

HB0121/268777/1

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL 121
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Repeal of” and substitute “Departure From”; in line 3, strike “for Second-Time Offenders”; strike beginning with “repealing” in line 4 down through “offenses;” in line 5; in line 6, after “program;” insert “authorizing a court to depart from a certain mandatory minimum sentence under certain circumstances;”; in line 13, after “Act;” insert “requiring the savings realized as a result of this Act to revert to the General Fund to be used for a certain purpose;”; in line 17, after “5-605,” insert “and”; and in the same line, strike “, 5-608(a), and 5-609(a)”.

On page 2, in line 1, strike “5-608(b), and 5-609(b)” and substitute “5-608, and 5-609”; and after line 3, insert:

“BY adding to

Article – Criminal Law

Section 5-609.1

Annotated Code of Maryland

(2012 Replacement Volume and 2014 Supplement)”.

AMENDMENT NO. 2

On pages 3 and 4, strike in their entirety the lines beginning with line 28 on page 3 through line 12 on page 4, inclusive, and substitute:

“(b) (1) [A] EXCEPT AS PROVIDED IN § 5-609.1 OF THIS SUBTITLE, A person who has been convicted previously under subsection (a) of this section shall be sentenced to imprisonment for not less than 2 years.

(Over)

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

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

On page 4, in line 13, strike “(D)” and substitute “(C)”.

On pages 5 and 6, strike in their entirety the lines beginning with line 6 on page 5 through line 5 on page 6, inclusive, and substitute:

“(b) (1) [A] EXCEPT AS PROVIDED IN § 5-609.1 OF THIS SUBTITLE, A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 10 years and is subject to a fine not exceeding \$100,000 if the person previously has been convicted once:

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

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

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

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

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

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

(c) (1) [A] EXCEPT AS PROVIDED IN § 5-609.1 OF THIS SUBTITLE, A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 25 years and is subject to a fine not exceeding \$100,000 if the person previously:

(i) has served at least one term of confinement of at least 180 days in a correctional institution as a result of a conviction:

1. under subsection (a) of this section or § 5–609 or § 5–614 of this subtitle;

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

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

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

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

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

(Over)

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

4. of any combination of these crimes.

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

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

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

(d) (1) [A] EXCEPT AS PROVIDED IN § 5-609.1 OF THIS SUBTITLE, A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 40 years and is subject to a fine not exceeding \$100,000 if the person previously has served three or more separate terms of confinement as a result of three or more separate convictions:

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

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

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

(iv) of any combination of these crimes.

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

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

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

On pages 8 and 9, strike in their entirety the lines beginning with line 25 on page 8 through line 31 on page 9, inclusive, and substitute:

“(b) (1) [A] EXCEPT AS PROVIDED IN § 5-609.1 OF THIS SUBTITLE, A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 10 years and is subject to a fine not exceeding \$100,000 if the person previously has been convicted once:

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

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

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

(iv) of any combination of these crimes.

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

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

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

(c) (1) [A] EXCEPT AS PROVIDED IN § 5-609.1 OF THIS SUBTITLE, A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 25 years and is subject to a fine not exceeding \$100,000 if the person previously:

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

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

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

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

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

4. of any combination of these crimes.

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

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

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

(d) (1) [A] EXCEPT AS PROVIDED IN § 5-609.1 OF THIS SUBTITLE, A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 40 years and is subject to a fine not exceeding \$100,000 if the person previously has served three separate terms of confinement as a result of three separate convictions:

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

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

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

(iv) of any combination of these crimes.

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

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

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

5-609.1.

A COURT MAY DEPART FROM A MANDATORY MINIMUM SENTENCE PRESCRIBED IN § 5-607, § 5-608, OR § 5-609 OF THIS SUBTITLE IF THE COURT FINDS AND STATES ON THE RECORD THAT, GIVING DUE REGARD TO THE NATURE OF THE CRIME, THE HISTORY AND CHARACTER OF THE DEFENDANT, AND THE DEFENDANT’S CHANCES OF SUCCESSFUL REHABILITATION:

(1) IMPOSITION OF THE MANDATORY MINIMUM SENTENCE WOULD RESULT IN SUBSTANTIAL INJUSTICE TO THE DEFENDANT; AND

(2) THE MANDATORY MINIMUM SENTENCE IS NOT NECESSARY FOR THE PROTECTION OF THE PUBLIC.”.

AMENDMENT NO. 3

On page 12, after line 27, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That the savings realized as a result of this Act shall revert to the General Fund to be used for funding drug treatment programs.”;

and in line 28, strike “3.” and substitute “4.”.