



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2023 Session
HB0927

Criminal Law - Use or Possession of a Controlled Dangerous Substance - De Minimis Quantity

Bill Summary

This bill establishes that the use or possession of a de minimis quantity of specified controlled dangerous substances (CDS) is a civil offense punishable by a maximum fine of \$100. A trial for a citation issued for a violation involving a de minimis quantity of a CDS must proceed in drug court, if the District Court in the district having venue has a drug court. The bill generally takes effect October 1, 2023.

Racial Equity Impact Statement

The bill's provisions decriminalizing specific de minimis amounts of CDS and encouraging courts to steer defendants into drug education programs or mental health screening and treatment could be beneficial for individuals impacted by the bill. However, the exact impacts and magnitude of those impacts cannot be reliably estimated without statewide demographic data for CDS usage, arrests, incarceration, drug court recidivism rates, and drug education program participation.

Analysis

The bill eliminates criminal penalties for possession of specified amounts of CDS and instead establishes civil citations for first and second offenses in addition to authorizing the court to facilitate mental health services for offenders under age 21. Citations issued for violations must be heard in a drug court if one is located in the District Court having venue. "De minimis quantity of a CDS" means equal to or less than the specified amounts for each particular substance as detailed in the bill. Examples of CDS covered by the bill include cocaine, heroin, and methamphetamine.

The bill's provisions may (1) potentially direct more young CDS users into drug education programs and/or mental health assessments or treatments; (2) reduce the number of individuals with criminal records and the associated negative repercussions; and (3) encourage restorative justice measures for individuals coping with drug use.

Available CDS Substance Abuse Data

National data from the Substance Abuse and Mental Health Services Administration for 2015 through 2019 suggest that those aged 12 years or older identifying as multiracial or Hispanic/Latino had higher rates of illicit drug use than Black or African American or white individuals.

Maryland's Opioid Operational Command Center reported preliminary data showing that opioid-related fatal overdoses increased by 16% among Black or African American Marylanders in the first two quarters of 2021 as compared to 2020 while decreasing by 7% for white Marylanders during the same period.

There is also some evidence to suggest that persons experiencing homelessness may have higher rates of substance abuse disorders than other populations. According to the United Way of Central Maryland, one of the top five charges on Baltimore City's homeless docket between 2013 and 2018 was CDS possession excluding marijuana, suggesting a connection between people experiencing homelessness and those criminally charged for low-level, nonviolent drug possession. Measuring the full equity impacts of the bill would require more robust data on CDS users in the State.

Impacts of the Bill

Provisions in the bill aimed at steering younger drug users into drug education programs and/or mental health assessments or treatment have the potential to successfully divert these individuals from recidivism, habitual drug use, and possible criminal penalties and incarceration. In addition, the provisions requiring that civil citations for CDS possession be heard in drug court when available promotes restorative justice for individuals coping with drug use. These courts are designed to be non-adversarial with the goal of restoring the defendant as a productive member of society. This is accomplished by providing individualized, but intensive and structured, treatment programs and monitoring a defendant's progress while in treatment. The Judiciary advises that there are 32 drug courts operating in the State across 21 counties and Baltimore City.

The bill's decriminalization of the aforementioned de minimis amounts of CDS are likely to have the most significant effect on individuals who consume these drugs. In 2020, the Department of State Police (DSP) reported 6,088 arrests for possession of opium, cocaine, synthetic drugs, and other CDS excluding marijuana. Opium/cocaine accounted for 65% of the total. Under the bill, a portion of these individuals would receive civil citations and may be offered drug treatment. The DSP report does not provide demographics for these arrests by drug type, nor does it specify the amounts of the drug found on the individuals at the time of their arrest. The Maryland State Commission on Criminal Sentencing Policy reports that 432 individuals were sentenced to 499 counts of possession of a CDS in the State's circuit courts during fiscal 2022. This data also does not identify the specific CDS or quantity of CDS involved in each case.

Conclusion

Statewide data providing the racial breakdown of CDS usage, arrests, incarceration, and success rates of court ordered rehabilitation would be required to conduct an in-depth impact analysis of the bill. It may also be beneficial to obtain data outlining the effectiveness of court ordered mental health services for various groups by studying rates of relapse and/or recidivism for CDS usage/possession. To the extent that the bill encourages drug education programs and mental health treatment, and reduces incarceration of individual drug users, the impacted individuals would benefit by avoiding the adverse circumstances of having a criminal record and potentially receive treatment that would positively impact their lives.

Information Sources: Administrative Office of the Courts; Substance Abuse and Mental Health Services Administration; Department of State Police; Maryland State Commission on Criminal Sentencing Policy; United Way of Central Maryland; Department of Legislative Services

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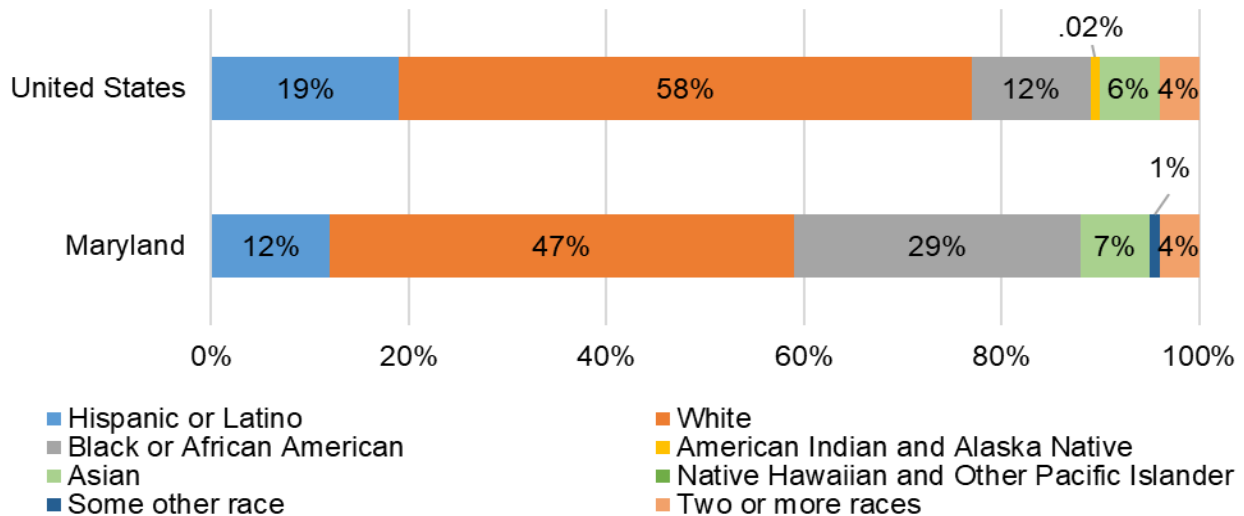
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest single race demographic group in the State of Maryland comprising 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national population, the largest shares of the non-white population are individuals who are Black or African American, with 29% of the State population identifying only as Black or African American and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.