
By: **Delegates Kelley, Patterson, Anderson, Carter, C. Davis, Haynes,
Howard, Jones, Kirk, Lee, Marriott, Menes, Nathan-Pulliam, Paige,
Parker, Petzold, Proctor, Ramirez, Taylor, V. Turner, Vallario, and
Vaughn**

Introduced and read first time: February 2, 2004
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Drug Crimes - Second Offenders - Eligibility for Parole**

3 FOR the purpose of repealing certain provisions making certain persons who have
4 been convicted of certain drug crimes ineligible for parole under certain
5 circumstances; providing for the application of this Act; and generally relating to
6 the eligibility for parole of persons convicted of drug crimes.

7 BY repealing and reenacting, with amendments,
8 Article - Criminal Law
9 Section 5-607 through 5-609, 5-612, 5-613, and 5-627
10 Annotated Code of Maryland
11 (2002 Volume and 2003 Supplement)

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

14 **Article - Criminal Law**

15 5-607.

16 (a) Except as provided in §§ 5-608 and 5-609 of this subtitle, a person who
17 violates a provision of §§ 5-602 through 5-606 of this subtitle is guilty of a felony and
18 on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
19 \$15,000 or both.

20 (b) (1) A person who has been convicted previously under subsection (a) of
21 this section shall be sentenced to imprisonment for not less than 2 years.

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

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

1 5-608.

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

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

10 (i) under subsection (a) of this section or § 5-609 of this subtitle;

11 (ii) of conspiracy to commit a crime included in subsection (a) of this
12 section or § 5-609 of this subtitle; or

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 § 5-609 of this
15 subtitle if committed in this State.

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

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

20 (4)] (3) A person convicted under subsection (a) of this section is not
21 prohibited from participating in a drug treatment program under § 8-507 of the
22 Health - General Article because of the length of the sentence.

23 (c) (1) A person who is convicted under subsection (a) of this section or of
24 conspiracy to commit a crime included in subsection (a) of this section shall be
25 sentenced to imprisonment for not less than 25 years and is subject to a fine not
26 exceeding \$100,000 if the person previously:

27 (i) has served at least one term of confinement of at least 180 days
28 in a correctional institution as a result of a conviction under subsection (a) of this
29 section, § 5-609 of this subtitle, or § 5-614 of this subtitle; and

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

32 1. under subsection (a) of this section or § 5-609 of this
33 subtitle;

34 2. of conspiracy to commit a crime included in subsection (a)
35 of this section or § 5-609 of this subtitle;

- 1 (4) 1-piperidinocyclohexanecarbonitrile;
- 2 (5) N-ethyl-1-phenylcyclohexylamine;
- 3 (6) 1-(1-phenylcyclohexyl)-pyrrolidine;
- 4 (7) 1-(1-(2-thienyl)-cyclohexyl)-piperidine;
- 5 (8) lysergic acid diethylamide; or
- 6 (9) 750 grams or more of 3, 4-methylenedioxymethamphetamine
7 (MDMA).

8 (b) (1) A person who is convicted under subsection (a) of this section or of
9 conspiracy to commit a crime included in subsection (a) of this section shall be
10 sentenced to imprisonment for not less than 10 years and is subject to a fine not
11 exceeding \$100,000 if the person previously has been convicted once:

12 (i) under subsection (a) of this section or § 5-608 of this subtitle;

13 (ii) of conspiracy to commit a crime included in subsection (a) of this
14 section or § 5-608 of this subtitle; or

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

18 (iv) of any combination of these crimes.

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

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

23 (c) (1) A person who is convicted under subsection (a) of this section or of
24 conspiracy to commit a crime included in subsection (a) of this section shall be
25 sentenced to imprisonment for not less than 25 years and is subject to a fine not
26 exceeding \$100,000 if the person previously:

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

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

32 1. under subsection (a) of this section or § 5-608 of this
33 subtitle;

1 (3) 448 grams or more of any mixture containing a detectable amount of
2 cocaine;

3 (4) 50 grams or more of cocaine base, commonly known as "crack";

4 (5) 28 grams or more of morphine or opium or any derivative, salt,
5 isomer, or salt of an isomer of morphine or opium;

6 (6) any mixture containing 28 grams or more of morphine or opium or
7 any derivative, salt, isomer, or salt of an isomer of morphine or opium;

8 (7) 1,000 dosage units or more of lysergic acid diethylamide;

9 (8) any mixture containing the equivalent of 1,000 dosage units of
10 lysergic acid diethylamide;

11 (9) 16 ounces or more of phencyclidine in liquid form;

12 (10) 448 grams or more of any mixture containing phencyclidine;

13 (11) 448 grams or more of methamphetamine; or

14 (12) any mixture containing 448 grams or more of methamphetamine.

15 (b) For the purpose of determining the quantity of a controlled dangerous
16 substance involved in individual acts of manufacturing, distributing, dispensing, or
17 possessing with intent to manufacture, distribute, or dispense under subsection (a) of
18 this section, the acts may be aggregated if each of the acts occurred within a 90-day
19 period.

20 (c) (1) A person who is convicted under § 5-602 of this subtitle with respect
21 to a controlled dangerous substance in an amount indicated in subsection (a) of this
22 section shall be sentenced to imprisonment for not less than 5 years.

23 (2) The court may not suspend any part of the mandatory minimum
24 sentence of 5 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 5-613.

28 (a) In this section, "drug kingpin" means an organizer, supervisor, financier, or
29 manager who acts as a coconspirator in a conspiracy to manufacture, distribute,
30 dispense, transport in, or bring into the State a controlled dangerous substance.

31 (b) (1) A drug kingpin who conspires to manufacture, distribute, dispense,
32 transport in, or bring into the State a controlled dangerous substance in an amount
33 listed in § 5-612 of this subtitle is guilty of a felony and on conviction is subject to
34 imprisonment for not less than 20 years and not exceeding 40 years without the
35 possibility of parole or a fine not exceeding \$1,000,000 or both.

1 (2) A court may not suspend any part of the mandatory minimum
2 sentence of 20 years.

3 [(3) The person is not eligible for parole during the mandatory minimum
4 sentence.]

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

8 (d) Notwithstanding any other provision of this title, a conviction under this
9 section does not merge with the conviction for any crime that is the object of the
10 conspiracy.

11 (e) The provisions of § 6-220 of the Criminal Procedure Article do not apply to
12 a conviction under this section.

13 (f) This section does not:

14 (1) prohibit a court from imposing an enhanced penalty under § 5-905 of
15 this title; or

16 (2) preclude or limit a prosecution for any other crime.

17 5-627.

18 (a) A person may not manufacture, distribute, dispense, or possess with intent
19 to distribute a controlled dangerous substance in violation of § 5-602 of this subtitle
20 or conspire to commit any of these crimes:

21 (1) in a school vehicle, as defined under § 11-154 of the Transportation
22 Article; or

23 (2) in, on, or within 1,000 feet of real property owned by or leased to an
24 elementary school, secondary school, or county board and used for elementary or
25 secondary education.

26 (b) Subsection (a) of this section applies whether or not:

27 (1) school was in session at the time of the crime; or

28 (2) the real property was being used for purposes other than school
29 purposes at the time of the crime.

30 (c) (1) A person who violates this section is guilty of a felony and on
31 conviction is subject to:

32 (i) for a first violation, imprisonment not exceeding 20 years or a
33 fine not exceeding \$20,000 or both; or

1 (ii) for each subsequent violation, imprisonment not less than 5
2 years and not exceeding 40 years or a fine not exceeding \$40,000 or both.

3 (2) [(i)] The court may not suspend the 5-year minimum sentence
4 required by paragraph (1)(ii) of this subsection.

5 [(ii) Except as otherwise provided in § 4-305 of the Correctional
6 Services Article, a person sentenced under paragraph (1) (ii) of this subsection is not
7 eligible for parole during this period of the 5-year minimum sentence.]

8 (3) A sentence imposed under paragraph (1) of this subsection shall be
9 consecutive to any other sentence imposed.

10 (d) Notwithstanding any other law, a conviction under this section may not
11 merge with a conviction under § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-607,
12 § 5-608, § 5-609, § 5-612, § 5-613, or § 5-628 of this subtitle.

13 (e) (1) In a prosecution under this section, a map or certified copy of a map
14 made by a county or municipal unit to depict the location and boundaries of the area
15 within 1,000 feet of real property owned by or leased to an elementary school,
16 secondary school, or county board and used for school purposes is admissible as prima
17 facie evidence of the location and boundaries of the depicted area, if the governing
18 body of the county or municipal corporation approves the map or certified copy of the
19 map as an official record of the location and boundaries of the depicted area.

20 (2) The map or a certified copy of the map shall be filed with the county
21 or municipal corporation, which shall maintain the map or the certified copy of the
22 map as an official record.

23 (3) The governing body of the county or municipal corporation may
24 revise periodically the map or certified copy of the map.

25 (4) This subsection does not preclude the prosecution from introducing
26 other evidence to establish an element of a crime under this section.

27 (5) This subsection does not preclude the use or admissibility of maps or
28 diagrams other than those approved by the county or municipal corporation.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
30 construed to apply retroactively and shall be applied to and interpreted to affect any
31 person convicted before, on, or after the effective date of this Act.

32 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2004.