
By: **Senator Astle**
Introduced and read first time: February 2, 2001
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Drug Crimes Committed in the City of Annapolis - Mandated Drug**
3 **Treatment or Education Program for Convicted Persons**

4 FOR the purpose of requiring the court to require a certain person to participate in a
5 drug treatment or education program under certain circumstances when a
6 certain violation occurs in the City of Annapolis; and generally relating to
7 mandated drug treatment or education programs for violations involving
8 controlled dangerous substances in the City of Annapolis.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 286, 287, and 639
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 2000 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**

17 286.

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

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

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

25 (3) To manufacture, distribute, or possess any punch, die, plate, stone, or
26 any other equipment which is designed to print, imprint, or reproduce the trademark,
27 trade name, or other identifying mark, imprint, or device of another or any likeness of

1 any of the foregoing upon any drug or container or labeling thereof so as to render the
2 drug a counterfeit controlled dangerous substance;

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

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

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

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

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

26 (2) Phencyclidine, 1-(1-phenylcyclohexyl) piperidine,
27 1-phenylcyclohexylamine, or 1-piperidinocyclohexanecarbonitrile, classified in
28 Schedule II, or n-ethyl-1-phenylcyclohexylamine,
29 1-(1-phenylcyclohexyl)-pyrrolidine, 1-(1-(2-thienyl)-cyclohexyl)-piperidine, or
30 lysergic acid diethylamide, classified in Schedule I, is guilty of a felony and is subject
31 to imprisonment for not more than 20 years, or a fine of not more than \$20,000, or
32 both.

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

41 (c) (1) A person who is convicted under subsection (b)(1) or subsection (b)(2)
42 of this section, or of conspiracy to violate subsection (b)(1) or (b)(2) of this section shall

1 be sentenced to imprisonment for not less than 10 years and subject to a fine not
2 exceeding \$100,000 if the person previously has been convicted:

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

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

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

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

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

19 (d) (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 25 years and subject to a fine not exceeding \$100,000 if the
23 person previously:

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

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

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

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

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

35 4. Of any combination of these offenses.

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

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

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

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

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

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

19 (iv) Of any combination of these offenses.

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

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

27 (i) 50 pounds or more of marijuana;

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

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

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

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

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

3 (vii) 448 grams or more of methamphetamine or any mixture
4 containing 448 grams or more of methamphetamine.

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

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

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

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

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

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

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

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

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

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

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

4 (H) IF A PERSON VIOLATES ANY PROVISION OF THIS SECTION AND THE
5 VIOLATION INVOLVES THE POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE
6 IN THE CITY OF ANNAPOLIS, THE COURT SHALL REQUIRE, UPON CONVICTION, IN
7 ADDITION TO ANY OTHER PROVISION OF THIS SUBHEADING, THAT THE PERSON
8 PARTICIPATE IN A DRUG TREATMENT OR EDUCATION PROGRAM APPROVED BY THE
9 DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

10 287.

11 Except as authorized by this subheading, it is unlawful for any person:

12 (a) To possess or administer to another any controlled dangerous substance,
13 unless such substance was obtained directly, or pursuant to a valid prescription or
14 order from a practitioner, while acting in the course of his professional practice.

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

23 Information communicated to a physician in an effort to obtain controlled
24 dangerous substances or controlled paraphernalia in violation of the provisions of this
25 subsection shall not be deemed a privileged communication.

26 (c) To affix any false or forged label to a package, container or other receptacle
27 containing any controlled dangerous substance, or to omit, remove, alter or obliterate
28 any label or symbol on any such controlled dangerous substance as required by the
29 federal, State, or local law.

30 (d) To possess or distribute controlled paraphernalia, which shall mean:

31 (1) A hypodermic syringe, needle or other instrument or implement or
32 combination thereof adapted for the administration of controlled dangerous
33 substances by hypodermic injections under circumstances which reasonably indicate
34 an intention to use such controlled paraphernalia for purposes of illegally
35 administering any controlled dangerous substance;

36 (2) Gelatin capsules, glassine envelopes or any other container suitable
37 for the packaging of individual quantities of controlled dangerous substances in
38 sufficient quantity to and under circumstances which reasonably indicate an
39 intention to use any such item for the illegal manufacture, distribution, or dispensing
40 of any such controlled dangerous substance. Evidence of such circumstances shall

1 include but not be limited to close proximity of any such controlled paraphernalia to
2 any adulterants or equipment commonly used in the illegal manufacture and
3 distribution of controlled dangerous substances, such as but not limited to any of the
4 following: scales, sieves, strainers, measuring spoons, staples and staplers, or
5 procaine hydrochloride, mannitol, lactose, quinine, or any controlled dangerous
6 substance; or

7 (3) Lactose, quinine, mannite, mannitol, dextrose, sucrose, procaine
8 hydrochloride or any other substance suitable as a diluent or adulterant in sufficient
9 quantity and under such circumstances which reasonably indicate an intention to use
10 any such substance for the illegal manufacture, distribution or dispensing of any
11 controlled substance. Evidence of such circumstances shall include but not be limited
12 to close proximity of any such controlled paraphernalia to any other adulterants,
13 diluents or equipment commonly used in the illegal manufacture and distribution of
14 controlled substances, such as but not limited to any of the following: scales, sieves,
15 strainers, measuring spoons, staples and staplers, glassine envelopes, gelatin
16 capsules, or any controlled substance.

17 (e) (1) Any person who violates this section shall, upon conviction, be
18 deemed guilty of a misdemeanor and be sentenced to a term of imprisonment for not
19 more than four (4) years, a fine of not more than twenty-five thousand dollars
20 (\$25,000), or both; provided, however, that any such person convicted of a violation of
21 this section involving the use or possession of marihuana shall be punished by a
22 period of imprisonment not to exceed one (1) year or by a fine not to exceed \$1,000.00,
23 or both.

24 (2) IF A PERSON VIOLATES THIS SECTION AND THE VIOLATION
25 INVOLVES THE POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE IN THE
26 CITY OF ANNAPOLIS, THE COURT SHALL REQUIRE, UPON CONVICTION, IN ADDITION
27 TO ANY OTHER PROVISION OF THIS SUBHEADING, THAT THE PERSON PARTICIPATE
28 IN A DRUG TREATMENT OR EDUCATION PROGRAM APPROVED BY THE DEPARTMENT
29 OF HEALTH AND MENTAL HYGIENE.

30 639.

31 (a) (1) The courts may suspend sentence generally or for a definite time, and
32 may make such orders and impose such terms as to costs, recognizance for
33 appearance, or matters relating to the residence or conduct of the convicts as may be
34 deemed proper; and if the convict is a person under 18 years of age, the courts may
35 also make such orders as to his detention in any care or custody as may be deemed
36 proper.

37 (2) In Charles County, St. Mary's County, and Calvert County, the court
38 may impose a sentence of confinement as a condition of probation.

39 (b) However, when the conviction is for violation of § 21-902(a) or (b) of the
40 Transportation Article, if the court places the person on probation, it shall require, as
41 a condition of the suspension of sentence, that the person participate in an alcohol
42 treatment or education program approved by the Department of Health and Mental

1 Hygiene, unless the court finds and affirmatively states on the record that the
2 interests of the person and the people of the State do not require the imposition of this
3 condition.

4 (c) In Prince George's County, the courts may also impose such sentences as
5 may be provided by law with respect to the offense upon which an accused has been
6 convicted and cause the convict to serve the sentence by attendance at the county
7 detention center or place of confinement under the jurisdiction of the sheriff, where
8 the sentence is to be performed during any 48-hour period, in any 7-day period, with
9 each period of confinement to constitute not less than 2 days of the sentence imposed;
10 provided, however, that the offense leading to such conviction shall permit
11 confinement in the county detention center and the total sentence imposed by the
12 judge may not exceed 30 2-day periods of confinement.

13 (d) (1) When the conviction is for violation of any provision of §§ 276 through
14 303 of this article, if the court places the person on probation, it shall require, as a
15 condition of the suspension of sentence, that the person participate in a drug
16 treatment or education program approved by the Department of Health and Mental
17 Hygiene[, unless the court finds and affirmatively states on the record that the
18 interests of the person and the people of the State do not require the imposition of this
19 condition].

20 (2) EXCEPT WHEN THE CONVICTION IS FOR A VIOLATION THAT
21 INVOLVES THE POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE IN THE
22 CITY OF ANNAPOLIS, THE COURT MAY CHOSE NOT TO REQUIRE A PERSON TO
23 PARTICIPATE IN A DRUG TREATMENT OR EDUCATION PROGRAM UNDER SUBSECTION
24 (D)(1) OF THIS SECTION WHEN THE COURT FINDS AND AFFIRMATIVELY STATES ON
25 THE RECORD THAT THE INTERESTS OF THE PERSON AND THE PEOPLE OF THE STATE
26 DO NOT REQUIRE THE IMPOSITION OF THAT CONDITION.

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