
By: **Chairman, Judiciary Committee (Departmental - Health and Mental Hygiene)**

Introduced and read first time: January 24, 2001

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Controlled Dangerous Substances, Controlled Paraphernalia, and**
3 **Drug Paraphernalia - Regulation**

4 FOR the purpose of providing that any substance which is designated as controlled
5 under federal law will be similarly controlled under State law unless the
6 Department of Health and Mental Hygiene objects to the classification;
7 clarifying that the prohibition against a person possessing or controlling any
8 drug containing opium, unless the person obtained the drug by prescription
9 from a licensed prescriber, does not apply if the control or possession is in the
10 regular course of lawful business; specifying that a certain number of fluid
11 ounces or more of liquid containing phencyclidine is a controlled dangerous
12 substance; providing that certain information provided to a health care
13 practitioner is not a privileged communication; adding drug paraphernalia to
14 the list of materials that certain persons may temporarily possess under certain
15 circumstances; making certain technical changes; and generally relating to the
16 regulation of controlled dangerous substances, controlled paraphernalia, and
17 drug paraphernalia.

18 BY repealing and reenacting, with amendments,
19 Article 27 - Crimes and Punishments
20 Section 278(a) and (c), 285(d), 286(a) and (f), 287(b), and 298(b)
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 2000 Supplement)

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

25 **Article 27 - Crimes and Punishments**

26 278.

27 (a) The Department shall control all substances enumerated in § 279 of this
28 subheading and may, by motion or on the petition of any interested party pursuant to
29 the procedures of the Administrative Procedure Act, and after notice and hearing, add

1 a substance as a controlled dangerous substance. In making such a determination the
2 Department shall consider the following:

- 3 (1) Its actual or relative potential for abuse;
- 4 (2) Scientific evidence of its pharmacological effect, if known;
- 5 (3) State of current scientific knowledge regarding the substance;
- 6 (4) Its history and current pattern of abuse;
- 7 (5) The scope, duration, and significance of abuse;
- 8 (6) What, if any, risk there is to the public health;
- 9 (7) Its psychic or physiological dependence liability; and
- 10 (8) Whether the substance is an immediate precursor of a substance
11 already controlled under this subheading.

12 After considering the above factors, the Department shall make findings with
13 respect [thereto] TO THOSE FACTORS and shall issue an order controlling the
14 substance if it finds that the substance has a potential for abuse.

15 (c) Any [new] substance which is designated as controlled under federal law
16 shall be similarly controlled under this subheading unless the Department objects to
17 such inclusion or rescheduling. In such case the Department shall cause to be
18 published and made public the reasons for such objection and shall afford all
19 interested parties an opportunity to be heard. At the conclusion of such hearing, the
20 Department shall publish and make public its decision, which shall be final. An
21 appeal from a designation made pursuant to this section shall not stay the effect of
22 such designation.

23 285.

24 (d) (1) In this subsection, "opium" or its derivatives includes codeine and any
25 compound, manufacture, salt, derivative, mixture, or preparation of opium, natural or
26 synthetic.

27 (2) (i) A person may not sell, dispense, or give any preparation
28 containing opium or any of its derivatives, except upon a valid prescription of a duly
29 authorized prescriber as defined in § 12-101 of the Health Occupations Article.

30 (ii) This prohibition does not apply to:

31 1. Sales made to registered practitioners of pharmacy,
32 medicine, dentistry, podiatry, or veterinary medicine; or

33 2. Sales made by any manufacturer, distributor, or licensed
34 pharmacy to a hospital or institution operating a dispensary in which a practitioner
35 licensed by law to dispense dangerous drugs is in charge.

1 (3) (i) A person may not possess or control any preparation containing
2 opium or its derivatives, unless the person obtained the drug on prescription of a duly
3 authorized prescriber as defined in § 12-101 of the Health Occupations Article.

4 (ii) This prohibition does not apply if the control or possession is in
5 the regular course of LAWFUL business, occupation, profession, employment, or duty
6 of the person.

7 (4) (i) Any person who violates the provisions of this subsection is
8 guilty of a misdemeanor and, on conviction, shall be fined not more than \$1,000 for
9 the first offense.

10 (ii) Any person convicted a second time for a violation of this
11 subsection shall be fined a sum not more than \$2,000.

12 (iii) Any person convicted more than twice for a violation of this
13 subsection shall be imprisoned for not more than 18 months.

14 286.

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

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

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

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

27 (4) To manufacture, distribute, or possess any machine, equipment,
28 instrument, implement, device, or combination thereof which is adopted for the
29 production of controlled dangerous substances under circumstances which reasonably
30 indicate an intention to use such item or combination thereof to produce, sell, or
31 dispense any controlled dangerous substance in violation of the provisions of this
32 subheading;

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

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

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

11 (i) 50 pounds or more of marijuana;

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

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

15 (iv) 28 grams or more of morphine or opium or any derivative, salt,
16 isomer, or salt of an isomer of morphine or opium or any mixture containing 28 grams
17 or more of morphine or opium or any derivative, salt, isomer, or salt of an isomer of
18 morphine or opium;

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

21 (vi) [16 ounces or more of phencyclidine in liquid form] 16 FLUID
22 OUNCES OR MORE OF LIQUID CONTAINING PHENCYCLIDINE or 448 grams or more of
23 any mixture containing phencyclidine; or

24 (vii) 448 grams or more of methamphetamine or any mixture
25 containing 448 grams or more of methamphetamine.

26 (2) For purposes of determining the quantity of a controlled dangerous
27 substance under paragraph (1) of this subsection, the quantity of controlled
28 dangerous substances involved in individual acts of manufacturing, distribution,
29 dispensing, or possessing with intent to distribute may be aggregated if each
30 aggregate act of manufacturing, distribution, dispensing, or possessing with the
31 intent to distribute occurred within a [period of 90 days] SINGLE 90-DAY PERIOD.

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

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

1 287.

2 (b) To obtain or attempt to obtain a controlled dangerous substance or
3 controlled paraphernalia or to procure or attempt to procure the administration of
4 any controlled dangerous substance by (1) fraud, deceit, misrepresentation or
5 subterfuge, or (2) by the forgery or alteration of a prescription or a written order, or
6 (3) by the concealment of any material fact or by the use of false name or address, or
7 (4) by falsely assuming the title of or representing himself to be a manufacturer,
8 distributor or practitioner, or (5) by making or uttering any false or forged
9 prescription or written order.

10 Information communicated to a [physician] PRACTITIONER in an effort to
11 obtain controlled dangerous substances or controlled paraphernalia in violation of the
12 provisions of this subsection shall not be deemed a privileged communication.

13 298.

14 (b) No criminal liability shall be imposed by virtue of this subheading upon
15 any duly authorized officer of the United States, this State or any political subdivision
16 of this State, or upon any duly authorized police department civilian employee of the
17 United States, this State, or any political subdivision of this State, engaged in the
18 enforcement or prosecution of this subheading, who shall be engaged in the
19 enforcement of any law or municipal ordinance relating to controlled dangerous
20 substances. Every such public official or employee may temporarily possess controlled
21 dangerous substances [or], controlled paraphernalia, OR DRUG PARAPHERNALIA
22 incidental to the discharge of his official or employee duties.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
24 effect October 1, 2001.