

# HOUSE BILL 1313

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CF SB 1006

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By: **The Speaker (By Request – Justice Reinvestment Coordinating Council)**

Introduced and read first time: February 12, 2016

Assigned to: Judiciary and Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Justice Reinvestment Act – Criminal Penalties**

3 FOR the purpose of altering the penalty for second degree murder; repealing mandatory  
4 minimum sentences for certain offenses involving distribution of a controlled  
5 dangerous substance; altering the penalties for certain offenses involving  
6 distribution of a controlled dangerous substance; making a certain conforming  
7 change; and generally relating to second degree murder and crimes involving  
8 distribution of a controlled dangerous substance.

9 BY repealing and reenacting, with amendments,  
10 Article – Criminal Law  
11 Section 2–204, 5–607, 5–608, and 5–609  
12 Annotated Code of Maryland  
13 (2012 Replacement Volume and 2015 Supplement)

14 BY repealing  
15 Article – Criminal Law  
16 Section 5–609.1  
17 Annotated Code of Maryland  
18 (2012 Replacement Volume and 2015 Supplement)

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

21 **Article – Criminal Law**

22 2–204.

23 (a) A murder that is not in the first degree under § 2–201 of this subtitle is in the  
24 second degree.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) A person who commits a murder in the second degree is guilty of a felony and  
2 on conviction is subject to imprisonment not exceeding ~~[30]~~ **40** years.

3 5-607.

4 (a) Except as provided in §§ 5-608 and 5-609 of this subtitle, a person who  
5 violates a provision of §§ 5-602 through 5-606 of this subtitle is guilty of a felony and on  
6 conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$15,000  
7 or both.

8 (b) [(1) Except as provided in § 5-609.1 of this subtitle, a person who has been  
9 convicted previously under subsection (a) of this section shall be sentenced to imprisonment  
10 for not less than 2 years.

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

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

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

18 5-608.

19 (a) Except as otherwise provided in this section, a person who violates a provision  
20 of §§ 5-602 through 5-606 of this subtitle with respect to a Schedule I or Schedule II  
21 narcotic drug is guilty of a felony and on conviction is subject to [imprisonment not  
22 exceeding 20 years or a fine not exceeding \$25,000 or both]:

23 **(1) FOR A FIRST OR SECOND CONVICTION, IMPRISONMENT NOT**  
24 **EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$15,000 OR BOTH;**

25 **(2) FOR A THIRD CONVICTION, IMPRISONMENT NOT EXCEEDING 8**  
26 **YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH; AND**

27 **(3) FOR A FOURTH OR SUBSEQUENT CONVICTION, IMPRISONMENT**  
28 **NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH.**

29 [(b) (1) Except as provided in § 5-609.1 of this subtitle, a person who is  
30 convicted under subsection (a) of this section or of conspiracy to commit a crime included  
31 in subsection (a) of this section shall be sentenced to imprisonment for not less than 10  
32 years and is subject to a fine not exceeding \$100,000 if the person previously has been  
33 convicted once:

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

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

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

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

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

11 (c) (1) Except as provided in § 5–609.1 of this subtitle, a person who is  
12 convicted under subsection (a) of this section or of conspiracy to commit a crime included  
13 in subsection (a) of this section shall be sentenced to imprisonment for not less than 25  
14 years and is subject to a fine not exceeding \$100,000 if the person previously:

15 (i) has served at least one term of confinement of at least 180 days  
16 in a correctional institution as a result of a conviction:

17 1. under subsection (a) of this section or § 5–609 or § 5–614  
18 of this subtitle;

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

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

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

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

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

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

33 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, the  
4 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 is  
6 committed after there has been a charging document filed for the preceding crime.

7           (d) (1) Except as provided in § 5–609.1 of this subtitle, a person who is  
8 convicted under subsection (a) of this section or of conspiracy to commit a crime included  
9 in subsection (a) of this section shall be sentenced to imprisonment for not less than 40  
10 years and is subject to a fine not exceeding \$100,000 if the person previously has served  
11 three or more separate terms of confinement as a result of three or more separate  
12 convictions:

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

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

16                   (iii) of a crime under the laws of another state or the United States  
17 that would be a crime included in subsection (a) of this section or § 5–609 of this subtitle if  
18 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, the  
23 person is not eligible for parole during the mandatory minimum sentence.】

24           **[(e) (B)** A person convicted under subsection (a) of this section or of conspiracy  
25 to commit a crime included in subsection (a) of this section is not prohibited from  
26 participating in a drug treatment program under § 8–507 of the Health – General Article  
27 because of the length of the sentence.

28 5–609.

29           **(a) THIS SECTION APPLIES TO THE FOLLOWING CONTROLLED DANGEROUS**  
30 **SUBSTANCES:**

31                   **(1) PHENCYCLIDINE;**

- 1           **(2) 1-(1-PHENYLCYCLOHEXYL) PIPERIDINE;**
- 2           **(3) 1-PHENYLCYCLOHEXYLAMINE;**
- 3           **(4) 1-PIPERIDINOCYCLOHEXANECARBONITRILE;**
- 4           **(5) N-ETHYL-1-PHENYLCYCLOHEXYLAMINE;**
- 5           **(6) 1-(1-PHENYLCYCLOHEXYL)-PYRROLIDINE;**
- 6           **(7) 1-(1-(2-THIENYL)-CYCLOHEXYL)-PIPERIDINE;**
- 7           **(8) LYSERGIC ACID DIETHYLAMIDE; OR**
- 8           **(9) 750 GRAMS OR MORE OF 3,**  
 9 **4-METHYLENEDIOXYMETHAMPHETAMINE (MDMA).**

10           **(B)** Except as otherwise provided in this section, a person who violates a provision  
 11 of §§ 5-602 through 5-606 of this subtitle with respect to [any of the following] A controlled  
 12 dangerous [substances] **SUBSTANCE** is guilty of a felony and on conviction is subject to  
 13 [imprisonment not exceeding 20 years or a fine not exceeding \$20,000 or both:

- 14           (1) phencyclidine;
- 15           (2) 1-(1-phenylcyclohexyl) piperidine;
- 16           (3) 1-phenylcyclohexylamine;
- 17           (4) 1-piperidinocyclohexanecarbonitrile;
- 18           (5) N-ethyl-1-phenylcyclohexylamine;
- 19           (6) 1-(1-phenylcyclohexyl)-pyrrolidine;
- 20           (7) 1-(1-(2-thienyl)-cyclohexyl)-piperidine;
- 21           (8) lysergic acid diethylamide; or
- 22           (9) 750 grams or more of 3, 4-methylenedioxymethamphetamine  
 23 (MDMA)]:

24           **(1) FOR A FIRST OR SECOND CONVICTION, IMPRISONMENT NOT**  
 25 **EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$15,000 OR BOTH;**

1           **(2) FOR A THIRD CONVICTION, IMPRISONMENT NOT EXCEEDING 8**  
2 **YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH; AND**

3           **(3) FOR A FOURTH OR SUBSEQUENT CONVICTION, IMPRISONMENT**  
4 **NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH.**

5           [(b) (1) Except as provided in § 5–609.1 of this subtitle, a person who is  
6 convicted under subsection (a) of this section or of conspiracy to commit a crime included  
7 in subsection (a) of this section shall be sentenced to imprisonment for not less than 10  
8 years and is subject to a fine not exceeding \$100,000 if the person previously has been  
9 convicted once:

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

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

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

16                   (iv) of any combination of these crimes.

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

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

21           (c) (1) Except as provided in § 5–609.1 of this subtitle, a person who is  
22 convicted under subsection (a) of this section or of conspiracy to commit a crime included  
23 in subsection (a) of this section shall be sentenced to imprisonment for not less than 25  
24 years and is subject to a fine not exceeding \$100,000 if the person previously:

25                   (i) has served at least one term of confinement of at least 180 days  
26 in a correctional institution as a result of a conviction under subsection (a) of this section,  
27 § 5–608 of this subtitle, or § 5–614 of this subtitle; and

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

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

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

1                   3.       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 § 5–608 of this  
3 subtitle if committed in this State; or

4                   4.       of any combination of these crimes.

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

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

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

11                  (d)       (1)       Except as provided in § 5–609.1 of this subtitle, a person who is  
12 convicted under subsection (a) of this section or of conspiracy to commit a crime included  
13 in subsection (a) of this section shall be sentenced to imprisonment for not less than 40  
14 years and is subject to a fine not exceeding \$100,000 if the person previously has served  
15 three separate terms of confinement as a result of three separate convictions:

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

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

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

22                               (iv)      of any combination of these crimes.

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

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

27                  [(e)] (C)       A person convicted under subsection [(a)] (B) of this section or of  
28 conspiracy to commit a crime included in subsection [(a)] (B) of this section is not prohibited  
29 from participating in a drug treatment program under § 8–507 of the Health – General  
30 Article because of the length of the sentence.

31 [5–609.1.

1 A court may depart from a mandatory minimum sentence prescribed in § 5–607, §  
2 5–608, or § 5–609 of this subtitle if the court finds and states on the record that, giving due  
3 regard to the nature of the crime, the history and character of the defendant, and the  
4 defendant’s chances of successful rehabilitation:

5 (1) imposition of the mandatory minimum sentence would result in  
6 substantial injustice to the defendant; and

7 (2) the mandatory minimum sentence is not necessary for the protection of  
8 the public.]

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
10 October 1, 2016.