

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

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 19, 2007

CHAPTER _____

1 AN ACT concerning

2 **Criminal Procedure - Drug-Related Offenses - ~~Repeal of Mandatory~~**
3 **~~Minimum Sentences~~ Parole Eligibility for Second Offenders**

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~~ altering a certain provision
14 concerning eligibility for parole by providing that a person convicted of a certain
15 drug-related offense is not eligible for parole during a certain mandatory
16 minimum sentence if the person has been convicted of a violation of a certain
17 crime of violence arising out of the incident that resulted in the imposition of
18 the mandatory minimum sentence; and generally relating to penalties for
19 drug-related offenses.

20 BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Criminal Law
 2 Section 5–602, 5–603, 5–604, 5–605, and 5–606
 3 Annotated Code of Maryland
 4 (2002 Volume and 2006 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article – Criminal Law
 7 Section ~~5–607, 5–608, 5–608~~ and 5–609
 8 Annotated Code of Maryland
 9 (2002 Volume and 2006 Supplement)

10 ~~BY repealing and reenacting, with amendments,~~
 11 ~~Article – Public Safety~~
 12 ~~Section 5–133(e)~~
 13 ~~Annotated Code of Maryland~~
 14 ~~(2003 Volume and 2006 Supplement)~~

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

17 **Article – Criminal Law**

18 5–602.

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

20 (1) manufacture, distribute, or dispense a controlled dangerous
 21 substance; or

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

25 5–603.

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

31 5–604.

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

3 (1) without authorization, bears a likeness of the trademark, trade
4 name, or other identifying mark, imprint, number, or device of a manufacturer,
5 distributor, or dispenser other than the actual manufacturer, distributor, or dispenser;
6 and

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

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

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

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

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

17 5–605.

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

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

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

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

25 5–606.

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

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

4 ~~5-607.~~

5 (a) ~~Except as provided in §§ 5-608 and 5-609 of this subtitle, a person who~~
6 ~~violates a provision of §§ 5-602 through 5-606 of this subtitle is guilty of a felony and~~
7 ~~on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding~~
8 ~~\$15,000 or both.~~

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

11 ~~(2) The court may not suspend the mandatory minimum sentence to~~
12 ~~less than 2 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.] A~~
15 ~~PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION IS NOT~~
16 ~~PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §~~
17 ~~8-507 OF THE HEALTH GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE~~
18 ~~SENTENCE.~~

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

24 ~~(I) ONE HEARING BEFORE THE COURT TO MODIFY OR~~
25 ~~REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND~~
26 ~~RULE 4-345, EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR~~
27 ~~RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE~~
28 ~~COURT; AND~~

29 ~~(H) ONE SENTENCE REVIEW OF THE MANDATORY MINIMUM~~
30 ~~SENTENCE BY A REVIEW PANEL AS PROVIDED IN § 8-102 OF THE CRIMINAL~~
31 ~~PROCEDURE ARTICLE.~~

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

3 ~~(3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER~~
 4 ~~PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN~~
 5 ~~APPLICATION TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30,~~
 6 ~~2010.~~

7 5-608.

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

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

18 ~~[(i)]~~ ~~(1)~~ under subsection (a) of this section or § 5-609 of this
 19 subtitle;

20 ~~[(ii)]~~ ~~(2)~~ of conspiracy to commit a crime included in subsection
 21 (a) of this section or § 5-609 of this subtitle; or

22 ~~[(iii)]~~ ~~(3)~~ of a crime under the laws of another state or the
 23 United States that would be a crime included in subsection (a) of this section or §
 24 5-609 of this 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 **IF THE**
 29 **PERSON HAS BEEN CONVICTED OF A VIOLATION OF A CRIME OF VIOLENCE, AS**
 30 **DEFINED IN § 14-101 OF THIS ARTICLE, ARISING OUT OF THE INCIDENT THAT**
 31 **RESULTED IN THE IMPOSITION OF THE MANDATORY MINIMUM SENTENCE.**

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

4 (c) (1) A person who is convicted under subsection (a) of this section or of
5 conspiracy to commit a crime included in subsection (a) of this section ‡shall be
6 sentenced to imprisonment for not less than 25 years and is subject to a fine not
7 exceeding \$100,000‡ ~~IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 25 YEARS~~
8 ~~OR A FINE NOT EXCEEDING \$100,000 OR BOTH~~ if the person previously:

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

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

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

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

18 3. of a crime under the laws of another state or the
19 United States that would be a crime included in subsection (a) of this section or §
20 5-609 of this subtitle if committed in this State; or

21 4. of any combination of these crimes.

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

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

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

28 (d) ‡(1)‡ A person who is convicted under subsection (a) of this section or of
29 conspiracy to commit a crime included in subsection (a) of this section ‡shall be
30 sentenced to imprisonment for not less than 40 years and is subject to a fine not
31 exceeding \$100,000‡ ~~IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 40 YEARS~~

1 ~~OR A FINE NOT EXCEEDING \$100,000 OR BOTH~~ if the person previously has served
 2 three or more separate terms of confinement as a result of three or more separate
 3 convictions:

4 ~~[(i)] (1)~~ under subsection (a) of this section or § 5-609 of this
 5 subtitle;

6 ~~[(ii)] (2)~~ of conspiracy to commit a crime included in subsection
 7 (a) of this section or § 5-609 of this subtitle;

8 ~~[(iii)] (3)~~ of a crime under the laws of another state or the
 9 United States that would be a crime included in subsection (a) of this section or §
 10 5-609 of this subtitle if committed in this State; or

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

12 ~~[(2)]~~ The court may not suspend any part of the mandatory minimum
 13 sentence of 40 years.

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

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

21 ~~(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND~~
 22 ~~SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING~~
 23 ~~A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE~~
 24 ~~IMPOSED ON OR BEFORE SEPTEMBER 30, 2007, FOR A VIOLATION OF THIS~~
 25 ~~SECTION IS ELIGIBLE TO BE GRANTED:~~

26 ~~(i) ONE HEARING BEFORE THE COURT TO MODIFY OR~~
 27 ~~REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND~~
 28 ~~RULE 4-345, EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR~~
 29 ~~RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE~~
 30 ~~COURT; AND~~

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

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

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

5-609.

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

(1) phencyclidine;

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

(3) 1-phenylcyclohexylamine;

(4) 1-piperidinocyclohexanecarbonitrile;

(5) N-ethyl-1-phenylcyclohexylamine;

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

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

(8) lysergic acid diethylamide; or

(9) 750 grams or more of 3, 4-methylenedioxymethamphetamine (MDMA).

(b) ~~[(1)]~~ 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

1 exceeding \$100,000] ~~IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS~~
 2 ~~OR A FINE NOT EXCEEDING \$100,000 OR BOTH~~ if the person previously has been
 3 convicted once:

4 ~~[(i)] (1)~~ under subsection (a) of this section or § 5-608 of this
 5 subtitle;

6 ~~[(ii)] (2)~~ of conspiracy to commit a crime included in subsection
 7 (a) of this section or § 5-608 of this subtitle;

8 ~~[(iii)] (3)~~ of a crime under the laws of another state or the
 9 United States that would be a crime included in subsection (a) of this section or §
 10 5-608 of this subtitle if committed in this State; or

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

12 ~~[(2)]~~ The court may not suspend the mandatory minimum sentence to
 13 less than 10 years.

14 (3) Except as provided in § 4-305 of the Correctional Services Article,
 15 the person is not eligible for parole during the mandatory minimum sentence **IF THE**
 16 **PERSON HAS BEEN CONVICTED OF A VIOLATION OF A CRIME OF VIOLENCE, AS**
 17 **DEFINED IN § 14-101 OF THIS ARTICLE, ARISING OUT OF THE INCIDENT THAT**
 18 **RESULTED IN THE IMPOSITION OF THE MANDATORY MINIMUM SENTENCE.**

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

22 (c) (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 25 years and is subject to a fine not
 25 exceeding \$100,000] ~~IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS~~
 26 ~~OR A FINE NOT EXCEEDING \$100,000 OR BOTH~~ if the person previously:

27 (i) has served at least one term of confinement of at least 180
 28 days 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
 31 been convicted twice:

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

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

5 3. of a crime under the laws of another state or the
6 United States that would be a crime included in subsection (a) of this section or §
7 5–608 of this subtitle if committed in this State; or

8 4. of any combination of these crimes.

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

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

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

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

21 ~~¶(i)¶ (1)~~ under subsection (a) of this section or § 5–608 of this
22 subtitle;

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

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

28 ~~¶(iv)¶ (4)~~ of any combination of these crimes.

1 ~~(e) (1) A person may not possess a regulated firearm if the person was~~
2 ~~previously convicted of:~~

3 ~~(i) a crime of violence; or~~

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

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

9 ~~(3) A person sentenced under paragraph (1) of this subsection may not~~
10 ~~be eligible for parole.~~

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

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.