

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 135
 Judiciary

(Delegates Moon and Williams)

Judicial Proceedings

Criminal Law - Controlled Dangerous Substances and Firearms

This bill (1) 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; (2) authorizes specified individuals incarcerated for violations of §§ 5-612 and 5-613 to file an application for a modification or reduction of a mandatory minimum sentence; (3) modifies penalties and crime classifications for specified firearms offenses; and (4) authorizes a person at least age 21 to manufacture a personal use amount of cannabis products or concentrated cannabis, as specified. 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. **The bill’s provisions related to manufacturing cannabis products or concentrated cannabis are contingent upon Section 4 of Chapter 26 of 2022 taking effect. (Section 4 of Chapter 26 is set to take effect July 1, 2023.)**

Fiscal Summary

State Effect: General fund expenditures for the Office of the Public Defender (OPD) increase by \$110,100 in FY 2024; future years reflect annualization, inflation, and elimination of one-time costs. State finances are otherwise not materially affected, as discussed below.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	110,100	134,100	140,000	146,200	153,800
Net Effect	(\$110,100)	(\$134,100)	(\$140,000)	(\$146,200)	(\$153,800)

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

Local Effect: The bill may have a fiscal and operational impact on State’s Attorneys’ offices in FY 2024 and 2025, as discussed below. Otherwise, the bill is not anticipated to materially affect local government revenues or expenditures, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary:

Alteration of Classification and Penalties – Volume Dealer and Drug Kingpin Offenses

Volume Dealer: The bill establishes that 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 10 years imprisonment and/or a \$50,000 fine.

The remaining violations of the volume dealer statute, which apply to other types of controlled dangerous substance (CDS), are subject to the existing penalty of imprisonment for up to 20 years (with a mandatory minimum of sentence of 5 years) and a fine of up to \$100,000. The bill also specifies in statute that a violation of the volume dealer statute for a substance other than cannabis is a felony. (While not specified in statute, the Maryland Sentencing Guidelines Offense Table currently specifies that any violation of § 5-612 is a felony.)

Drug Kingpin: The bill establishes that 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 20 years imprisonment and/or a \$100,000 fine. The remaining violations of the drug kingpin statute, which apply to other types of CDS, are subject to the existing penalty (felony punishable by imprisonment for up to 40 years (with a mandatory minimum sentence of 20 years) and/or a fine of up to \$1.0 million).

Authorization to Request Sentence Modification or Reduction

A person who is serving a term of confinement that includes a mandatory minimum sentence for a violation of § 5-612 (volume dealer statute) or § 5-613 (drug kingpin statute) of the Criminal Law Article may file an application with the court or sentence review panel by September 30, 2024, for a modification or reduction of the mandatory minimum sentence, as provided in Maryland Rule 4-345, regardless of whether the defendant filed a timely motion for reconsideration or such a motion was denied by the court if:

- the sentence was imposed on or before September 30, 2017, and involved less than 448 grams of cocaine base (under this scenario, only one application may be filed);
or

- the sentence was imposed on or before September 30, 2023, and involved cannabis (under this scenario, if the first motion is denied, a second application may be filed no earlier than three years after the denial).

The court must notify the State’s Attorney and hold a hearing if such an application is filed. The court may modify the sentence and depart from the mandatory minimum sentence unless the State shows that, giving due regard to the nature of the crime, the history and character of the defendant, and the defendant’s chances of successful rehabilitation, retention of the mandatory minimum sentence would not result in substantial injustice to the defendant *and* the mandatory minimum sentence is necessary for the protection of the public. The court may consider an application filed after the September 30, 2024 deadline for good cause shown.

Alterations of Classification and Penalties – Firearm Offenses

The bill modifies the classifications and penalty provisions for various firearm offenses under the Public Safety Article. **Exhibit 1** details the classifications and penalties under current law and under the bill.

Manufacture of Cannabis Products and Concentrated Cannabis – Authorization

Contingent on Section 4 of Chapter 26 taking effect, the bill authorizes a person who is at least age 21 to manufacture a personal use amount of cannabis products or concentrated cannabis for personal use or adult sharing at a private residence if the manufacturing process does not involve the use of a “volatile solvent.” A “volatile solvent” is defined as a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

Exhibit 1
Firearm Offense Penalties Under Current Law and Under the Bill

<u>Offense (Public Safety Article)</u>	<u>Penalty Under Current Law</u>	<u>Penalty Under the Bill</u>
<i>Section 5-138 – Sale, transfer, or disposal of stolen regulated firearm in violation of prohibition</i>	<ul style="list-style-type: none"> ● Misdemeanor ● Imprisonment up to five years and/or \$10,000 maximum fine ● Each violation is considered a separate crime 	<ul style="list-style-type: none"> ● Felony ● Same penalty as current law ● Each violation is considered a separate crime
<i>Section 5-406 – Manufacture or Sale of Handguns: Manufacturing a handgun for distribution or sale in violation of prohibition</i>	<ul style="list-style-type: none"> ● Misdemeanor ● Fine up to \$10,000 ● Each handgun is a separate violation 	<ul style="list-style-type: none"> ● Felony ● Imprisonment up to five years and/or \$10,000 maximum fine ● Each handgun is a separate violation
<i>Section 5-406 – Manufacture or Sale of Handguns: Selling or offering to sell in violation of prohibition</i>	<ul style="list-style-type: none"> ● Misdemeanor ● Fine up to \$2,500 ● Each handgun is a separate violation 	<ul style="list-style-type: none"> ● Felony ● Imprisonment up to five years and/or \$2,500 maximum fine ● Each handgun is a separate violation
<i>Section 5-703 – Serial Number Requirement for Firearms: Purchasing, receiving, selling, offering to sell, or transferring an unfinished frame or receiver without a serial number pursuant to federal law or selling, offering to sell, or transferring a firearm without a serial number</i>	<ul style="list-style-type: none"> ● Misdemeanor ● Imprisonment up to five years and/or \$10,000 maximum fine ● Each violation is a separate crime 	<ul style="list-style-type: none"> ● Felony ● Same penalty as current law ● Each violation is a separate crime

Source: Department of Legislative Services

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”) (prior to October 1, 2017, 50 grams or more of “crack” was subject to the specified prohibitions);
- 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 5 years, a maximum incarceration penalty of 20 years, and a fine of up to \$100,000.

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.

Cannabis

Possession of Cannabis: Pursuant to Chapter 26 and the passage of the associated constitutional amendment, as of January 1, 2023, statute distinguishes between a “personal use amount” and a “civil use amount” of cannabis. **Exhibit 2** shows a comparison of what is included under the definitions of each of these terms.

Exhibit 2
Comparison of “Personal Use Amount” and “Civil Use Amount” Definitions

Personal Use Amount

- up to 1.5 ounces of usable cannabis
- up to 12 grams of concentrated cannabis
- cannabis products containing up to 750 milligrams of delta-9-THC
- (as of July 1, 2023) up to two cannabis plants

Civil Use Amount

- more than 1.5 ounces but not more than 2.5 ounces of usable cannabis
- more than 12 grams but not more than 20 grams of concentrated cannabis
- cannabis products containing more than 750 milligrams but not more than 1,250 milligrams of delta-9-THC

THC: tetrahydrocannabinol

Note: Effective July 1, 2023, “personal use amount” also includes up to two cannabis plants. Cannabis plants are not included in the definition of the civil use amount of cannabis; thus, cultivating any number of plants from January 1, 2023, to June 30, 2023, and more than two plants as of July 1, 2023, is a criminal misdemeanor with a maximum penalty of imprisonment for three years and/or a \$5,000 fine.

Source: Department of Legislative Services

As of July 1, 2023, (1) a person at least age 21 may possess the personal use amount of cannabis; (2) possession of the personal use amount of cannabis by a person younger than age 21 and possession of the civil use amount of cannabis are subject to civil penalties; and (3) possession of more than the civil use amount of cannabis is subject to a criminal penalty.

Possession with the Intent to Distribute and Adult Sharing of Cannabis: As of January 1, 2023, a person may not possess cannabis in sufficient quantity to reasonably indicate under all circumstances an intent to distribute or dispense cannabis. However, possession of the personal use amount of cannabis or the civil use amount of cannabis without other evidence of an intent to distribute or dispense does not constitute a violation of this prohibition. A police officer must charge a violation of this provision by citation, as specified. A person who violates this provision is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a \$5,000 maximum fine.

Effective July 1, 2023, the prohibition against distributing, dispensing, or possessing with the intent to distribute a CDS does not prohibit adult sharing of the personal use amount of cannabis. A civil or criminal penalty may not be imposed for “adult sharing” (generally defined as the transfer of cannabis between persons who are at least age 21 without remuneration) of the personal use amount of cannabis. “Adult sharing” does not include instances in which (1) cannabis is given away contemporaneously with another reciprocal transaction between the same parties; (2) a gift of cannabis is offered or advertised in conjunction with an offer for the sale of goods or services; or (3) a gift of cannabis is contingent on a separate reciprocal transaction for goods or services.

Cultivating Cannabis: Between January 1, 2023, and June 30, 2023, an individual is prohibited from cultivating cannabis. Effective July 1, 2023, a person at least age 21 may cultivate up to two cannabis plants. However, no more than two cannabis plants may be cultivated at a single residence where two or more people at least age 21 reside. A person who cultivates cannabis must (1) cultivate cannabis in a location outside of public view; (2) take reasonable precautions, as specified, to ensure the plants are secure from unauthorized access and access by an underage person; and (3) only cultivate cannabis on property the cultivator lawfully possesses or with the consent of the property’s lawful possessor. An underage person may not cultivate cannabis. A person who violates these provisions is guilty of a misdemeanor and subject to imprisonment for up to three years and/or a \$5,000 maximum fine.

Manufacturing Cannabis Products: A person may not manufacture a cannabis product, or manufacture, distribute, or possess a machine, equipment, an instrument, an implement, a device, or a combination of them that is adapted to produce cannabis or a cannabis product under circumstances that reasonably indicate an intent to use it to produce, sell, or dispense cannabis or a cannabis product in violation of Title 5 of the Criminal Law Article. A police

officer must charge a violation of this provision by citation. A person who violates this provision is guilty of a misdemeanor and subject to a maximum imprisonment for up to three years and/or a \$5,000 maximum fine.

State Revenues: While the bill is not expected to have a material effect on general fund revenues overall, (1) 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 reclassification of a volume dealer offense involving cannabis as a misdemeanor and (2) general fund revenues may *decrease* minimally from fines imposed in cases that shift from the District Court to the circuit court because of the bill's reclassification of specified firearm offenses as felonies.

State Expenditures: General fund expenditures increase by \$110,101 in fiscal 2024 for OPD to hire one additional attorney; future year expenditures are annualized, adjusted for inflation, and reflect ongoing costs. Overall, the bill is not anticipated to materially affect the expenditures of the Department of Public Safety and Correctional Services (DPSCS), as discussed below. The bill is also not anticipated to materially affect the Judiciary or the Maryland State Commission on Criminal Sentencing Policy.

Relevant Offense Data

Exhibit 3 displays the number of violations and guilty dispositions for offenses that may be eligible to file for an application for a modification of sentence under the bill. Exhibit 3 does not include violations and dispositions in Baltimore City.

Exhibit 3
Offenses Eligible for Modification of Sentences
Violations and Guilty Dispositions – §§ 5-612 and 5-613 of the Criminal Law Article
Fiscal 2021 and 2022

<u>Offenses Involving Cannabis¹</u>	<u>Fiscal 2021</u>		<u>Fiscal 2022</u>	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
<i>§ 5-612 – District Court</i>	315	-	311	-
<i>§ 5-613 – District Court</i>	4	-	4	-
<i>§ 5-612 – Circuit Courts</i>	353	14	378	27
<i>§ 5-613 – Circuit Courts</i>	11	1	23	-

<u>Less Than 448 Grams Cocaine Base Offenses (Data Shown Is for 50 Grams or More)^{1, 2}</u>	<u>Fiscal 2015</u>		<u>Fiscal 2016</u>	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
<i>§ 5-612 – District Court</i>	99	-	139	-
<i>§ 5-613 – District Court</i>	7	-	3	-
<i>§ 5-612 – Circuit Courts</i>	131	18	154	15
<i>§ 5-613 – Circuit Courts</i>	22	1	6	-

¹ Numbers do not include violations in Baltimore City.

² Prior to October 1, 2017, 50 grams or more (as opposed to less than 448 grams under current statute) of cocaine base was subject to specified prohibitions.

Source: Maryland Judiciary; Department of Legislative Services

Exhibit 4 displays the number of violations and guilty dispositions for the firearms offenses affected by the bill in fiscal 2021 and 2022.

Exhibit 4
Violations and Guilty Dispositions for Firearms Offenses Affected by the Bill

	<u>Fiscal 2021</u>		<u>Fiscal 2022</u>	
	<u>Violations</u>	<u>Guilty Dispositions</u>	<u>Violations</u>	<u>Guilty Dispositions</u>
<u>District Court Offenses</u>				
<i>Public Safety, § 5-138</i>	607	2	517	1
<i>Public Safety, § 5-406</i>	-	-	1	-
<i>Public Safety, § 5-703</i>	-	-	-	-
<u>Circuit Court Offenses</u>				
<i>Public Safety, § 5-138</i>	344	23	285	25
<i>Public Safety, § 5-406</i>	-	-	-	-
<i>Public Safety, § 5-703</i>	-	-	-	-

Source: Maryland Judiciary; Department of Legislative Services

Office of the Public Defender

All of the inmates subject to the bill’s authorization for sentence modifications and reductions likely qualify for OPD’s services due to incarceration status. OPD advises that the bill’s authorization to file sentence modifications results in an increased caseload equivalent to that of one attorney. Based on the data in Exhibit 3, the number of individuals convicted of and potentially eligible for a modification of sentence under the bill is not significant in each fiscal year. However, aggregating the number of guilty dispositions across the years for individuals incarcerated under specified provisions of § 5-612 of the Criminal Law Article (mandatory minimum sentence of 5 years and maximum sentence of 20 years) and § 5-613 of the Criminal Law Article (mandatory minimum sentence of 20 years and a maximum sentence of 40 years) likely results in the need for additional staff.

Accordingly, general fund expenditures increase by \$110,101 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 provide representation for increased caseloads that result from the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$102,692
Operating Expenses	<u>7,409</u>
Total FY 2024 OPD Expenditures	\$110,101

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

OPD further advises that the bill’s alteration of firearm-related penalty provisions results in an increased caseload equivalent to that of one attorney. Data displayed in Exhibit 4 indicates that the number of individuals convicted of firearms offenses affected by the bill is relatively low; however, over the last two fiscal years, an average of 877 individuals per year were charged with a firearms offense under § 5-138 of the Public Safety Article (there was only one other violation charged under any of the other firearm offenses affected by the bill). Nevertheless, individuals charged under § 5-138 are already eligible to apply for OPD representation, the bill does not alter the maximum penalty for the crime and changing a violation of § 5-138 from a misdemeanor to a felony is not likely to result in a significant increase in attorney workloads. Thus, the Department of Legislative Services advises that OPD does not need additional staff due to the bill’s provisions related to firearms offenses.

Department of Public Safety and Correctional Services

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. General fund expenditures may *increase* minimally due to the bill’s establishment of incarceration penalties (rather than fine only penalties) for specified firearms offenses. Overall, the bill is not expected to materially affect DPSCS expenditures.

Changing crimes from misdemeanors to felonies means that (1) such cases are likely to be filed in the circuit courts rather than the District Court and (2) some persons may eventually serve longer incarcerations due to more stringent penalty provisions, applicable to some offenses for prior felony convictions. Accordingly, it is assumed that this bill shifts an unknown number of cases from the District Court to the circuit courts. It is not known whether such a prospective shift may spur more plea bargains and affect actual sentencing practices for this offense.

Local Revenues: Revenues may *decrease* 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. Revenues may *increase* minimally from fines imposed in cases that shift from the District Court to the circuit court

because of the bill's classification of specified firearm offenses as felonies. Overall, the bill is not expected to have a material effect on local revenues.

Local Expenditures: The bill's authorization for incarcerated individuals serving a sentence that includes a mandatory minimum for specified cocaine base or cannabis offenses under the volume dealer statute (§ 5-612 of the Criminal Law Article) or drug kingpin statute (§ 5-613 of the Criminal Law Article) likely impacts the workload of the circuit courts to process applications and hold the required hearings. However, any impact from these provisions is not expected to have a material effect on circuit court operations or finances.

The State's Attorneys' Association advises that the bill's sentence modification and reduction provisions may have a significant fiscal impact on State's Attorneys' offices across the State but was unable to gather the data in time for inclusion in this analysis. Depending on caseloads and existing resources within each jurisdiction, the bill may have a fiscal and operational impact on State's Attorneys' offices in fiscal 2024 and 2025.

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: SB 946 (Senator Smith) - Rules.

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