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By: **Delegates Simmons, King, Kullen, and Quinter**

Introduced and read first time: January 26, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Controlled Dangerous Substance Offenses - Subsequent Offender Penalties**  
3 **- Incarceration in Another Jurisdiction**

4 FOR the purpose of providing that the enhanced penalties for a third time offender  
5 who has committed certain controlled dangerous substance offenses apply if the  
6 person serves a term of confinement of a certain number of days in a  
7 correctional institution as a result of a conviction of a crime under the laws of  
8 another state or the United States that would be a crime under certain  
9 provisions if committed in this State; and generally relating to subsequent  
10 offender penalties.

11 BY repealing and reenacting, with amendments,

12 Article - Criminal Law

13 Section 5-608 and 5-609

14 Annotated Code of Maryland

15 (2002 Volume and 2004 Supplement)

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

18 **Article - Criminal Law**

19 5-608.

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

24 (b) (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 10 years and is subject to a fine not  
27 exceeding \$100,000 if the person previously has been convicted once:

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

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

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

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

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

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

13 (c) (1) A person who is convicted under subsection (a) of this section or of  
14 conspiracy to commit a crime included in subsection (a) of this section shall be  
15 sentenced to imprisonment for not less than 25 years and is subject to a fine not  
16 exceeding \$100,000 if the person previously:

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

19 1. a conviction under subsection (a) of this section, § 5-609 of  
20 this subtitle, or § 5-614 of this subtitle; OR

21 2. A CONVICTION OF A CRIME UNDER THE LAWS OF  
22 ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN  
23 SUBSECTION (A) OF THIS SECTION, § 5-609 OF THIS SUBTITLE, OR § 5-614 OF THIS  
24 SUBTITLE, IF COMMITTED IN THIS STATE; and

25 (ii) has been convicted twice, if the convictions arise from separate  
26 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 (a)  
30 of this section or § 5-609 of this subtitle;

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

34 4. of any combination of these crimes.

35 (2) The court may not suspend any part of the mandatory minimum  
36 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  
7 sentenced to imprisonment for not less than 40 years and is subject to a fine not  
8 exceeding \$100,000 if the person previously has served three or more separate terms  
9 of confinement as a result of three or more separate convictions:

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

11 (ii) of conspiracy to commit a crime included in subsection (a) of this  
12 section or § 5-609 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 § 5-609 of this  
15 subtitle if committed in this State; or

16 (iv) of any combination of these crimes.

17 (2) The court may not suspend any part of the mandatory minimum  
18 sentence of 40 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 5-609.

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 any of the  
24 following controlled dangerous substances is guilty of a felony and on conviction is  
25 subject to imprisonment not exceeding 20 years or a fine not exceeding \$20,000 or  
26 both:

27 (1) phencyclidine;

28 (2) 1-(1-phenylcyclohexyl) piperidine;

29 (3) 1-phenylcyclohexylamine;

30 (4) 1-piperidinocyclohexanecarbonitrile;

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

32 (6) 1-(1-phenylcyclohexyl)-pyrrolidine;

33 (7) 1-(1-(2-thienyl)-cyclohexyl)-piperidine;

1 (8) lysergic acid diethylamide; or

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

4 (b) (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 10 years and is subject to a fine not  
7 exceeding \$100,000 if the person previously has been convicted once:

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

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

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

14 (iv) of any combination of these crimes.

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

17 (3) Except as provided in § 4-305 of the Correctional Services Article, the  
18 person is not eligible for parole during 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 if the person previously:

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

28 1. a conviction under subsection (a) of this section, § 5-608 of  
29 this subtitle, or § 5-614 of this subtitle; OR

30 2. A CONVICTION OF A CRIME UNDER THE LAWS OF  
31 ANOTHER STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN  
32 SUBSECTION (A) OF THIS SECTION, § 5-608 OF THIS SUBTITLE, OR § 5-614 OF THIS  
33 SUBTITLE IF COMMITTED IN THIS STATE; and

34 (ii) if the convictions do not arise from a single incident, has been  
35 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 (a)  
4 of this section or § 5-608 of this subtitle;
- 5                                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 § 5-608 of  
7 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, the  
12 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 is  
14 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 if the person previously has served three separate terms of  
19 confinement as a result of three separate convictions:

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

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

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

26                              (iv)      of any combination of these crimes.

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

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

31        SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2005.