

SENATE BILL 1006

E1

6lr3638
CF HB 1313

By: **The President (By Request – Justice Reinvestment Coordinating Council)**

Introduced and read first time: February 15, 2016

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Justice Reinvestment Act – Criminal Penalties**

3 FOR the purpose of altering the penalty for second degree murder; repealing mandatory
4 minimum sentences for certain offenses involving distribution of a controlled
5 dangerous substance; altering the penalties for certain offenses involving
6 distribution of a controlled dangerous substance; making a certain conforming
7 change; and generally relating to second degree murder and crimes involving
8 distribution of a controlled dangerous substance.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Law
11 Section 2–204, 5–607, 5–608, and 5–609
12 Annotated Code of Maryland
13 (2012 Replacement Volume and 2015 Supplement)

14 BY repealing
15 Article – Criminal Law
16 Section 5–609.1
17 Annotated Code of Maryland
18 (2012 Replacement Volume and 2015 Supplement)

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

Article – Criminal Law

21
22 2–204.

23 (a) A murder that is not in the first degree under § 2–201 of this subtitle is in the
24 second degree.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) A person who commits a murder in the second degree is guilty of a felony and
2 on conviction is subject to imprisonment not exceeding [30] 40 years.

3 5-607.

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

8 (b) [(1) Except as provided in § 5-609.1 of this subtitle, a person who has been
9 convicted previously under subsection (a) of this section shall be sentenced to imprisonment
10 for not less than 2 years.

11 (2) The court may not suspend the mandatory minimum sentence to less
12 than 2 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 (c)] A person convicted under subsection (a) of this section is not prohibited from
16 participating in a drug treatment program under § 8-507 of the Health – General Article
17 because of the length of the sentence.

18 5-608.

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

23 **(1) FOR A FIRST OR SECOND CONVICTION, IMPRISONMENT NOT**
24 **EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$15,000 OR BOTH;**

25 **(2) FOR A THIRD CONVICTION, IMPRISONMENT NOT EXCEEDING 8**
26 **YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH; AND**

27 **(3) FOR A FOURTH OR SUBSEQUENT CONVICTION, IMPRISONMENT**
28 **NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH.**

29 [(b) (1) Except as provided in § 5-609.1 of this subtitle, a person who is
30 convicted under subsection (a) of this section or of conspiracy to commit a crime included
31 in subsection (a) of this section shall be sentenced to imprisonment for not less than 10
32 years and is subject to a fine not exceeding \$100,000 if the person previously has been
33 convicted once:

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

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

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

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

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

11 (c) (1) Except as provided in § 5–609.1 of this subtitle, a person who is
12 convicted under subsection (a) of this section or of conspiracy to commit a crime included
13 in subsection (a) of this section shall be sentenced to imprisonment for not less than 25
14 years and is subject to a fine not exceeding \$100,000 if the person previously:

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

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

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

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

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

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

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

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

33 4. of any combination of these crimes.

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

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

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

7 (d) (1) Except as provided in § 5–609.1 of this subtitle, a person who is
8 convicted under subsection (a) of this section or of conspiracy to commit a crime included
9 in subsection (a) of this section shall be sentenced to imprisonment for not less than 40
10 years and is subject to a fine not exceeding \$100,000 if the person previously has served
11 three or more separate terms of confinement as a result of three or more separate
12 convictions:

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

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

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

19 (iv) of any combination of these crimes.

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

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

24 **[(e)](B)** A person convicted under subsection (a) of this section or of conspiracy
25 to commit a crime included in subsection (a) of this section is not prohibited from
26 participating in a drug treatment program under § 8–507 of the Health – General Article
27 because of the length of the sentence.

28 5–609.

29 (a) **THIS SECTION APPLIES TO THE FOLLOWING CONTROLLED DANGEROUS**
30 **SUBSTANCES:**

31 **(1) PHENCYCLIDINE;**

- 1 **(2) 1-(1-PHENYLCYCLOHEXYL) PIPERIDINE;**
- 2 **(3) 1-PHENYLCYCLOHEXYLAMINE;**
- 3 **(4) 1-PIPERIDINOCYCLOHEXANECARBONITRILE;**
- 4 **(5) N-ETHYL-1-PHENYLCYCLOHEXYLAMINE;**
- 5 **(6) 1-(1-PHENYLCYCLOHEXYL)-PYRROLIDINE;**
- 6 **(7) 1-(1-(2-THIENYL)-CYCLOHEXYL)-PIPERIDINE;**
- 7 **(8) LYSERGIC ACID DIETHYLAMIDE; OR**
- 8 **(9) 750 GRAMS OR MORE OF 3,**
 9 **4-METHYLENEDIOXYMETHAMPHETAMINE (MDMA).**

10 **(B)** Except as otherwise provided in this section, a person who violates a provision
 11 of §§ 5-602 through 5-606 of this subtitle with respect to [any of the following] A controlled
 12 dangerous [substances] **SUBSTANCE** is guilty of a felony and on conviction is subject to
 13 [imprisonment not exceeding 20 years or a fine not exceeding \$20,000 or 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 **(1) FOR A FIRST OR SECOND CONVICTION, IMPRISONMENT NOT**
 25 **EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$15,000 OR BOTH;**

1 **(2) FOR A THIRD CONVICTION, IMPRISONMENT NOT EXCEEDING 8**
2 **YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH; AND**

3 **(3) FOR A FOURTH OR SUBSEQUENT CONVICTION, IMPRISONMENT**
4 **NOT EXCEEDING 10 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH.**

5 [(b) (1) Except as provided in § 5–609.1 of this subtitle, a person who is
6 convicted under subsection (a) of this section or of conspiracy to commit a crime included
7 in subsection (a) of this section shall be sentenced to imprisonment for not less than 10
8 years and is subject to a fine not exceeding \$100,000 if the person previously has been
9 convicted once:

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

11 (ii) of conspiracy to commit a crime included in subsection (a) of this
12 section or § 5–608 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 § 5–608 of this subtitle if
15 committed in this State; or

16 (iv) of any combination of these crimes.

17 (2) The court may not suspend the mandatory minimum sentence to less
18 than 10 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 (c) (1) Except as provided in § 5–609.1 of this subtitle, a person who is
22 convicted under subsection (a) of this section or of conspiracy to commit a crime included
23 in subsection (a) of this section shall be sentenced to imprisonment for not less than 25
24 years and is subject to a fine not exceeding \$100,000 if the person previously:

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

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

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

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

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 this
3 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) Except as provided in § 5–609.1 of this subtitle, a person who is
12 convicted under subsection (a) of this section or of conspiracy to commit a crime included
13 in subsection (a) of this section shall be sentenced to imprisonment for not less than 40
14 years and is subject to a fine not exceeding \$100,000 if the person previously has served
15 three separate terms of 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 subtitle if
21 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)] (C) A person convicted under subsection [(a)] (B) of this section or of
28 conspiracy to commit a crime included in subsection [(a)] (B) of this section is not prohibited
29 from participating in a drug treatment program under § 8–507 of the Health – General
30 Article because of the length of the sentence.

31 [5–609.1.

1 A court may depart from a mandatory minimum sentence prescribed in § 5–607, §
2 5–608, or § 5–609 of this subtitle if the court finds and states on the record that, giving due
3 regard to the nature of the crime, the history and character of the defendant, and the
4 defendant’s chances of successful rehabilitation:

5 (1) imposition of the mandatory minimum sentence would result in
6 substantial injustice to the defendant; and

7 (2) the mandatory minimum sentence is not necessary for the protection of
8 the public.]

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2016.