

By: **Delegate Menes (Chairman, Special Committee on Drug and Alcohol Abuse) and Delegates Barkley, Boschert, and Burns**

Introduced and read first time: January 30, 2006

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 14, 2006

CHAPTER _____

1 AN ACT concerning

2 **Crimes - ~~Methamphetamine Laboratories - Criminal Penalties~~ Controlled**
3 **Dangerous Substances - Restitution for Cleanup Costs**

4 FOR the purpose of establishing that a person who ~~manufactures, distributes,~~
5 ~~dispenses, or possesses methamphetamine is subject to certain additional~~
6 ~~penalties and liability~~ is convicted or found to have committed a juvenile act
7 under certain provisions of law relating to the manufacture, distribution,
8 dispensation, or possession of a controlled dangerous substance may be ordered
9 to pay restitution for certain costs; providing that if a certain person is a minor,
10 the court may order certain persons to pay certain restitution; and generally
11 relating to ~~penalties for methamphetamine~~ restitution for controlled dangerous
12 substance violations.

13 BY repealing and reenacting, without amendments,
14 Article - Criminal Law
15 Section 5-602 through 5-608
16 Annotated Code of Maryland
17 (2002 Volume and 2005 Supplement)

18 ~~BY repealing and reenacting, with amendments,~~
19 ~~Article - Criminal Law~~
20 ~~Section 5-609~~
21 ~~Annotated Code of Maryland~~
22 ~~(2002 Volume and 2005 Supplement)~~

23 BY adding to

1 Article - Criminal Law
2 Section 5-610
3 Annotated Code of Maryland
4 (2002 Volume and 2005 Supplement)

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

7 **Article - Criminal Law**

8 5-602.

9 Except as otherwise provided in this title, a person may not:

10 (1) manufacture, distribute, or dispense a controlled dangerous
11 substance; or

12 (2) possess a controlled dangerous substance in sufficient quantity
13 reasonably to indicate under all circumstances an intent to manufacture, distribute,
14 or dispense a controlled dangerous substance.

15 5-603.

16 Except as otherwise provided in this title, a person may not manufacture,
17 distribute, or possess a machine, equipment, instrument, implement, device, or a
18 combination of them that is adapted to produce a controlled dangerous substance
19 under circumstances that reasonably indicate an intent to use it to produce, sell, or
20 dispense a controlled dangerous substance in violation of this title.

21 5-604.

22 (a) In this section, "counterfeit substance" means a controlled dangerous
23 substance, or its container or labeling, that:

24 (1) without authorization, bears a likeness of the trademark, trade
25 name, or other identifying mark, imprint, number, or device of a manufacturer,
26 distributor, or dispenser other than the actual manufacturer, distributor, or
27 dispenser; and

28 (2) thereby falsely purports or is represented to be the product of, or to
29 have been distributed by, the other manufacturer, distributor, or dispenser.

30 (b) Except as otherwise provided in this title, a person may not:

31 (1) create or distribute a counterfeit substance; or

32 (2) possess a counterfeit substance with intent to distribute it.

33 (c) Except as otherwise provided in this title, a person may not manufacture,
34 distribute, or possess equipment that is designed to print, imprint, or reproduce an

1 authentic or imitation trademark, trade name, other identifying mark, imprint,
2 number, or device of another onto a drug or the container or label of a drug, rendering
3 the drug a counterfeit substance.

4 5-605.

5 (a) "Common nuisance" means a dwelling, building, vehicle, vessel, aircraft, or
6 other place:

7 (1) resorted to by individuals for the purpose of administering illegally
8 controlled dangerous substances; or

9 (2) where controlled dangerous substances or controlled paraphernalia
10 are manufactured, distributed, dispensed, stored, or concealed illegally.

11 (b) A person may not keep a common nuisance.

12 5-606.

13 (a) Except as otherwise provided in this title, a person may not pass, issue,
14 make, or possess a false, counterfeit, or altered prescription for a controlled
15 dangerous substance with intent to distribute the controlled dangerous substance.

16 (b) Information that is communicated to an authorized prescriber in an effort
17 to obtain a controlled dangerous substance in violation of subsection (a) of this section
18 is not a privileged communication.

19 5-607.

20 (a) Except as provided in §§ 5-608 and 5-609 of this subtitle, a person who
21 violates a provision of §§ 5-602 through 5-606 of this subtitle is guilty of a felony and
22 on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
23 \$15,000 or both.

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

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

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

30 5-608.

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

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

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

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

8 (iii) of a crime under the laws of another state or the United States
9 that would be a crime included in subsection (a) of this section or § 5-609 of this
10 subtitle if committed in this State.

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

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

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

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

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

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

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

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

31 3. of a crime under the laws of another state or the United
32 States that would be a crime included in subsection (a) of this section or § 5-609 of
33 this subtitle if committed in this State; or

34 4. of any combination of these crimes.

35 (2) The court may not suspend any part of the mandatory minimum
36 sentence of 25 years.

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

3 (4) A separate occasion is one in which the second or succeeding crime is
4 committed after there has been a charging document filed for the preceding crime.

5 (d) (1) A person who is convicted under subsection (a) of this section or of
6 conspiracy to commit a crime included in subsection (a) of this section shall be
7 sentenced to imprisonment for not less than 40 years and is subject to a fine not
8 exceeding \$100,000 if the person previously has served three or more separate terms
9 of confinement as a result of three or more separate convictions:

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;

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; or

16 (iv) of any combination of these crimes.

17 (2) The court may not suspend any part of the mandatory minimum
18 sentence of 40 years.

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

21 ~~5-609.~~

22 ~~(a) Except as otherwise provided in this section, a person who violates a~~
23 ~~provision of §§ 5-602 through 5-606 of this subtitle with respect to any of the~~
24 ~~following controlled dangerous substances is guilty of a felony and on conviction is~~
25 ~~subject to imprisonment not exceeding 20 years or a fine not exceeding \$20,000 or~~
26 ~~both:~~

27 (1) ~~phencyclidine;~~

28 (2) ~~1-(1-phenylcyclohexyl)piperidine;~~

29 (3) ~~1-phenylcyclohexylamine;~~

30 (4) ~~1-piperidino-cyclohexanecarbonitrile;~~

31 (5) ~~N-ethyl-1-phenylcyclohexylamine;~~

32 (6) ~~1-(1-phenylcyclohexyl)pyrrolidine;~~

33 (7) ~~1-(1-(2-thienyl)cyclohexyl)piperidine;~~

1 (8) lysergic acid diethylamide; [or]

2 (9) 750 grams or more of 3, 4 methylenedioxymethamphetamine
3 (MDMA); OR

4 (10) METHAMPHETAMINE.

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

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

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

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

15 (iv) ~~of any combination of these crimes.~~

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) ~~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, § 5-608 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;~~

34 2. ~~of conspiracy to commit a crime included in subsection (a)~~
35 ~~of this section or § 5-608 of this subtitle;~~

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1 3. of a crime under the laws of another state or the United
2 States that would be a crime included in subsection (a) of this section or § 5-608 of
3 this subtitle if committed in this State; or

4 4. of any combination of these crimes.

5 (2) The court may not suspend any part of the mandatory minimum
6 sentence of 25 years.

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

9 (4) A separate occasion is one in which the second or succeeding crime is
10 committed after there has been a charging document filed for the preceding crime.

11 (d) (1) A person who is convicted under subsection (a) of this section or of
12 conspiracy to commit a crime included in subsection (a) of this section shall be
13 sentenced to imprisonment for not less than 40 years and is subject to a fine not
14 exceeding \$100,000 if the person previously has served three separate terms of
15 confinement as a result of three separate convictions:

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

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

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

22 (iv) of any combination of these crimes.

23 (2) The court may not suspend any part of the mandatory minimum
24 sentence of 40 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 (E) A PERSON WHO VIOLATES A PROVISION OF §§ 5-602 THROUGH 5-606 OF
28 THIS SUBTITLE WITH RESPECT TO METHAMPHETAMINE SHALL BE LIABLE FOR ALL
29 COSTS OF CLEANING UP OR REMEDIATING LABORATORIES OR OTHER FACILITIES
30 OPERATED FOR THE ILLEGAL MANUFACTURE OF METHAMPHETAMINE.

31 5-610.

32 (A) IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, A PERSON WHO
33 IS CONVICTED OR FOUND TO HAVE COMMITTED A DELINQUENT ACT UNDER § 5-602,
34 § 5-603, § 5-604, § 5-605, OR § 5-606 OF THIS SUBTITLE MAY BE ORDERED BY THE
35 COURT TO PAY RESTITUTION FOR ACTUAL COSTS REASONABLY INCURRED IN

1 CLEANING UP OR REMEDIATING LABORATORIES OR OTHER FACILITIES OPERATED
2 FOR THE ILLEGAL MANUFACTURE OF A CONTROLLED DANGEROUS SUBSTANCE.

3 (B) IF THE PERSON CONVICTED OR FOUND TO HAVE COMMITTED A
4 DELINQUENT ACT IS A MINOR, THE COURT MAY ORDER THE MINOR, THE MINOR'S
5 PARENT, OR BOTH TO PAY THE RESTITUTION DESCRIBED IN SUBSECTION (A) OF THIS
6 SECTION.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2006.