

# HOUSE BILL 168

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By: **Delegates Anderson, Carter, Rosenberg, and Waldstreicher**

Introduced and read first time: January 26, 2009

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Controlled Dangerous Substances - Eligibility to Participate**  
3 **in Drug Treatment Program**

4 FOR the purpose of specifying that a person convicted of certain drug-related offenses  
5 is not prohibited from participating in a certain drug treatment program  
6 because of the length of sentence; specifying that a person convicted of certain  
7 drug-related offenses who was previously convicted of certain offenses is not  
8 prohibited from participating in a certain drug treatment program because of  
9 the length of the sentence; and generally relating to eligibility of an offender to  
10 participate in a drug treatment program.

11 BY repealing and reenacting, with amendments,  
12 Article - Criminal Law  
13 Section 5-607, 5-608, and 5-609  
14 Annotated Code of Maryland  
15 (2002 Volume and 2008 Supplement)

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

18 **Article - Criminal Law**

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.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

5           **(4)    A PERSON CONVICTED UNDER THIS SECTION IS NOT**  
6 **PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §**  
7 **8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**  
8 **SENTENCE.**

9 5–608.

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

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

18                   (i)    under subsection (a) of this section or § 5–609 of this  
19 subtitle;

20                   (ii)   of conspiracy to commit a crime included in subsection (a) of  
21 this section or § 5–609 of this subtitle; or

22                   (iii)  of a crime under the laws of another state or the United  
23 States that would be a crime included in subsection (a) of this section or § 5–609 of this  
24 subtitle if committed in this State.

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

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

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

32          (c)    (1)    A person who is convicted under subsection (a) of this section or of  
33 conspiracy to commit a crime included in subsection (a) of this section shall be

1 sentenced to imprisonment for not less than 25 years and is subject to a fine not  
2 exceeding \$100,000 if the person previously:

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

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

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

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

12 3. of a crime under the laws of another state or the  
13 United States that would be a crime included in subsection (a) of this section or §  
14 5–609 of this subtitle if committed in this State; or

15 4. of any combination of these crimes.

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

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

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

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

27 (i) under subsection (a) of this section or § 5–609 of this  
28 subtitle;

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

31 (iii) 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 this  
33 subtitle if committed in this State; or

34 (iv) of any combination of these crimes.

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

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

5           **(E)    A PERSON CONVICTED UNDER THIS SECTION IS NOT PROHIBITED**  
6 **FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER § 8–507 OF THE**  
7 **HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE SENTENCE.**

8 5–609.

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

14           (1)    phencyclidine;

15           (2)    1–(1–phenylcyclohexyl) piperidine;

16           (3)    1–phenylcyclohexylamine;

17           (4)    1–piperidinocyclohexanecarbonitrile;

18           (5)    N–ethyl–1–phenylcyclohexylamine;

19           (6)    1–(1–phenylcyclohexyl)–pyrrolidine;

20           (7)    1–(1–(2–thienyl)–cyclohexyl)–piperidine;

21           (8)    lysergic acid diethylamide; or

22           (9)    750 grams or more of 3, 4–methylenedioxymethamphetamine  
23 (MDMA).

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

28                   (i)    under subsection (a) of this section or § 5–608 of this  
29 subtitle;

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

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

6 (iv) of any combination of these crimes.

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

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

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

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

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

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

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

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

27 3. of a crime under the laws of another state or the  
28 United States that would be a crime included in subsection (a) of this section or §  
29 5–608 of this subtitle if committed in this State; or

30 4. of any combination of these crimes.

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

1           (3)    Except as provided in § 4–305 of the Correctional Services Article,  
2 the 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  
4 is 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 separate terms of  
9 confinement as a result of three separate convictions:

10                   (i)    under subsection (a) of this section or § 5–608 of this  
11 subtitle;

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

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

17                   (iv)   of any combination of these crimes.

18           (2)    The court may not suspend any part of the mandatory minimum  
19 sentence of 40 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           **(E)    A PERSON CONVICTED UNDER THIS SECTION IS NOT PROHIBITED**  
23 **FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER § 8–507 OF THE**  
24 **HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE SENTENCE.**

25           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2009.