

HOUSE BILL 845

E2

8lr1211

By: **Delegates Anderson, Barnes, Branch, Bronrott, Carter, Conaway, Davis, Dumais, Glenn, Harrison, Heller, Ivey, Jones, McIntosh, Montgomery, Oaks, Proctor, Ramirez, Robinson, Rosenberg, Schuler, Simmons, Stukes, Taylor, V. Turner, Valderrama, Vallario, and Vaughn**

Introduced and read first time: February 6, 2008

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Penalties – The “Smart on Crime” Act**

3 FOR the purpose of altering penalties for certain drug possession offenses based on the
4 amount of drugs involved; specifying that a person convicted of certain
5 drug-related offenses is not prohibited from participating in a certain drug
6 treatment program because of the length of sentence; specifying that a person
7 convicted of certain drug-related offenses who was previously convicted of
8 certain offenses is not prohibited from participating in a certain drug treatment
9 program because of the length of the sentence; altering penalties for certain
10 drug distribution offenses based on the amount of drugs involved with a certain
11 exception; providing that a person convicted of a certain drug distribution
12 offense who was convicted previously of a crime of violence is not eligible for
13 certain penalties; allowing a person who is serving a term of confinement for
14 certain drug-related offenses that includes a mandatory minimum sentence
15 imposed before a certain date under certain conditions to apply for and receive a
16 certain hearing and a certain review of the mandatory minimum sentence;
17 authorizing a court or review panel to take certain action; requiring an
18 application for review under this Act to be filed on or before a certain date;
19 making technical changes; and generally relating to penalties for drug-related
20 offenses.

21 BY repealing and reenacting, with amendments,
22 Article – Criminal Law
23 Section 5–601, 5–602, 5–603, 5–607, 5–608, and 5–609
24 Annotated Code of Maryland
25 (2002 Volume and 2007 Supplement)

26 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law
2 Section 5–609.1
3 Annotated Code of Maryland
4 (2002 Volume and 2007 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Criminal Law**

8 5–601.

9 (a) Except as otherwise provided in this title, a person may not:

10 (1) possess or administer to another a controlled dangerous substance,
11 unless obtained directly or by prescription or order from an authorized provider acting
12 in the course of professional practice; or

13 (2) obtain or attempt to obtain a controlled dangerous substance, or
14 procure or attempt to procure the administration of a controlled dangerous substance
15 by:

16 (i) fraud, deceit, misrepresentation, or subterfuge;

17 (ii) the counterfeiting or alteration of a prescription or a written
18 order;

19 (iii) the concealment of a material fact;

20 (iv) the use of a false name or address;

21 (v) falsely assuming the title of or representing to be a
22 manufacturer, distributor, or authorized provider; or

23 (vi) making, issuing, or presenting a false or counterfeit
24 prescription or written order.

25 (b) Information that is communicated to a physician in an effort to obtain a
26 controlled dangerous substance in violation of this section is not a privileged
27 communication.

28 (c) (1) Except as provided in paragraphs [(2) and] **(2)**, **(3)**, **AND (4)** of this
29 subsection, a person who violates this section is guilty of a misdemeanor and on
30 conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding
31 \$25,000 or both.

1 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
2 MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT
3 EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 IF THE VIOLATION
4 INVOLVES AN AMOUNT OF THE CONTROLLED DANGEROUS SUBSTANCE EQUAL
5 TO OR LESS THAN ONE-TENTH OF A GRAM.

6 [(2)] (3) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
7 SUBSECTION, A person whose violation of this section involves the use or possession
8 of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding
9 \$1,000 or both.

10 [(3)] (4) (i) In a prosecution for the use or possession of
11 marijuana, the defendant may introduce and the court shall consider as a mitigating
12 factor any evidence of medical necessity.

13 (ii) Notwithstanding paragraph [(2)] (3) of this subsection, if
14 the court finds that the person used or possessed marijuana because of medical
15 necessity, on conviction of a violation of this section, the maximum penalty that the
16 court may impose on the person is a fine not exceeding \$100.

17 5-602.

18 Except as otherwise provided in this title, a person may not:

19 (1) [manufacture, distribute,] **DISTRIBUTE** or dispense a controlled
20 dangerous substance; or

21 (2) possess a controlled dangerous substance in sufficient quantity
22 reasonably to indicate under all circumstances an intent to [manufacture, distribute,]
23 **DISTRIBUTE** or dispense a controlled dangerous substance.

24 5-603.

25 Except as otherwise provided in this title, a person may not **MANUFACTURE A**
26 **CONTROLLED DANGEROUS SUBSTANCE, OR** manufacture, distribute, or possess a
27 machine, equipment, instrument, implement, device, or a combination of them that is
28 adapted to produce a controlled dangerous substance under circumstances that
29 reasonably indicate an intent to use it to produce, sell, or dispense a controlled
30 dangerous substance in violation of this title.

31 5-607.

32 (a) Except as provided in § 5-608 [and 5-609], § **5-609, OR § 5-609.1** of
33 this subtitle, a person who violates a provision of §§ 5-602 through 5-606 of this
34 subtitle is guilty of a felony and on conviction is subject to imprisonment not exceeding
35 5 years or a fine not exceeding \$15,000 or both.

1 (b) (1) A person who has been convicted previously under subsection (a) of
2 this section shall be sentenced to imprisonment for not less than 2 years.

3 (2) The court may not suspend the mandatory minimum sentence to
4 less than 2 years.

5 (3) Except as provided in § 4–305 of the Correctional Services Article,
6 the person is not eligible for parole during the mandatory minimum sentence.

7 (4) **A PERSON CONVICTED UNDER THIS SECTION IS NOT**
8 **PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §**
9 **8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**
10 **SENTENCE.**

11 5–608.

12 (a) Except as otherwise provided in this section **OR IN § 5–609.1 OF THIS**
13 **SUBTITLE**, a person who violates a provision of §§ 5–602 through 5–606 of this
14 subtitle with respect to a Schedule I or Schedule II narcotic drug is guilty of a felony
15 and on conviction is subject to imprisonment not exceeding 20 years or a fine not
16 exceeding \$25,000 or both.

17 (b) (1) A person who is convicted under subsection (a) of this section or of
18 conspiracy to commit a crime included in subsection (a) of this section shall be
19 sentenced to imprisonment for not less than 10 years and is subject to a fine not
20 exceeding \$100,000 if the person previously has been convicted once:

21 (i) under subsection (a) of this section or § 5–609 of this
22 subtitle;

23 (ii) of conspiracy to commit a crime included in subsection (a) of
24 this section or § 5–609 of this subtitle; or

25 (iii) of a crime under the laws of another state or the United
26 States that would be a crime included in subsection (a) of this section or § 5–609 of this
27 subtitle if committed in this State.

28 (2) The court may not suspend the mandatory minimum sentence to
29 less than 10 years.

30 (3) Except as provided in § 4–305 of the Correctional Services Article,
31 the person is not eligible for parole during the mandatory minimum sentence.

32 [(4) A person convicted under subsection (a) of this section is not
33 prohibited from participating in a drug treatment program under § 8–507 of the
34 Health – General Article because of the length of the sentence.]

1 (c) (1) A person who is convicted under subsection (a) of this section or of
2 conspiracy to commit a crime included in subsection (a) of this section shall be
3 sentenced to imprisonment for not less than 25 years and is subject to a fine not
4 exceeding \$100,000 if the person previously:

5 (i) has served at least one term of confinement of at least 180
6 days in a correctional institution as a result of a conviction under subsection (a) of this
7 section, § 5–609 of this subtitle, or § 5–614 of this subtitle; and

8 (ii) has been convicted twice, if the convictions arise from
9 separate occasions:

10 1. under subsection (a) of this section or § 5–609 of this
11 subtitle;

12 2. of conspiracy to commit a crime included in subsection
13 (a) of this section or § 5–609 of this subtitle;

14 3. of a crime under the laws of another state or the
15 United States that would be a crime included in subsection (a) of this section or §
16 5–609 of this subtitle if committed in this State; or

17 4. of any combination of these crimes.

18 (2) The court may not suspend any part of the mandatory minimum
19 sentence of 25 years.

20 (3) Except as provided in § 4–305 of the Correctional Services Article,
21 the person is not eligible for parole during the mandatory minimum sentence.

22 (4) A separate occasion is one in which the second or succeeding crime
23 is committed after there has been a charging document filed for the preceding crime.

24 (d) (1) A person who is convicted under subsection (a) of this section or of
25 conspiracy to commit a crime included in subsection (a) of this section shall be
26 sentenced to imprisonment for not less than 40 years and is subject to a fine not
27 exceeding \$100,000 if the person previously has served three or more separate terms
28 of confinement as a result of three or more separate convictions:

29 (i) under subsection (a) of this section or § 5–609 of this
30 subtitle;

31 (ii) of conspiracy to commit a crime included in subsection (a) of
32 this section or § 5–609 of this subtitle;

1 (iii) of a crime under the laws of another state or the United
2 States that would be a crime included in subsection (a) of this section or § 5-609 of this
3 subtitle if committed in this State; or

4 (iv) of any combination of these crimes.

5 (2) The court may not suspend any part of the mandatory minimum
6 sentence of 40 years.

7 (3) Except as provided in § 4-305 of the Correctional Services Article,
8 the person is not eligible for parole during the mandatory minimum sentence.

9 **(E) A PERSON CONVICTED UNDER THIS SECTION IS NOT PROHIBITED**
10 **FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER § 8-507 OF THE**
11 **HEALTH - GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE SENTENCE.**

12 5-609.

13 (a) Except as otherwise provided in this section **OR IN § 5-609.1 OF THIS**
14 **SUBTITLE**, a person who violates a provision of §§ 5-602 through 5-606 of this
15 subtitle with respect to any of the following controlled dangerous substances is guilty
16 of a felony and on conviction is subject to imprisonment not exceeding 20 years or a
17 fine not exceeding \$20,000 or both:

18 (1) phencyclidine;

19 (2) 1-(1-phenylcyclohexyl) piperidine;

20 (3) 1-phenylcyclohexylamine;

21 (4) 1-piperidinocyclohexanecarbonitrile;

22 (5) N-ethyl-1-phenylcyclohexylamine;

23 (6) 1-(1-phenylcyclohexyl)-pyrrolidine;

24 (7) 1-(1-(2-thienyl)-cyclohexyl)-piperidine;

25 (8) lysergic acid diethylamide; or

26 (9) 750 grams or more of 3, 4-methylenedioxymethamphetamine
27 (MDMA).

28 (b) (1) A person who is convicted under subsection (a) of this section or of
29 conspiracy to commit a crime included in subsection (a) of this section shall be
30 sentenced to imprisonment for not less than 10 years and is subject to a fine not
31 exceeding \$100,000 if the person previously has been convicted once:

1 (i) under subsection (a) of this section or § 5–608 of this
2 subtitle;

3 (ii) of conspiracy to commit a crime included in subsection (a) of
4 this section or § 5–608 of this subtitle;

5 (iii) of a crime under the laws of another state or the United
6 States that would be a crime included in subsection (a) of this section or § 5–608 of this
7 subtitle if committed in this State; or

8 (iv) of any combination of these crimes.

9 (2) The court may not suspend the mandatory minimum sentence to
10 less than 10 years.

11 (3) Except as provided in § 4–305 of the Correctional Services Article,
12 the person is not eligible for parole during the mandatory minimum sentence.

13 [(4) A person convicted under subsection (a) of this section is not
14 prohibited from participating in a drug treatment program under § 8–507 of the
15 Health – General Article because of the length of the sentence.]

16 (c) (1) A person who is convicted under subsection (a) of this section or of
17 conspiracy to commit a crime included in subsection (a) of this section shall be
18 sentenced to imprisonment for not less than 25 years and is subject to a fine not
19 exceeding \$100,000 if the person previously:

20 (i) has served at least one term of confinement of at least 180
21 days in a correctional institution as a result of a conviction under subsection (a) of this
22 section, § 5–608 of this subtitle, or § 5–614 of this subtitle; and

23 (ii) if the convictions do not arise from a single incident, has
24 been convicted twice:

25 1. under subsection (a) of this section or § 5–608 of this
26 subtitle;

27 2. of conspiracy to commit a crime included in subsection
28 (a) of this section or § 5–608 of this subtitle;

29 3. of a crime under the laws of another state or the
30 United States that would be a crime included in subsection (a) of this section or §
31 5–608 of this subtitle if committed in this State; or

32 4. of any combination of these crimes.

1 (2) The court may not suspend any part of the mandatory minimum
2 sentence of 25 years.

3 (3) Except as provided in § 4–305 of the Correctional Services Article,
4 the person is not eligible for parole during the mandatory minimum sentence.

5 (4) A separate occasion is one in which the second or succeeding crime
6 is committed after there has been a charging document filed for the preceding crime.

7 (d) (1) A person who is convicted under subsection (a) of this section or of
8 conspiracy to commit a crime included in subsection (a) of this section shall be
9 sentenced to imprisonment for not less than 40 years and is subject to a fine not
10 exceeding \$100,000 if the person previously has served three separate terms of
11 confinement as a result of three separate convictions:

12 (i) under subsection (a) of this section or § 5–608 of this
13 subtitle;

14 (ii) of conspiracy to commit a crime included in subsection (a) of
15 this section or § 5–608 of this subtitle;

16 (iii) of a crime under the laws of another state or the United
17 States that would be a crime included in subsection (a) of this section or § 5–608 of this
18 subtitle if committed in this State; or

19 (iv) of any combination of these crimes.

20 (2) The court may not suspend any part of the mandatory minimum
21 sentence of 40 years.

22 (3) Except as provided in § 4–305 of the Correctional Services Article,
23 the person is not eligible for parole during the mandatory minimum sentence.

24 **(E) A PERSON CONVICTED UNDER THIS SECTION IS NOT PROHIBITED**
25 **FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER § 8–507 OF THE**
26 **HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE SENTENCE.**

27 **5–609.1.**

28 **(A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IN ANY**
29 **PROSECUTION FOR A VIOLATION OF § 5–602 OF THIS SUBTITLE, THE VIOLATION**
30 **SHALL BE CONSIDERED A MISDEMEANOR AND ON CONVICTION THE PERSON**
31 **SHALL BE SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR A MAXIMUM TERM OF**
32 **IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH IF THE VIOLATION**
33 **INVOLVES AN AMOUNT OF THE CONTROLLED DANGEROUS SUBSTANCE EQUAL**
34 **TO OR LESS THAN:**

- 1 **(1) 56 GRAMS OF MARIJUANA;**
- 2 **(2) 4 GRAMS OF COCAINE;**
- 3 **(3) 4 GRAMS OF ANY MIXTURE CONTAINING A DETECTABLE**
4 **AMOUNT OF COCAINE;**
- 5 **(4) 4 GRAMS OF COCAINE BASE, COMMONLY KNOWN AS “CRACK”;**
- 6 **(5) 4 GRAMS OF MORPHINE OR OPIUM OR ANY DERIVATIVE, SALT,**
7 **ISOMER, OR SALT OF AN ISOMER OF MORPHINE OR OPIUM;**
- 8 **(6) ANY MIXTURE CONTAINING 4 GRAMS OF MORPHINE OR OPIUM**
9 **OR ANY DERIVATIVE, SALT, ISOMER, OR SALT OF AN ISOMER OF MORPHINE OR**
10 **OPIUM;**
- 11 **(7) 1 MILLIGRAM OF LYSERGIC ACID DIETHYLAMIDE;**
- 12 **(8) ANY MIXTURE CONTAINING THE EQUIVALENT OF 1 MILLIGRAM**
13 **OF LYSERGIC ACID DIETHYLAMIDE;**
- 14 **(9) 250 MILLIGRAMS OF ANY MIXTURE CONTAINING**
15 **PHENCYCLIDINE;**
- 16 **(10) 14 GRAMS OF METHAMPHETAMINE; OR**
- 17 **(11) ANY MIXTURE CONTAINING 14 GRAMS OF**
18 **METHAMPHETAMINE.**

19 **(B) A PERSON IS NOT ELIGIBLE FOR SENTENCING IN ACCORDANCE**
20 **WITH THIS SECTION IF THE PERSON WAS CONVICTED WITHIN THE PRECEDING 3**
21 **YEARS OF THE CONVICTION UNDER § 5-602 OF THIS SUBTITLE OF A CRIME OF**
22 **VIOLENCE, AS DEFINED IN § 14-101 OF THIS ARTICLE.**

23 SECTION 2. AND BE IT FURTHER ENACTED, That:

24 (a) notwithstanding any law to the contrary, a person serving a sentence of
25 confinement for a violation of § 5-607, § 5-608, or § 5-609 of the Criminal Law Article
26 that includes a mandatory minimum sentence imposed before October 1, 2008, who
27 would have qualified for sentencing under Section 5-609.1 of the Criminal Law Article
28 may apply for and shall be granted:

29 (1) one hearing and review of the mandatory minimum sentence as
30 provided in Maryland Rule 4-345 even if the person did not file a timely motion for

1 reconsideration under Maryland Rule 4-345 or the motion was denied by the court;
2 and

3 (2) one hearing and review of the mandatory minimum sentence as
4 provided by § 8-102 of the Criminal Procedure Article;

5 (b) the court or review panel may strike the restriction against parole or
6 reduce the length of the sentence; and

7 (c) all applications for review under this section shall be filed on or before
8 September 30, 2011.

9 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2008.