
By: **Delegates Marriott, Benson, Grosfeld, Howard, A. Jones, Kirk,
Nathan-Pulliam, Proctor, and Rawlings**

Introduced and read first time: February 3, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Mandatory Sentences for Drug-Related Offenses - Repeal**

3 FOR the purpose of repealing certain penalty provisions which provide for certain
4 mandatory minimum sentences for certain drug-related offenses; altering
5 certain penalties for certain offenses; repealing certain provisions pertaining to
6 penalties for certain subsequent offenders; providing for the application of this
7 Act; and generally relating to the repeal of mandatory minimum sentences for
8 drug-related offenses.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 281A, 286, and 286D
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1999 Supplement)

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

16 **Article 27 - Crimes and Punishments**

17 281A.

18 (a) (1) In this section the following terms have the meanings indicated.

19 (2) "Drug trafficking crime" means:

20 (i) Any felony involving the possession, distribution, manufacture,
21 or importation of a controlled dangerous substance under §§ 286 and 286A of this
22 article; or

23 (ii) Conspiracy to commit any felony involving possession,
24 distribution, manufacture, or importation of a controlled dangerous substance under
25 § 286 or § 286A of this article.

1 (3) "Firearm silencer or muffler" means any device that is designed for
2 silencing, muffling, or diminishing the report of a firearm including any combination
3 of parts designed, redesigned, or intended for use in assembling or fabricating a
4 firearm silencer or muffler.

5 (b) During and in relation to any drug trafficking crime, a person who
6 possesses a firearm under sufficient circumstances to constitute a nexus to the drug
7 trafficking crime or who uses, wears, carries, or transports a firearm is guilty of a
8 separate felony and on conviction shall, in addition to the sentence provided for the
9 drug trafficking crime, be sentenced [as follows:

10 (1) (i) For a first offense,] TO IMPRISONMENT for a term [of not less
11 than 5 nor more than] NOT EXCEEDING 20 years[.

12 (ii) It is mandatory upon the court to impose no less than the
13 minimum sentence of 5 years, no part of which may be suspended and the person may
14 not be eligible for parole except in accordance with the provisions of § 4-305 of the
15 Correctional Services Article; and

16 (2) (i) For a second or subsequent offense, for a term of not less than
17 10 nor more than 20 years.

18 (ii) It is mandatory upon the court to impose no less than a
19 minimum consecutive sentence of 10 years, no part of which may be suspended and
20 the person may not be eligible for parole except in accordance with the provisions of §
21 4-305 of the Correctional Services Article.

22 (iii) The sentence shall be served consecutively and not concurrently
23 to any other sentence imposed by virtue of the commission of the drug trafficking
24 crime].

25 (c) The [minimum mandatory] sentence provided in subsection (b)(1) and (2)
26 of this section shall be doubled if the firearm is:

27 (1) Any firearm listed in § 36H-1 or § 441 of this article;

28 (2) A machine gun; or

29 (3) Equipped with a firearm silencer or muffler.

30 (d) (1) Any firearm or ammunition seized under this section is contraband
31 and shall be summarily forfeited.

32 (2) If the owner or possessor of property seized under this section is
33 acquitted or the charges against the person are dismissed, the seized property shall
34 be returned to the owner or possessor within 90 days if not otherwise prohibited by
35 law unless forfeiture proceedings have commenced.

36 (3) If the State enters a nolle prosequi against the owner or possessor of
37 property seized under this section and does not charge the person within 90 days

1 after the nolle prosequi is entered, the seized property shall be promptly returned to
2 the owner or possessor if not otherwise prohibited by law.

3 286.

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

5 (1) To manufacture, distribute, or dispense, or to possess a controlled
6 dangerous substance in sufficient quantity to reasonably indicate under all
7 circumstances an intent to manufacture, distribute, or dispense, a controlled
8 dangerous substance;

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

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

16 (4) To manufacture, distribute, or possess any machine, equipment,
17 instrument, implement, device, or combination thereof which is adopted for the
18 production of controlled dangerous substances under circumstances which reasonably
19 indicate an intention to use such item or combination thereof to produce, sell, or
20 dispense any controlled dangerous substance in violation of the provisions of this
21 subheading;

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

28 (6) To possess, pass, utter, make, or manufacture a false, forged, or
29 altered prescription or prescriptions for a controlled dangerous substance with the
30 intent to distribute the controlled dangerous substance. Information communicated to
31 an authorized prescriber in an effort to obtain a controlled dangerous substance in
32 violation of the provisions of this item shall not be deemed a privileged
33 communication.

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

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

1 (2) Phencyclidine, 1-(1-phenylcyclohexyl) piperidine,
2 1-phenylcyclohexylamine, or 1-piperidinocyclohexanecarbonitrile, classified in
3 Schedule II, or n-ethyl-1-phenylcyclohexylamine,
4 1-(1-phenylcyclohexyl)-pyrrolidine, 1-(1-(2-thienyl)-cyclohexyl)-piperidine, or
5 lysergic acid diethylamide, classified in Schedule I, is guilty of a felony and is subject
6 to imprisonment for not more than 20 years, or a fine of not more than \$20,000, or
7 both.

8 (3) Any other controlled dangerous substance classified in Schedule I, II,
9 III, IV, or V shall, upon conviction, be deemed guilty of a felony and sentenced to a
10 term of imprisonment for not more than 5 years or a fine of not more than \$15,000, or
11 both. [Any person who has previously been convicted under this paragraph shall be
12 sentenced to imprisonment for not less than 2 years. The prison sentence of a person
13 sentenced under this paragraph as a repeat offender may not be suspended to less
14 than 2 years, and the person may be paroled during that period only in accordance
15 with § 4-305 of the Correctional Services Article.]

16 (c) [(1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
17 of this section, or of conspiracy to violate subsection (b)(1) or (b)(2) of this section shall
18 be sentenced to imprisonment for not less than 10 years and subject to a fine not
19 exceeding \$100,000 if the person previously has been convicted:

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

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

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

26 (2) The prison sentence of a person sentenced under subsection (b)(1) or
27 subsection (b)(2) of this section, or of conspiracy to violate subsection (b)(1) or
28 subsection (b)(2) of this section or any combination of these offenses, as a second
29 offender may not be suspended to less than 10 years, and the person may be paroled
30 during that period only in accordance with § 4-305 of the Correctional Services
31 Article.

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

36 (d) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
37 of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this
38 section shall be sentenced to imprisonment for the term allowed by law, but, in any
39 event, not less than 25 years and subject to a fine not exceeding \$100,000 if the
40 person previously:

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

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

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

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

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

12 4. Of any combination of these offenses.

13 (2) Neither the sentence required under paragraph (1) of this subsection
14 nor any part of it may be suspended, and the person may not be eligible for parole
15 except in accordance with § 4-305 of the Correctional Services Article.

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

19 (e) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
20 of this section or of conspiracy to violate subsection (b)(1) or subsection (b)(2) of this
21 section shall be sentenced to imprisonment for the term allowed by law, but in any
22 event, not less than 40 years and subject to a fine not exceeding \$100,000 if the
23 person previously has served 3 separate terms of confinement as a result of 3
24 separate convictions:

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

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

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

31 (iv) Of any combination of these offenses.

32 (2) Neither the sentence required under paragraph (1) of this subsection
33 nor any part of it may be suspended, and the person may not be eligible for parole
34 except in accordance with § 4-305 of the Correctional Services Article.

35 (f)] (1) If a person violates subsection (a)(1) of this section and the violation
36 involves any of the following controlled dangerous substances, in the amounts

1 indicated, the person is subject to the penalties provided in paragraph (3) of this
2 subsection upon conviction:

3 (i) 50 pounds or more of marijuana;

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

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

7 (iv) 28 grams or more of morphine or opium or any derivative, salt,
8 isomer, or salt of an isomer of morphine or opium or any mixture containing 28 grams
9 or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of
10 morphine or opium;

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

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

15 (vii) 448 grams or more of methamphetamine or any mixture
16 containing 448 grams or more of methamphetamine.

17 (2) For purposes of determining the quantity of a controlled dangerous
18 substance under paragraph (1) of this subsection, the quantity of controlled
19 dangerous substances involved in individual acts of manufacturing, distribution,
20 dispensing, or possessing with intent to distribute may be aggregated if each
21 aggregate act of manufacturing, distribution, dispensing, or possessing with the
22 intent to distribute occurred within a period of 90 days.

23 (3) [(i)] A person convicted of violating paragraph (1) of this subsection
24 is guilty of a felony and shall be subject to a fine not exceeding \$100,000 and shall be
25 sentenced as otherwise provided for in this section[, except that it is mandatory upon
26 the court to impose no less than 5 years' imprisonment, and neither that term of
27 imprisonment nor any part of it may be suspended.

28 (ii) The person may not be eligible for parole except in accordance
29 with § 4-305 of the Correctional Services Article].

30 [(g)] (D) (1) In this subsection, "drug kingpin" means a person who occupies
31 a position of an organizer, supervisor, financier, or manager as a coconspirator in a
32 conspiracy to manufacture, distribute, dispense, bring into, or transport in the State
33 controlled dangerous substances.

34 (2) A drug kingpin who conspires to manufacture, distribute, dispense,
35 bring into, or transport in the State controlled dangerous substances in one or more of
36 the amounts described under subsection [(f)] (C) of this section is guilty of a felony
37 and on conviction is subject to:

1 (i) Imprisonment [for not less than 20 nor more than] NOT
2 EXCEEDING 40 years [without the possibility of parole, and it is mandatory on the
3 court to impose no less than 20 years' imprisonment, no part of which may be
4 suspended]; and

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

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

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

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

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

17 286D.

18 (a) A person who manufactures, distributes, dispenses, or possesses with
19 intent to distribute a controlled dangerous substance in violation of § 286(a)(1) of this
20 subheading, or who conspires to commit any of these offenses, is guilty of a felony if
21 the offense occurred:

22 (1) In, on, or within 1,000 feet of any real property owned by or leased to
23 any elementary school, secondary school, or school board, and used for elementary or
24 secondary education, as defined under § 1-101 of the Education Article, regardless of
25 whether:

26 (i) School was in session at the time of the offense; or

27 (ii) The real property was being used for other purposes besides
28 school purposes at the time of the offense; or

29 (2) On a school vehicle, as defined under § 11-154 of the Transportation
30 Article.

31 (b) [(1)] A person who violates the provisions of this section, on conviction,
32 shall be subject to the following penalties:

33 [(i)] (1) For a first offense, imprisonment for not more than 20
34 years or a fine of not more than \$20,000 or both; or

35 [(ii)] (2) For a second or subsequent offense, imprisonment [for not
36 less than 5 or more than] NOT EXCEEDING 40 years or a fine of not more than

1 \$40,000 or both. [It is mandatory for the court to impose a minimum sentence of 5
2 years, which may not be suspended, and a person is not eligible for parole during that
3 period, except in accordance with § 4-305 of the Correctional Services Article.

4 (2) A sentence imposed under this subsection shall be served
5 consecutively to any other sentence imposed.]

6 (c) Notwithstanding any other provision of law, a conviction arising under this
7 section may not merge with a conviction for a violation of § 286 or § 286C of this
8 subheading.

9 (d) (1) In a prosecution under this section, a map produced or reproduced by
10 any municipal or county agency or department for the purpose of depicting the
11 location and boundaries of the area on or within 1,000 feet of the property of a public
12 or nonpublic elementary or secondary school that is used for school purposes, or a true
13 copy of the map, shall, if certified as a true copy by the custodian of the record, be
14 admissible and shall constitute prima facie evidence of the location and boundaries of
15 the area, if the governing body of the municipality or county has approved the map as
16 an official record of the location and boundaries of the area.

17 (2) A map approved under this section may be revised from time to time
18 by the governing body of the municipality or county.

19 (3) The original of every map approved or revised under this section, or a
20 true copy, shall be filed with the municipality or county and shall be maintained as an
21 official record of the municipality or county.

22 (4) This section does not preclude the prosecution from introducing or
23 relying upon any other evidence or testimony to establish any element of this offense.

24 (5) This section does not preclude the use or admissibility of map or
25 diagram other than the one which has been approved by the municipality or county.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
27 construed only prospectively and may not be applied or interpreted to have any effect
28 on or application to any offenses occurring before the effective date of this Act.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2000.