

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 992
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Criminal Procedure - Drug-Related Offenses - Parole Eligibility for Second Offenders

This bill repeals the prohibition against parole applicable to a 10-year mandatory minimum, nonsuspendable sentence of incarceration for a second-time violation of distributing narcotics or hallucinogens, if the person was not convicted of a crime of violence arising out of the incident that resulted in the mandatory minimum sentence.

Fiscal Summary

State Effect: Potential minimal decrease in general fund expenditures beginning in FY 2011 due to an increase in parole eligibility for some offenders. Revenues would not be affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: For specified primary crimes involving controlled dangerous substances and paraphernalia covered by this bill, a person may not:

- manufacture, distribute, dispense, or possess with intent to distribute a controlled dangerous substance;
- manufacture, distribute, or possess a machine, equipment, or device that is adapted to produce a controlled dangerous substance with intent to use it to produce, sell, or dispense a controlled dangerous substance;

- create, distribute, or possess with intent to distribute a controlled dangerous substance;
- manufacture, distribute, or possess equipment designed to render a counterfeit substance;
- keep a common nuisance; or
- pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with intent to distribute the controlled dangerous substance.

A violator is guilty of a felony and subject to maximum penalties of imprisonment for five years and/or a fine of \$15,000. A subsequent offender under these prohibitions must be sentenced to imprisonment for two years, which term is nonsuspendable and nonparolable.

When the controlled dangerous substance is a Schedule I or Schedule II narcotic drug, a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$25,000. A second-time offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A third-time offender or conspirator convicted of those same primary crimes involving a Schedule I or Schedule II narcotic drug, if certain confinement and conviction prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A fourth-time offender is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

When the controlled dangerous substance was a hallucinogenic substance – including PCP, LSD, and MDMA – a convicted person is subject to maximum penalties of imprisonment for 20 years and/or a fine of \$20,000. A second-time offender or conspirator, even if the prior conviction was under federal law or in another state, must receive a mandatory minimum sentence of 10 years and is subject to a maximum fine of \$100,000. The mandatory minimum sentence is nonsuspendable and nonparolable.

A third-time offender or conspirator convicted of those same primary crimes involving the specified other drugs, if certain confinement and conviction prerequisites are met, is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 25 years and a maximum fine of \$100,000. A fourth-time offender for such offenses is subject to a mandatory minimum nonsuspendable, nonparolable sentence of 40 years and a maximum fine of \$100,000.

A second-time offender of one of the covered offenses is not prohibited from participation in a drug treatment program under § 8-507 of the Health – General Article because of the length of the sentence.

State Expenditures: General fund expenditures for incarceration costs could decrease due to some people being committed to Division of Correction (DOC) facilities for shorter periods of time. The actual number of convicted persons who would be successful in securing a parole release under the bill is unknown.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,300 per month. This bill alone, however, should not create the need to eliminate beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including medical care and variable costs) is \$465 per month. Excluding medical care, average variable costs total \$134 per month. Accordingly, this bill could allow for a cost savings of approximately \$1,608 per year per inmate, but only to the extent that fewer mandatory minimum sentences imposed would result in less time served by any given inmate convicted of these drug-related offenses.

The Office of the Public Defender advises that this bill should not have a fiscal impact on its caseloads or operations. The State’s Attorneys’ Association advises that this bill would not have a fiscal impact on prosecutions. The Commission on Criminal Sentencing Policy advises that alterations to the classifications of offenses within its databases could be accommodated with existing budgeted resources.

Additional Information

Prior Introductions: Various bills have been introduced in recent years to eliminate mandatory minimum sentencing for drug-related repeat offenders, though none were identical to this bill. In 2006, HB 877 received an unfavorable report from the House Judiciary Committee and SB 592 received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 624 (Senator Gladden) – Judicial Proceedings.

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

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