
By: **Delegate Franchot**
Introduced and read first time: March 5, 1999
Assigned to: Rules and Executive Nominations
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Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 27, 1999

CHAPTER _____

1 AN ACT concerning

2 **Crimes - Distribution of Controlled Dangerous Substances - Penalties**

3 FOR the purpose of altering the maximum fine for certain second and subsequent
4 controlled dangerous substances convictions; altering the maximum fine for
5 manufacturing, distributing, dispensing, or possessing certain controlled
6 dangerous substances in certain amounts; and generally relating to the
7 penalties for controlled dangerous substances violations.

8 BY repealing and reenacting, with amendments,
9 Article 27 - Crimes and Punishments
10 Section 286
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 1998 Supplement)

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

15 **Article 27 - Crimes and Punishments**

16 286.

17 (a) Except as authorized by this subheading, it is unlawful for any person:

18 (1) To manufacture, distribute, or dispense, or to possess a controlled
19 dangerous substance in sufficient quantity to reasonably indicate under all
20 circumstances an intent to manufacture, distribute, or dispense, a controlled
21 dangerous substance;

1 (2) To create, distribute, or possess with intent to distribute, a
2 counterfeit controlled dangerous substance;

3 (3) To manufacture, distribute, or possess any punch, die, plate, stone, or
4 any other equipment which is designed to print, imprint, or reproduce the trademark,
5 trade name, or other identifying mark, imprint, or device of another or any likeness of
6 any of the foregoing upon any drug or container or labeling thereof so as to render the
7 drug a counterfeit controlled dangerous substance;

8 (4) To manufacture, distribute, or possess any machine, equipment,
9 instrument, implement, device, or combination thereof which is adopted for the
10 production of controlled dangerous substances under circumstances which reasonably
11 indicate an intention to use such item or combination thereof to produce, sell, or
12 dispense any controlled dangerous substance in violation of the provisions of this
13 subheading;

14 (5) To keep or maintain any common nuisance which means any dwelling
15 house, apartment, building, vehicle, vessel, aircraft, or any place whatever which is
16 resorted to by drug abusers for purposes of illegally administering controlled
17 dangerous substances or which is used for the illegal manufacture, distribution,
18 dispensing, storage or concealment of controlled dangerous substances or controlled
19 paraphernalia, as defined in § 287(d) of this subheading; or

20 (6) To possess, pass, utter, make, or manufacture a false, forged, or
21 altered prescription or prescriptions for a controlled dangerous substance with the
22 intent to distribute the controlled dangerous substance. Information communicated to
23 an authorized prescriber in an effort to obtain a controlled dangerous substance in
24 violation of the provisions of this item shall not be deemed a privileged
25 communication.

26 (b) Any person who violates any of the provisions of subsection (a) of this
27 section with respect to:

28 (1) A substance classified in Schedules I or II which is a narcotic drug is
29 guilty of a felony and is subject to imprisonment for not more than 20 years, or a fine
30 of not more than \$25,000, or both.

31 (2) Phencyclidine, 1-(1-phenylcyclohexyl) piperidine,
32 1-phenylcyclohexylamine, or 1-piperidinocyclohexanecarbonitrile, classified in
33 Schedule II, or n-ethyl-1-phenylcyclohexylamine,
34 1-(1-phenylcyclohexyl)-pyrrolidine, 1-(1-(2-thienyl)-cyclohexyl)-piperidine, or
35 lysergic acid diethylamide, classified in Schedule I, is guilty of a felony and is subject
36 to imprisonment for not more than 20 years, or a fine of not more than \$20,000, or
37 both.

38 (3) Any other controlled dangerous substance classified in Schedule I, II,
39 III, IV, or V shall, upon conviction, be deemed guilty of a felony and sentenced to a
40 term of imprisonment for not more than 5 years or a fine of not more than \$15,000, or
41 both. Any person who has previously been convicted under this paragraph shall be
42 sentenced to imprisonment for not less than 2 years. The prison sentence of a person

1 sentenced under this paragraph as a repeat offender may not be suspended to less
2 than 2 years, and the person may be paroled during that period only in accordance
3 with Article 31B, § 11 of the Code.

4 (c) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
5 of this section, or of conspiracy to violate subsection (b)(1) or (b)(2) of this section shall
6 be sentenced to imprisonment for not less than 10 years AND SUBJECT TO A FINE NOT
7 EXCEEDING ~~\$1,000,000~~ \$100,000 if the person previously has been convicted:

8 (i) Under subsection (b)(1) or subsection (b)(2) of this section;

9 (ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of
10 this section; or

11 (iii) Of an offense under the laws of another state, the District of
12 Columbia, or the United States that would be a violation of subsection (b)(1) or
13 subsection (b)(2) of this section if committed in this State.

14 (2) The prison sentence of a person sentenced under subsection (b)(1) or
15 subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or
16 subsection (b)(2) of this section or any combination of these offenses, as a second
17 offender may not be suspended to less than 10 years, and the person may be paroled
18 during that period only in accordance with Article 31B, § 11 of the Code.

19 (3) This subsection does not prevent, prohibit, or make ineligible a
20 convicted defendant from participating in the rehabilitation program under Title 8,
21 Subtitle 5 of the Health - General Article, because of the length of sentence, if
22 imposed under subsection (b)(1) of this section.

23 (d) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
24 of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this
25 section shall be sentenced to imprisonment for the term allowed by law, but, in any
26 event, not less than 25 years AND SUBJECT TO A FINE NOT EXCEEDING ~~\$1,000,000~~
27 \$100,000 if the person previously:

28 (i) Has served at least 1 term of confinement of at least 180 days in
29 a correctional institution as a result of a conviction of a previous violation of this
30 section or § 286A of this article; and

31 (ii) Has been convicted twice, where the convictions do not arise
32 from a single incident:

33 1. Under subsection (b)(1) or subsection (b)(2) of this section;

34 2. Of conspiracy to violate subsection (b)(1) or subsection
35 (b)(2) of this section;

36 3. Of an offense under the laws of another state, the District
37 of Columbia, or the United States that would be a violation of subsection (b)(1) or
38 subsection (b)(2) of this section if committed in this State; or

1 4. Of any combination of these offenses.

2 (2) Neither the sentence required under paragraph (1) of this subsection
 3 nor any part of it may be suspended, and the person may not be eligible for parole
 4 except in accordance with Article 31B, § 11 of the Code.

5 (3) A separate occasion shall be considered one in which the second or
 6 succeeding offense is committed after there has been a charging document filed for
 7 the preceding offense.

8 (e) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
 9 of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this
 10 section shall be sentenced to imprisonment for the term allowed by law, but in any
 11 event, not less than 40 years AND SUBJECT TO A FINE NOT EXCEEDING ~~\$1,000,000~~
 12 \$100,000 if the person previously has served 3 separate terms of confinement as a
 13 result of 3 separate convictions:

14 (i) Under subsection (b)(1) or subsection (b)(2) of this section;

15 (ii) Of conspiracy to violate subsection (b)(1) or subsection (b)(2) of
 16 this section;

17 (iii) Of an offense under the laws of another state, the District of
 18 Columbia, or the United States that would be a violation of subsection (b)(1) or
 19 subsection (b)(2) of this section if committed in this State; or

20 (iv) Of any combination of these offenses.

21 (2) Neither the sentence required under paragraph (1) of this subsection
 22 nor any part of it may be suspended, and the person may not be eligible for parole
 23 except in accordance with Article 31B, § 11 of the Code.

24 (f) (1) If a person violates subsection (a)(1) of this section and the violation
 25 involves any of the following controlled dangerous substances, in the amounts
 26 indicated, the person is subject to the penalties provided in paragraph (3) of this
 27 subsection upon conviction:

28 (i) 50 pounds or more of marijuana;

29 (ii) 448 grams or more of cocaine or 448 grams or more of any
 30 mixture containing a detectable amount of cocaine;

31 (iii) 50 grams or more of cocaine base, commonly known as "crack";

32 (iv) 28 grams or more of morphine or opium or any derivative, salt,
 33 isomer, or salt of an isomer of morphine or opium or any mixture containing 28 grams
 34 or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of
 35 morphine or opium;

1 (v) 1,000 dosage units of lysergic acid diethylamide or any mixture
2 containing the equivalent of 1,000 dosage units of lysergic acid diethylamide;

3 (vi) 16 ounces or more of phencyclidine in liquid form or 448 grams
4 or more of any mixture containing phencyclidine; or

5 (vii) 448 grams or more of methamphetamine or any mixture
6 containing 448 grams or more of methamphetamine.

7 (2) For purposes of determining the quantity of a controlled dangerous
8 substance under paragraph (1) of this subsection, the quantity of controlled
9 dangerous substances involved in individual acts of manufacturing, distribution,
10 dispensing, or possessing with intent to distribute may be aggregated if each
11 aggregate act of manufacturing, distribution, dispensing, or possessing with the
12 intent to distribute occurred within a period of 90 days.

13 (3) (i) A person convicted of violating paragraph (1) of this subsection
14 is guilty of a felony and shall BE SUBJECT TO A FINE NOT EXCEEDING ~~\$1,000,000~~
15 \$100,000 AND SHALL be sentenced as otherwise provided for in this section, except that
16 it is mandatory upon the court to impose no less than 5 years' imprisonment, and
17 neither that term of imprisonment nor any part of it may be suspended.

18 (ii) The person may not be eligible for parole except in accordance
19 with Article 31B, § 11 of the Code.

20 (g) (1) In this subsection, "drug kingpin" means a person who occupies a
21 position of an organizer, supervisor, financier, or manager as a coconspirator in a
22 conspiracy to manufacture, distribute, dispense, bring into, or transport in the State
23 controlled dangerous substances.

24 (2) A drug kingpin who conspires to manufacture, distribute, dispense,
25 bring into, or transport in the State controlled dangerous substances in one or more of
26 the amounts described under subsection (f) of this section is guilty of a felony and on
27 conviction is subject to:

28 (i) Imprisonment for not less than 20 nor more than 40 years
29 without the possibility of parole, and it is mandatory on the court to impose no less
30 than 20 years' imprisonment, no part of which may be suspended; and

31 (ii) A fine of not more than \$1,000,000.

32 (3) The provisions of § 641 of this article are not applicable to a
33 conviction under this subsection.

34 (4) Notwithstanding any other provision of this subheading, a conviction
35 under this subsection does not merge with the conviction for any offense which is the
36 object of the conspiracy.

1 (5) Nothing contained in this subsection prohibits the court from
2 imposing an enhanced penalty under § 293 of this article. This subsection may not be
3 construed to preclude or limit any prosecution for any other criminal offense.

4 (6) It is not a defense to a prosecution under this section that the
5 controlled dangerous substance was brought into or transported in this State solely
6 for ultimate distribution or dispensing in another jurisdiction

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 1999.