

HB0135/633420/1

BY: Judiciary Committee

AMENDMENTS TO HOUSE BILL 135
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike lines 2 and 3 in their entirety and substitute “**Criminal Law – Controlled Dangerous Substances and Firearms**”; in line 7, after “cannabis;” insert “authorizing a certain person serving a certain term of confinement for an offense relating to volume dealing in cocaine base or cannabis or drug kingpin with regard to cocaine base or cannabis imposed on or before a certain date to file a certain motion to modify or reduce the sentence under certain circumstances; altering the penalties for certain crimes relating to firearms; authorizing a person at least a certain age to manufacture a personal use amount of cannabis products or concentrated cannabis for personal use or adult sharing at a private residence if the manufacturing process does not involve the use of a volatile solvent;”; in the same line, strike “volume dealers and drug kingpins” and substitute “controlled dangerous substances and firearms”; after line 7, insert:

“BY repealing and reenacting, without amendments,

Article – Criminal Law

Section 5–101(a) and (u) and 5–602

Annotated Code of Maryland

(2021 Replacement Volume and 2022 Supplement)

(As enacted by Chapter 26 of the Acts of the General Assembly of 2022)”;

in line 10, strike “5–612 and 5–613” and substitute “5–603, 5–612, and 5–613”; and after line 12, insert:

“BY adding to

Article – Criminal Law

Section 5–612.1 and 5–613.1

Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, with amendments

Article – Public Safety
Section 5–138, 5–406, and 5–703
Annotated Code of Maryland
(2022 Replacement Volume)”.

AMENDMENT NO. 2

On page 3, in line 3, strike “5” and substitute “10”; after line 3, insert:

“5–612.1.

(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO SUBSECTION (C) OF THIS SECTION, A PERSON WHO IS SERVING A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE IMPOSED ON OR BEFORE SEPTEMBER 30, 2017, FOR A VIOLATION OF § 5–612 OR § 5–613 OF THIS SUBTITLE INVOLVING LESS THAN 448 GRAMS OF COCAINE BASE MAY APPLY TO THE COURT TO MODIFY OR REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND RULE 4–345, REGARDLESS OF WHETHER THE DEFENDANT FILED A TIMELY MOTION FOR RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE COURT.

(B) THE COURT MAY MODIFY THE SENTENCE AND DEPART FROM THE MANDATORY MINIMUM SENTENCE UNLESS THE STATE SHOWS THAT, GIVING DUE REGARD TO THE NATURE OF THE CRIME, THE HISTORY AND CHARACTER OF THE DEFENDANT, AND THE DEFENDANT’S CHANCES OF SUCCESSFUL REHABILITATION:

(1) RETENTION OF THE MANDATORY MINIMUM SENTENCE WOULD NOT RESULT IN SUBSTANTIAL INJUSTICE TO THE DEFENDANT; AND

(2) THE MANDATORY MINIMUM SENTENCE IS NECESSARY FOR THE PROTECTION OF THE PUBLIC.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN APPLICATION UNDER SUBSECTION (A) OF THIS SECTION SHALL BE FILED WITH THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30, 2024.

(2) THE COURT MAY CONSIDER AN APPLICATION FILED AFTER SEPTEMBER 30, 2024, ONLY FOR GOOD CAUSE SHOWN.

(3) THE COURT SHALL NOTIFY THE STATE’S ATTORNEY OF THE FILING OF AN APPLICATION.

(4) A PERSON MAY NOT FILE MORE THAN ONE APPLICATION UNDER SUBSECTION (A) OF THIS SECTION FOR A MANDATORY MINIMUM SENTENCE FOR A VIOLATION OF § 5-612 OF THIS SUBTITLE INVOLVING LESS THAN 448 GRAMS OF COCAINE BASE.

(5) THE COURT SHALL HOLD A HEARING ON AN APPLICATION FILED UNDER SUBSECTION (A) OF THIS SECTION.”;

in line 21, strike “10” and substitute “20”; and after line 33, insert:

“5-613.1.

(Over)

(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND SUBJECT TO SUBSECTION (C) OF THIS SECTION, A PERSON WHO IS SERVING A TERM OF CONFINEMENT THAT INCLUDES A MANDATORY MINIMUM SENTENCE IMPOSED ON OR BEFORE SEPTEMBER 30, 2023, FOR A VIOLATION OF § 5-612 OR § 5-613 OF THIS SUBTITLE INVOLVING CANNABIS MAY APPLY TO THE COURT TO MODIFY OR REDUCE THE MANDATORY MINIMUM SENTENCE AS PROVIDED IN MARYLAND RULE 4-345, REGARDLESS OF WHETHER THE DEFENDANT FILED A TIMELY MOTION FOR RECONSIDERATION OR A MOTION FOR RECONSIDERATION WAS DENIED BY THE COURT.

(B) THE COURT MAY MODIFY THE SENTENCE AND DEPART FROM THE MANDATORY MINIMUM SENTENCE UNLESS THE STATE SHOWS THAT, GIVING DUE REGARD TO THE NATURE OF THE CRIME, THE HISTORY AND CHARACTER OF THE DEFENDANT, AND THE DEFENDANT'S CHANCES OF SUCCESSFUL REHABILITATION:

(1) RETENTION OF THE MANDATORY MINIMUM SENTENCE WOULD NOT RESULT IN SUBSTANTIAL INJUSTICE TO THE DEFENDANT; AND

(2) THE MANDATORY MINIMUM SENTENCE IS NECESSARY FOR THE PROTECTION OF THE PUBLIC.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN APPLICATION UNDER SUBSECTION (A) OF THIS SECTION SHALL BE FILED WITH THE COURT OR REVIEW PANEL ON OR BEFORE SEPTEMBER 30, 2024.

(2) THE COURT MAY CONSIDER AN APPLICATION FILED AFTER SEPTEMBER 30, 2024, ONLY FOR GOOD CAUSE SHOWN.

(3) THE COURT SHALL NOTIFY THE STATE'S ATTORNEY OF THE FILING OF AN APPLICATION.

(4) THE COURT SHALL HOLD A HEARING ON AN APPLICATION FILED UNDER SUBSECTION (A) OF THIS SECTION.

(5) IF THE COURT DENIES THE MOTION, THE PERSON MAY FILE ONE SUBSEQUENT MOTION UNDER THIS SECTION NO EARLIER THAN 3 YEARS AFTER THE DENIAL OF THE FIRST MOTION.

Article – Public Safety

5-138.

(A) A person may not possess, sell, transfer, or otherwise dispose of a stolen regulated firearm if the person knows or has reasonable cause to believe that the regulated firearm has been stolen.

(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 5 YEARS OR A FINE NOT EXCEEDING \$10,000 OR BOTH.

(C) EACH VIOLATION OF THIS SECTION IS A SEPARATE CRIME.

5-406.

(a) (1) Except as provided in § 5-402 of this subtitle, a person may not manufacture for distribution or sale a handgun that is not included on the handgun roster in the State.

(Over)

(2) A person may not sell or offer for sale in the State a handgun manufactured after January 1, 1985, that is not included on the handgun roster.

(3) A person may not manufacture, sell, or offer for sale a handgun on which the manufacturer's identification mark or number is obliterated, removed, changed, or otherwise altered.

(b) The Secretary may seek an order from a circuit court to permanently or temporarily enjoin the willful and continuous manufacture, sale, or offer for sale, in violation of this section, of a handgun that is not included on the handgun roster.

(c) (1) A person who manufactures a handgun for distribution or sale in violation of this section is guilty of a [misdemeanor] **FELONY** and on conviction is subject to **IMPRISONMENT NOT EXCEEDING 5 YEARS OR** a fine not exceeding \$10,000 **OR BOTH** for each violation.

(2) A person who sells or offers to sell a handgun in violation of this section is guilty of a [misdemeanor] **FELONY** and on conviction is subject to **IMPRISONMENT NOT EXCEEDING 5 YEARS OR** a fine not exceeding \$2,500 **OR BOTH** for each violation.

(3) For purposes of this subsection, each handgun manufactured, sold, or offered for sale in violation of this [subsection] **SECTION** is a separate violation.

5-703.

(a) (1) A person may not purchase, receive, sell, offer to sell, or transfer an unfinished frame or receiver unless it is required by federal law to be, and has been, imprinted with a serial number by a federally licensed firearms manufacturer or federally licensed firearms importer in compliance with all federal laws and regulations applicable to the manufacture and import of firearms.

(2) Except as provided in paragraph (1) of this subsection, a person may not sell, offer to sell, or transfer a firearm unless it is imprinted with a serial number as described under subsection (b) of this section.

(b) (1) This subsection does not apply to:

(i) possession of a firearm unless a person knew or reasonably should have known that the firearm was not imprinted with a serial number as described under this subsection;

(ii) possession of a firearm that does not comply with the marking requirements described under this subsection by a person who received the firearm through inheritance, and is not otherwise prohibited from possessing the firearm, for a period not exceeding 30 days after inheriting the firearm; or

(iii) possession of an unfinished frame or receiver by a person that made or manufactured the unfinished frame or receiver, without the use of any prefabricated parts, and who is not otherwise prohibited from possessing the unfinished frame or receiver, for a period not exceeding 30 days after the person made or manufactured the unfinished frame or receiver.

(2) On or after March 1, 2023, a person may not possess a firearm unless:

(i) the firearm is required by federal law to be, and has been, imprinted by a federally licensed firearms manufacturer, federally licensed firearms importer, or other federal licensee authorized to provide marking services, with a serial number in compliance with all federal laws and regulations applicable to the manufacture and import of firearms; or

(ii) the firearm:

(Over)

HB0135/633420/01 Judiciary Committee
Amendments to HB 135
Page 8 of 12

1. has been imprinted by a federally licensed firearms dealer, federal firearms manufacturer, or other federal licensee authorized to provide marking services, with:

A. the zip code of the current owner or person that made, completed, or initially assembled the firearm;

B. the initials of the current owner or person that made, completed, or initially assembled the firearm; and

C. a number that does not match a number used by the current owner on another firearm or by the person who made, completed, or initially assembled the firearm on any other firearm that the person has made, completed, or initially assembled; and

2. has been registered with the Secretary.

(c) (1) A person who violates subsection (a) of this section is guilty of a [misdemeanor] FELONY and ON CONVICTION IS subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both.

(2) A person who violates subsection (b) of this section is guilty of a misdemeanor and ON CONVICTION IS subject to imprisonment not exceeding 2 years or a fine not exceeding \$10,000 or both.

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

(d) A federally licensed firearms dealer or other federal licensee authorized to provide marking services who imprints a firearm under subsection (b)(2)(ii) of this section shall imprint the firearm in compliance with all federal laws and regulations applicable to affixing serial numbers to firearms, including:

- (1) minimum size and depth requirements; and
- (2) requirements that the numbers not be readily susceptible to being obliterated, altered, or removed.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Criminal Law

5–101.

- (a) In this title the following words have the meanings indicated.
 - (u) “Personal use amount” means:
 - (1) an amount of usable cannabis that does not exceed 1.5 ounces;
 - (2) an amount of concentrated cannabis that does not exceed 12 grams;
 - (3) an amount of cannabis products containing delta–9–tetrahydrocannabinol that does not exceed 750 milligrams; or
 - (4) two or fewer cannabis plants.

5–602.

- (a) Except as otherwise provided in this title, a person may not:
 - (1) distribute or dispense a controlled dangerous substance; or

(Over)

(2) possess a controlled dangerous substance other than cannabis in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense a controlled dangerous substance.

(b) (1) Except as otherwise provided in this title, a person may not possess cannabis in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense cannabis.

(2) Possession of the civil use amount of cannabis or the personal use amount of cannabis without other evidence of an intent to distribute or dispense does not constitute a violation of paragraph (1) of this subsection.

(c) (1) (i) In this subsection, “adult sharing” means transferring cannabis between persons who are 21 years of age or older without remuneration.

(ii) “Adult sharing” does not include instances in which:

1. cannabis is given away contemporaneously with another reciprocal transaction between the same parties;

2. a gift of cannabis is offered or advertised in conjunction with an offer for the sale of goods or services; or

3. a gift of cannabis is contingent on a separate reciprocal transaction for goods or services.

(2) This section does not prohibit, and no civil or criminal penalty may be imposed for, adult sharing of the personal use amount of cannabis.

5-603.

(a) Except as otherwise provided in this title, a person may not manufacture

a controlled dangerous substance other than cannabis, or manufacture, distribute, or possess a machine, equipment, instrument, implement, device, or a combination of them that is adapted to produce a controlled dangerous substance other than cannabis under circumstances that reasonably indicate an intent to use it to produce, sell, or dispense a controlled dangerous substance other than cannabis in violation of this title.

(b) Except as otherwise provided in this title, a person may not cultivate or grow cannabis or manufacture a cannabis product, or manufacture, distribute, or possess a machine, equipment, an instrument, an implement, a device, or a combination of them that is adapted to produce cannabis or a cannabis product under circumstances that reasonably indicate an intent to use it to produce, sell, or dispense cannabis or a cannabis product in violation of this title.

(c) (1) (i) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(ii) “ADULT SHARING” HAS THE MEANING STATED IN § 5-602(C)(1) OF THIS SUBTITLE.

(iii) 1. “VOLATILE SOLVENT” MEANS A SOLVENT THAT IS OR PRODUCES A FLAMMABLE GAS OR VAPOR THAT, WHEN PRESENT IN THE AIR IN SUFFICIENT QUANTITIES, WILL CREATE EXPLOSIVE OR IGNITABLE MIXTURES.

2. “VOLATILE SOLVENT” INCLUDES BUTANE, HEXANE, AND PROPANE.

(2) A PERSON WHO IS AT LEAST 21 YEARS OLD MAY MANUFACTURE A PERSONAL USE AMOUNT OF CANNABIS PRODUCTS OR CONCENTRATED CANNABIS FOR PERSONAL USE OR ADULT SHARING AT A PRIVATE RESIDENCE IF THE MANUFACTURING PROCESS DOES NOT INVOLVE THE USE OF A VOLATILE

(Over)

SOLVENT.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect October 1, 2023, contingent on the taking effect of Section 4 of Chapter 26 of the Acts of the General Assembly of 2022, and if Section 4 of Chapter 26 does not take effect, Section 2 of this Act, with no further action required by the General Assembly, shall be null and void.”.

On page 4, in line 1, strike “2.” and substitute “4.”; and in the same line, after “That” insert “, except as provided in Section 3 of this Act.”.