

# HOUSE BILL 121

E2, E4  
HB 992/07 – JUD

5lr1044

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By: **Delegates Anderson, Vallario, Carter, Conaway, Jalisi, Kittleman, Lierman, Luedtke, Moon, Morales, Oaks, B. Robinson, Rosenberg, Smith, Sydnor, and M. Washington**

Introduced and read first time: January 26, 2015

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Drug-Related Offenses – Repeal of Mandatory Minimum**  
3 **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 program;  
7 providing that a person who is serving a term of confinement that includes a  
8 mandatory minimum sentence imposed on or before a certain date is entitled to a  
9 certain hearing and a certain sentence review; requiring that a person who seeks a  
10 hearing or sentence review submit an application on or before a certain date; altering  
11 certain penalties; repealing a prohibition against a person possessing a regulated  
12 firearm if the person was previously convicted of certain drug-related offenses; and  
13 generally relating to penalties for drug-related offenses.

14 BY repealing and reenacting, without amendments,  
15 Article – Criminal Law  
16 Section 5–602, 5–603, 5–604, 5–605, and 5–606  
17 Annotated Code of Maryland  
18 (2012 Replacement Volume and 2014 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Law  
21 Section 5–607, 5–608, and 5–609  
22 Annotated Code of Maryland  
23 (2012 Replacement Volume and 2014 Supplement)

24 BY repealing and reenacting, with amendments,  
25 Article – Public Safety  
26 Section 5–133(c)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2011 Replacement Volume and 2014 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
4 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 controlled  
14 dangerous substance, or manufacture, distribute, or possess a machine, equipment,  
15 instrument, implement, device, or a combination of them that is adapted to produce a  
16 controlled dangerous substance under circumstances that reasonably indicate an intent to  
17 use it to produce, sell, or dispense a controlled dangerous substance in violation of this title.

18 5–604.

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

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

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

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

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

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

29 (c) Except as otherwise provided in this title, a person may not manufacture,  
30 distribute, or possess equipment that is designed to print, imprint, or reproduce an  
31 authentic or imitation trademark, trade name, other identifying mark, imprint, number, or

1 device of another onto a drug or the container or label of a drug, rendering the drug a  
2 counterfeit substance.

3 5–605.

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

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

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

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

11 5–606.

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

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

18 5–607.

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

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

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

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

1           **(C) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT**  
 2 **TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING A TERM OF**  
 3 **CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE IMPOSED ON OR**  
 4 **BEFORE SEPTEMBER 30, 2015, FOR A VIOLATION OF A PROVISION OF §§ 5-602**  
 5 **THROUGH 5-606 OF THIS SUBTITLE IS ELIGIBLE FOR:**

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

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

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

15                           **(3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER**  
 16 **PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN APPLICATION**  
 17 **TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30, 2018.**

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 exceeding  
 22 20 years or a fine not exceeding \$25,000 or both.

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

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

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

32                           **[(iii)](3)** of a crime under the laws of another state or the United  
 33 States that would be a crime included in subsection (a) of this section or §  
 34 5-609 of this subtitle if committed in this State.

1            [(2) The court may not suspend the mandatory minimum sentence to less  
2 than 10 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 person convicted under subsection (a) of this section is not prohibited  
6 from participating in a drug treatment program under § 8–507 of the Health – General  
7 Article because of the length of the sentence.]

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

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

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

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

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

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

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

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

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

31                            4. of any combination of these crimes.

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

1           (3) Except as provided in § 4–305 of the Correctional Services Article, the  
2 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 is  
4 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 sentenced  
7 to imprisonment for not less than 40 years and is subject to a fine not exceeding \$100,000]  
8 **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 40 YEARS OR A FINE NOT**  
9 **EXCEEDING \$100,000 OR BOTH** if the person previously has served three or more  
10 separate terms of confinement as a result of three or more separate convictions:

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

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

15                       [(iii)](3) of a crime under the laws of another state or the United  
16 States that would be a crime included in subsection (a) of this section or §  
17 5–609 of this subtitle if committed in this State; or

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

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

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

23           **(E) A PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF**  
24 **CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION**  
25 **IS NOT PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER**  
26 **§ 8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**  
27 **SENTENCE.**

28           **(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT**  
29 **TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING A TERM OF**  
30 **CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE IMPOSED ON OR**  
31 **BEFORE SEPTEMBER 30, 2015, FOR A VIOLATION OF THIS SECTION IS ELIGIBLE FOR:**

32                       **(I) ONE HEARING BEFORE THE COURT TO MODIFY OR REDUCE**  
33 **THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND RULE 4–345,**

1 EVEN IF THE DEFENDANT DID NOT TIMELY FILE A MOTION FOR RECONSIDERATION  
2 OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE COURT; AND

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

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

8 (3) TO BE GRANTED A HEARING OR SENTENCE REVIEW UNDER  
9 PARAGRAPH (1) OF THIS SUBSECTION, A PERSON SHALL SUBMIT AN APPLICATION  
10 TO THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30, 2018.

11 5-609.

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

16 (1) phencyclidine;

17 (2) 1-(1-phenylcyclohexyl) piperidine;

18 (3) 1-phenylcyclohexylamine;

19 (4) 1-piperidinocyclohexanecarbonitrile;

20 (5) N-ethyl-1-phenylcyclohexylamine;

21 (6) 1-(1-phenylcyclohexyl)-pyrrolidine;

22 (7) 1-(1-(2-thienyl)-cyclohexyl)-piperidine;

23 (8) lysergic acid diethylamide; or

24 (9) 750 grams or more of 3, 4-methylenedioxyamphetamine (MDMA).

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

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

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

5                    [(iii)](3)            of a crime under the laws of another state or the United  
6 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                    [(iv)](4)            of any combination of these crimes.

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

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

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

16                    (c)    (1)    A person who is convicted under subsection (a) of this section or of  
17 conspiracy to commit a crime included in subsection (a) of this section [shall be sentenced  
18 to imprisonment for not less than 25 years and is subject to a fine not exceeding \$100,000]  
19 **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 30 YEARS OR A FINE NOT**  
20 **EXCEEDING \$100,000 OR BOTH** if the person previously:

21                    (i)    has served at least one term of confinement of at least 180 days  
22 in a correctional institution as a result of a conviction under subsection (a) of this section,  
23 § 5–608 of this subtitle, or § 5–614 of this subtitle; and

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

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

28                    2.    of conspiracy to commit a crime included in subsection (a)  
29 of this section or § 5–608 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 §  
32 5–608 of this 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)] 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 sentenced  
9 to imprisonment for not less than 40 years and is subject to a fine not exceeding \$100,000]  
10 **IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 40 YEARS OR A FINE NOT**  
11 **EXCEEDING \$100,000 OR BOTH** if the person previously has served three separate terms  
12 of confinement as a result of three separate convictions:

13 [(i)](1) under subsection (a) of this section or § 5–608 of this  
14 subtitle;

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

17 [(iii)](3) of a crime under the laws of another state or the United  
18 States that would be a crime included in subsection (a) of this section or §  
19 5–608 of this subtitle if committed in this State; or

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

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

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

25 **(E) A PERSON CONVICTED UNDER SUBSECTION (A) OF THIS SECTION OR OF**  
26 **CONSPIRACY TO COMMIT A CRIME INCLUDED IN SUBSECTION (A) OF THIS SECTION**  
27 **IS NOT PROHIBITED FROM PARTICIPATING IN A DRUG TREATMENT PROGRAM UNDER**  
28 **§ 8–507 OF THE HEALTH – GENERAL ARTICLE BECAUSE OF THE LENGTH OF THE**  
29 **SENTENCE.**

30 **(F) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT**  
31 **TO PARAGRAPH (3) OF THIS SUBSECTION, A PERSON WHO IS SERVING A TERM OF**  
32 **CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE IMPOSED ON OR**  
33 **BEFORE SEPTEMBER 30, 2015, FOR A VIOLATION OF THIS SECTION IS ELIGIBLE FOR:**



1                   (3)    At the time of the commission of the offense, if a period of more than 5  
2 years has elapsed since the person completed serving the sentence for the most recent  
3 conviction under paragraph (1)(i) or (ii) of this subsection, including all imprisonment,  
4 mandatory supervision, probation, and parole:

5                           (i)    the imposition of the mandatory minimum sentence is within the  
6 discretion of the court; and

7                           (ii)   the mandatory minimum sentence may not be imposed unless  
8 the State's Attorney notifies the person in writing at least 30 days before trial of the State's  
9 intention to seek the mandatory minimum sentence.

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

11                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2015.