

HOUSE BILL 353

E2, E4

11r0960

By: **Delegates Anderson, Vallario, Alston, Carter, Conaway, and Glenn**
Introduced and read first time: February 3, 2011
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; altering the
12 requirements for the imposition of certain penalties; repealing a prohibition
13 against a person possessing a regulated firearm if the person was previously
14 convicted of certain drug-related offenses; and generally relating to penalties
15 for drug-related offenses.

16 BY repealing and reenacting, without amendments,
17 Article – Criminal Law
18 Section 5-602, 5-603, 5-604, 5-605, and 5-606
19 Annotated Code of Maryland
20 (2002 Volume and 2010 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Criminal Law
23 Section 5-607, 5-608, and 5-609
24 Annotated Code of Maryland
25 (2002 Volume and 2010 Supplement)

26 BY repealing and reenacting, with amendments,
27 Article – Public Safety
28 Section 5-133(c)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2003 Volume and 2010 Supplement)

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

5 **Article – Criminal Law**

6 5–602.

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

8 (1) distribute or dispense a controlled dangerous substance; or

9 (2) possess a controlled dangerous substance in sufficient quantity
10 reasonably to indicate under all circumstances an intent to distribute or dispense a
11 controlled dangerous substance.

12 5–603.

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

19 5–604.

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

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

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

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

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

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

31 (c) Except as otherwise provided in this title, a person may not manufacture,
32 distribute, or possess equipment that is designed to print, imprint, or reproduce an

1 authentic or imitation trademark, trade name, other identifying mark, imprint,
2 number, or device of another onto a drug or the container or label of a drug, rendering
3 the drug a counterfeit substance.

4 5–605.

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

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

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

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

12 5–606.

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

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

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.

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

28 (3) Except as provided in § 4–305 of the Correctional Services Article,
29 the person is not eligible for parole during the mandatory minimum sentence.] **A
30 PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION IS NOT
31 PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER §
32 8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE
33 SENTENCE.**

1 **(C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND**
2 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING**
3 **A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE**
4 **IMPOSED ON OR BEFORE SEPTEMBER 30, 2011, FOR A VIOLATION OF § 5-602, §**
5 **5-603, § 5-604, § 5-605, OR § 5-606 OF THIS SUBTITLE IS ELIGIBLE TO BE**
6 **GRANTED:**

7 **(I) ONE HEARING BEFORE THE COURT TO MODIFY OR**
8 **REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND**
9 **RULE 4-345, EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR**
10 **RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE**
11 **COURT; AND**

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

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

17 **(3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER**
18 **PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN**
19 **APPLICATION TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30,**
20 **2014.**

21 5-608.

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

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

32 **[(i)] (1)** under subsection (a) of this section or § 5-609 of this
33 subtitle;

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

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

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

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

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

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

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

18 1. under subsection (a) of this section or § 5–609 or §
19 5–614 of this subtitle;

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

22 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; and

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

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

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

31 3. of a crime under the laws of another state or the
32 United States that would be a crime included in subsection (a) of this section or §
33 5–609 of this subtitle if committed in this State; or

34 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,
4 the 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
6 is committed after there has been a charging document filed for the preceding crime.

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

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

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

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

22 (2) The court may not suspend any part of the mandatory minimum
23 sentence of 40 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 **(E) A PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR**
27 **OF CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS**
28 **SECTION IS NOT PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT**
29 **PROGRAM UNDER § 8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF**
30 **THE LENGTH OF THE SENTENCE.**

31 **(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND**
32 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING**
33 **A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE**

1 IMPOSED ON OR BEFORE SEPTEMBER 30, 2011, FOR A VIOLATION OF THIS
2 SECTION IS ELIGIBLE TO BE GRANTED:

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

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

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

13 (3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER
14 PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN
15 APPLICATION TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30,
16 2014.

17 5-609.

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

- 23 (1) phencyclidine;
- 24 (2) 1-(1-phenylcyclohexyl) piperidine;
- 25 (3) 1-phenylcyclohexylamine;
- 26 (4) 1-piperidinocyclohexanecarbonitrile;
- 27 (5) N-ethyl-1-phenylcyclohexylamine;
- 28 (6) 1-(1-phenylcyclohexyl)-pyrrolidine;
- 29 (7) 1-(1-(2-thienyl)-cyclohexyl)-piperidine;
- 30 (8) lysergic acid diethylamide; or

1 (9) 750 grams or more of 3, 4-methylenedioxymethamphetamine
2 (MDMA).

3 (b) **[(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 10 years and is subject to a fine not
6 exceeding \$100,000] **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS**
7 **OR A FINE NOT EXCEEDING \$100,000 OR BOTH** if the person previously has been
8 convicted once:

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 the mandatory minimum sentence to
18 less than 10 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 **[(4)]** A person convicted under subsection (a) of this section is not
22 prohibited from participating in a drug treatment program under § 8-507 of the
23 Health – General Article because of the length of the sentence.]

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

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

32 (ii) if the convictions do not arise from a single incident, has
33 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.

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

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

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

6 **(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND**
7 **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING**
8 **A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE**
9 **IMPOSED ON OR BEFORE SEPTEMBER 30, 2011, FOR A VIOLATION OF THIS**
10 **SECTION IS ELIGIBLE TO BE GRANTED:**

11 **(I) ONE HEARING BEFORE THE COURT TO MODIFY OR**
12 **REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND**
13 **RULE 4-345, EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR**
14 **RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE**
15 **COURT; AND**

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

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

21 **(3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER**
22 **PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN**
23 **APPLICATION TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30,**
24 **2014.**

25 **Article – Public Safety**

26 5-133.

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

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

30 (ii) a violation of § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, §
31 5-607, § 5-608, § 5-609, § 5-612, § 5-613, or § 5-614 of the Criminal Law Article].

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

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

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

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2011.