

May 16, 2007

The Honorable Michael E. Busch
Speaker of the House
State House
Annapolis, MD 21401

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed House Bill 992 - *Criminal Procedure-Drug Related Offenses-Parole Eligibility for Second Offenders*.

The current law, introduced in 1982 by Governor Harry Hughes and overwhelmingly passed by the General Assembly, mandates a minimum 10 year non-suspendable, non-parolable sentence for offenders convicted a second time of distributing, manufacturing, creating or dispensing Schedule I or Schedule II narcotics or hallucinogens. House Bill 992 would repeal the prohibition against parole if the person was not convicted of a crime of violence arising out of the incident that resulted in the mandatory minimum sentence.

After careful consideration, it is my conclusion that signing this bill into law is both unnecessary and contrary to the interests of public safety for the following reasons:

Despite the bill's applicability to "non-violent" criminals, drug dealers participate in an activity that fuels violent crime and murder.

Maryland law already affords two-time offenders an opportunity to receive drug treatment services in lieu of a mandatory sentence.

The bill seeks to aid addicted individuals, but does not require individuals to receive drug treatment services or make progress in addressing the public health and public safety issue of drug addiction.

Much has been said and written about this bill and, as discussed below, I share most of the policy goals of those who support this bill. However, it is difficult for me, and many Marylanders, to lose sight of the fact that this bill potentially reduces the sentence of individuals who have been twice convicted of distributing drugs in our communities.¹

The drug trade is an inherently violent business. While an individual drug-dealing transaction, or an individual drug production operation, may not experience an incident of

¹ While the bill aims to aid addicts convicted of these crimes, it is well accepted that not all drug manufacturers and dealers are addicted to, or even use, the product that they produce and pedal. Yet the bill affords non-addicted street entrepreneurs the same opportunity to make a case to avoid the mandatory minimum sentence as those individuals who may in fact be addicted to and dealing drugs.

violence, the illegal drug market as a whole is shaped and protected through a culture of violence. We know all too well that somewhere along the chain of drug production and distribution lives are lost, families are devastated, and communities are destroyed.

Further, Maryland law has long allowed a second-time offender to ask to receive treatment services for a drug addiction through the Department of Health and Mental Hygiene. Sections 5-608(b)(4) and 5-609(b)(4) of the Criminal Law Article, which are amended by House Bill 992, clearly state that a person convicted of the crime in question “is not prohibited from participating in a drug treatment program under Section 8-507 of the Health-General Article because of the length of the sentence.”²

In 1993, the Maryland Court of Appeals addressed the issue of “whether a defendant, who is committed to a drug treatment center pursuant to [Section 8-507] and successfully completes the program of treatment, is required to serve the balance of the mandatorily imposed sentence of incarceration prescribed by” the precursor to the law amended by this bill [pre-Code Revision of Article 27]. *State v. Thompson*, 332 Md. 1, 3 (1993).³ The Court considered the specific question of “whether the treatment ordered is in lieu of, or, as the State argues, in addition to, the mandatory sentence,” and held that “when a defendant successfully completes the drug treatment program, whether he or she must serve the remainder of the mandatory ten year sentence, imposed pursuant to [this statute], is within the trial court’s discretion to determine.” *Thompson* at 10, 11.⁴

Finally, many proponents of the bill have also been long-time supporters of drug treatment funds and services for those in need. This is an issue I have championed throughout my time in public service. During my time as Mayor of Baltimore City, funding for drug treatment services doubled. This year, I provided, and the General Assembly approved, a \$5 million increase in drug treatment funding in a very difficult budget. This bill, however, does nothing to advance the amount of drug treatment services available to addicted individuals.

² Section 8-507 provides that “a court that finds in a criminal case that a defendant has an alcohol or drug dependency may commit the defendant as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment,” to DHMH for appropriate treatment. This commitment can last for any period of time between 72 hours and 1 year.

³ *Thompson* involved an individual who was a second-time distributor of cocaine. He was sentenced to several concurrent sentences, ten years of which were to be served without parole pursuant to the law that is the subject of HB 992. As a condition of release, he was committed to Second Genesis, a drug treatment program. The State argued that once treatment was completed the defendant should be remanded to the Department of Corrections to serve the balance of the mandatory minimum sentence, contending that treatment does not allow a defendant to avoid the mandatory sentence.

⁴ The Court rejected the State’s argument that remand for service of the balance of the sentence was mandatory, stating that “[t]he trial judge, having observed the defendant before and after treatment, will be in the position to determine whether society’s interest would be better served if that defendant, upon completion of treatment, is returned to prison or released.” *Thompson* at 19, 20.

Supporters of this bill have worked in good faith, hoping to primarily meet the needs of low-level dealers who sell small quantities of drugs in order to gain the means to support their own habits. In my opinion, State law has long been carefully crafted to meet that narrow, legitimate public policy goal. The desire of the bill's supporters to have a trial judge consider the individual circumstances of a defendant to determine whether the addiction precipitated the unlawful behavior, and order treatment for the underlying addiction, is met under current law. This bill, as passed by the General Assembly, unnecessarily broadens current law and makes parole a possibility, however remote, for drug dealers who are driven by greed and profit supported by violence, not addiction.

For the above stated reasons, I have vetoed House Bill 992.

Sincerely,

Martin O'Malley
Governor