

HOUSE BILL 992

E2, E4

71r1483

By: **Delegates Anderson, Carter, Conaway, Lee, Love, and Rosenberg**
Introduced and read first time: February 9, 2007
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Drug-Related Offenses – Repeal of Mandatory**
3 **Minimum Sentences**

4 FOR the purpose of repealing certain mandatory minimum sentences for certain
5 drug-related offenses; specifying that a person convicted of certain drug-related
6 offenses is not prohibited from participating in a certain drug treatment
7 program; providing that a person who is serving a term of confinement that
8 includes a mandatory minimum sentence imposed on or before a certain date is
9 entitled to be granted a certain hearing and a certain sentence review; requiring
10 that a person who seeks to be granted a hearing or sentence review submit an
11 application on or before a certain date; altering certain penalties; repealing a
12 prohibition against a person possessing a regulated firearm if the person was
13 previously convicted of certain drug-related offenses; and generally relating to
14 penalties for drug-related offenses.

15 BY repealing and reenacting, without amendments,
16 Article – Criminal Law
17 Section 5–602, 5–603, 5–604, 5–605, and 5–606
18 Annotated Code of Maryland
19 (2002 Volume and 2006 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Law
22 Section 5–607, 5–608, and 5–609
23 Annotated Code of Maryland
24 (2002 Volume and 2006 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Public Safety
3 Section 5–133(c)
4 Annotated Code of Maryland
5 (2003 Volume and 2006 Supplement)

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

8 **Article – Criminal Law**

9 5–602.

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

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

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

16 5–603.

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

22 5–604.

23 (a) In this section, “counterfeit substance” means a controlled dangerous
24 substance, or its container or labeling, that:

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

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

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

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

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

4 (c) Except as otherwise provided in this title, a person may not manufacture,
5 distribute, or possess equipment that is designed to print, imprint, or reproduce an
6 authentic or imitation trademark, trade name, other identifying mark, imprint,
7 number, or device of another onto a drug or the container or label of a drug, rendering
8 the drug a counterfeit substance.

9 5–605.

10 (a) “Common nuisance” means a dwelling, building, vehicle, vessel, aircraft,
11 or other place:

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

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

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

17 5–606.

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

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

24 5–607.

25 (a) Except as provided in §§ 5–608 and 5–609 of this subtitle, a person who
26 violates a provision of §§ 5–602 through 5–606 of this subtitle is guilty of a felony and
27 on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
28 \$15,000 or both.

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

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

5 (3) Except as provided in § 4-305 of the Correctional Services Article,
6 the person is not eligible for parole during the mandatory minimum sentence.] **A**
7 **PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION IS NOT**
8 **PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §**
9 **8-507 OF THE HEALTH - GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**
10 **SENTENCE.**

11 (c) (1) **NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND**
12 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING**
13 **A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE**
14 **IMPOSED ON OR BEFORE SEPTEMBER 30, 2007, FOR A VIOLATION OF §§ 5-602**
15 **THROUGH 5-606 OF THIS SUBTITLE IS ELIGIBLE TO BE GRANTED:**

16 (i) **ONE HEARING BEFORE THE COURT TO MODIFY OR**
17 **REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND**
18 **RULE 4-345, EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR**
19 **RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE**
20 **COURT; AND**

21 (ii) **ONE SENTENCE REVIEW OF THE MANDATORY MINIMUM**
22 **SENTENCE BY A REVIEW PANEL AS PROVIDED IN § 8-102 OF THE CRIMINAL**
23 **PROCEDURE ARTICLE.**

24 (2) **THE COURT OR THE REVIEW PANEL MAY STRIKE THE**
25 **RESTRICTION AGAINST PAROLE OR REDUCE THE LENGTH OF THE SENTENCE.**

26 (3) **TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER**
27 **PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN**
28 **APPLICATION TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30,**
29 **2010.**

30 5-608.

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

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] **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS**
9 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH** if the person previously has been
10 convicted once:

11 [(i)](1) under subsection (a) of this section or § 5–609 of this
12 subtitle;

13 [(ii)](2) of conspiracy to commit a crime included in subsection
14 (a) of this section or § 5–609 of this subtitle; or

15 [(iii)](3) of a crime under the laws of another state or the
16 United States that would be a crime included in subsection (a) of this section or §
17 5–609 of this subtitle if committed in this State.

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

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

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

25 (c) (1) A person who is convicted under subsection (a) of this section or of
26 conspiracy to commit a crime included in subsection (a) of this section [shall be
27 sentenced to imprisonment for not less than 25 years and is subject to a fine not
28 exceeding \$100,000] **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 25 YEARS**
29 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH** if the person previously:

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

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

3 1. under subsection (a) of this section or § 5–609 of this
4 subtitle;

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

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

10 4. of any combination of these crimes.

11 (2) [The court may not suspend any part of the mandatory minimum
12 sentence of 25 years.

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

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

17 (d) [(1)] A person who is convicted under subsection (a) of this section or of
18 conspiracy to commit a crime included in subsection (a) of this section [shall be
19 sentenced to imprisonment for not less than 40 years and is subject to a fine not
20 exceeding \$100,000] **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 40 YEARS**
21 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH** if the person previously has served
22 three or more separate terms of confinement as a result of three or more separate
23 convictions:

24 [(i)](1) under subsection (a) of this section or § 5–609 of this
25 subtitle;

26 [(ii)](2) of conspiracy to commit a crime included in subsection
27 (a) of this section or § 5–609 of this subtitle;

28 [(iii)](3) of a crime under the laws of another state or the
29 United States that would be a crime included in subsection (a) of this section or §
30 5–609 of this subtitle if committed in this State; or

1 [(iv)](4) of any combination of these crimes.

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

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

6 **(E) A PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR**
7 **OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS**
8 **SECTION IS NOT PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT**
9 **PROGRAM UNDER § 8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF**
10 **THE LENGTH OF THE SENTENCE.**

11 **(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND**
12 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING**
13 **A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE**
14 **IMPOSED ON OR BEFORE SEPTEMBER 30, 2007, FOR A VIOLATION OF THIS**
15 **SECTION IS ELIGIBLE TO BE GRANTED:**

16 **(I) ONE HEARING BEFORE THE COURT TO MODIFY OR**
17 **REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND**
18 **RULE 4–345, EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR**
19 **RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE**
20 **COURT; AND**

21 **(II) ONE SENTENCE REVIEW OF THE MANDATORY MINIMUM**
22 **SENTENCE BY A REVIEW PANEL AS PROVIDED IN § 8–102 OF THE CRIMINAL**
23 **PROCEDURE ARTICLE.**

24 **(2) THE COURT OR THE REVIEW PANEL MAY STRIKE THE**
25 **RESTRICTION AGAINST PAROLE OR REDUCE THE LENGTH OF THE SENTENCE.**

26 **(3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER**
27 **PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN**
28 **APPLICATION TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30,**
29 **2010.**

30 5–609.

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

- 6 (1) phencyclidine;
- 7 (2) 1–(1–phenylcyclohexyl) piperidine;
- 8 (3) 1–phenylcyclohexylamine;
- 9 (4) 1–piperidinocyclohexanecarbonitrile;
- 10 (5) N–ethyl–1–phenylcyclohexylamine;
- 11 (6) 1–(1–phenylcyclohexyl)–pyrrolidine;
- 12 (7) 1–(1–(2–thienyl)–cyclohexyl)–piperidine;
- 13 (8) lysergic acid diethylamide; or
- 14 (9) 750 grams or more of 3, 4–methylenedioxymethamphetamine
15 (MDMA).

16 (b) [(1)] A person who is convicted under subsection (a) of this section or of
17 conspiracy to commit a crime included in subsection (a) of this section [shall be
18 sentenced to imprisonment for not less than 10 years and is subject to a fine not
19 exceeding \$100,000] **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS**
20 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH** if the person previously has been
21 convicted once:

22 [(i)](1) under subsection (a) of this section or § 5–608 of this
23 subtitle;

24 [(ii)](2) of conspiracy to commit a crime included in subsection
25 (a) of this section or § 5–608 of this subtitle;

26 [(iii)](3) of a crime under the laws of another state or the
27 United States that would be a crime included in subsection (a) of this section or §
28 5–608 of this subtitle if committed in this State; or

1 [(iv)](4) of any combination of these crimes.

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

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

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

9 (c) (1) A person who is convicted under subsection (a) of this section or of
10 conspiracy to commit a crime included in subsection (a) of this section [shall be
11 sentenced to imprisonment for not less than 25 years and is subject to a fine not
12 exceeding \$100,000] **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS**
13 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH** if the person previously:

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

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

19 1. under subsection (a) of this section or § 5–608 of this
20 subtitle;

21 2. of conspiracy to commit a crime included in subsection
22 (a) of this section or § 5–608 of this subtitle;

23 3. of a crime under the laws of another state or the
24 United States that would be a crime included in subsection (a) of this section or §
25 5–608 of this subtitle if committed in this State; or

26 4. of any combination of these crimes.

27 (2) [The court may not suspend any part of the mandatory minimum
28 sentence of 25 years.

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

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

3 (d) [(1)] A person who is convicted under subsection (a) of this section or of
4 conspiracy to commit a crime included in subsection (a) of this section [shall be
5 sentenced to imprisonment for not less than 40 years and is subject to a fine not
6 exceeding \$100,000] **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 40 YEARS**
7 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH** if the person previously has served
8 three separate terms of confinement as a result of three separate convictions:

9 [(i)](1) under subsection (a) of this section or § 5–608 of this
10 subtitle;

11 [(ii)](2) of conspiracy to commit a crime included in subsection
12 (a) of this section or § 5–608 of this subtitle;

13 [(iii)](3) of a crime under the laws of another state or the
14 United States that would be a crime included in subsection (a) of this section or §
15 5–608 of this subtitle if committed in this State; or

16 [(iv)](4) 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,
20 the person is not eligible for parole during the mandatory minimum sentence.]

21 **(E) A PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR**
22 **OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS**
23 **SECTION IS NOT PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT**
24 **PROGRAM UNDER § 8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF**
25 **THE LENGTH OF THE SENTENCE.**

26 **(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND**
27 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING**
28 **A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE**
29 **IMPOSED ON OR BEFORE SEPTEMBER 30, 2007, FOR A VIOLATION OF THIS**
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1 (I) ONE HEARING BEFORE THE COURT TO MODIFY OR
2 REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND
3 RULE 4-345, EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR
4 RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE
5 COURT; AND

6 (II) ONE SENTENCE REVIEW OF THE MANDATORY MINIMUM
7 SENTENCE BY A REVIEW PANEL AS PROVIDED IN § 8-102 OF THE CRIMINAL
8 PROCEDURE ARTICLE.

9 (2) THE COURT OR THE REVIEW PANEL MAY STRIKE THE
10 RESTRICTION AGAINST PAROLE OR REDUCE THE LENGTH OF THE SENTENCE.

11 (3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER
12 PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN
13 APPLICATION TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30,
14 2010.

15 Article - Public Safety

16 5-133.

17 (c) (1) A person may not possess a regulated firearm if the person was
18 previously convicted of[:

19 (i)] a crime of violence[; or

20 (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, §
21 5-607, § 5-608, § 5-609, § 5-612, § 5-613, or § 5-614 of the Criminal Law Article].

22 (2) A person who violates this subsection is guilty of a felony and on
23 conviction is subject to imprisonment for not less than 5 years, no part of which may
24 be suspended.

25 (3) A person sentenced under paragraph (1) of this subsection may not
26 be eligible for parole.

27 (4) Each violation of this subsection is a separate crime.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 2007.