoses resulting from all substances (including fentanyl, cocaine, alcohol, prescription opioids, heroin, methamphetamines, benzodiazepines, and phencyclidine) across Maryland.

State Expenditures:

Judiciary

The Judiciary advises that due to the bill's provision authorizing a court to refer a person to drug court (or in absence of a drug court program, a substance abuse treatment program) programming changes are necessary to include an alternate sentencing provision on judicial orders. Thus, general fund expenditures increase by \$22,681 in fiscal 2024 only.

While the bill authorizes a court to refer an individual to drug court in lieu of a fine, the overall effect of the bill on drug court participation remains unclear. Drug court participation is voluntary, individuals who are charged with an offense under the bill may already be participating in drug court, and drug court participation is usually at the discretion of the drug court program. The Judiciary advises that there are 32 drug courts operating in the State across 21 counties and Baltimore City.

Department of Public Safety and Correctional Services

General fund expenditures increase as a result of the bill's incarceration penalty due to more people being committed to State correctional facilities for convictions in Baltimore City. However, the extent of this increase will depend upon the actual court sentencing practices in light of the bill's authorization to refer a person to drug court or drug treatment in lieu of incarceration.

Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore Pretrial Complex, a State-operated facility, is used primarily for pretrial detentions.

Office of the Public Defender

OPD advises that the new crime would significantly increase caseloads for District Court public defenders across the State necessitating the hiring of 15 attorneys, 15 social workers, and 5 secretaries at a cost of \$3.1 million in fiscal 2024. Per OPD's 2021 annual [report](#), OPD operates across 12 districts, with three different caseload standards: (1) seven rural districts with a caseload standard of 630 cases annually per attorney; (2) four suburban districts with a caseload standard of 705 cases per attorney annually; and (3) one urban district with a caseload standard of 728 cases per attorney. As a weighted average, this is 663 cases per District Court public defenders across the State. The annual report also indicates that current standards recommend there be one social worker for every eight attorneys and one secretary for every three attorneys. The Department of Legislative Services advises that without actual experience under the bill, it is impossible to predict the actual number of prosecutions that will occur but agrees the number of cases could be significant.

As noted above, for the year ending October 2022 there were 8,610 non-fatal opioid-related hospital emergency department visits in the State. If just 10% of this number result in a prosecution under the bill, there are an additional 861 cases statewide. This analysis assumes that 861 cases represent the minimum number of cases that will result under the bill.

Thus, general fund expenditures increase by *at least* \$100,214 in fiscal 2024, which accounts for the bill's October 1, 2023 effective date. This estimate reflects the cost of hiring one assistant public defender to handle additional cases likely to result under the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$92,805
Operating Expenses	<u>7,409</u>
Total FY 2024 State Expenditures	\$100,214

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. General fund expenditures increase further to the extent that the number of prosecutions resulting from the bill increase beyond what is contemplated in this fiscal and policy note.

Local Expenditures: Expenditures increase as a result of the bill's incarceration penalty. However, the extent of this increase and the effect on each jurisdiction will depend upon actual court sentencing practices in light of the bill's authorization to refer a person to drug court or drug treatment in lieu of imposing incarceration. 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: SB 532 (Senator Corderman) - Judicial Proceedings.

Information Source(s): Caroline, Howard, 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; Department of Public Safety and Correctional Services; Department of Legislative Services

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