

# SENATE BILL 297

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By: **Senator Zirkin**

Introduced and read first time: January 23, 2013

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – De Minimis Quantity**

3 FOR the purpose of altering the penalty for the use or possession of less than a certain  
4 quantity of marijuana; making the use or possession of less than a certain  
5 quantity of marijuana a civil offense; making conforming changes; and generally  
6 relating to penalties for possession of marijuana.

7 BY repealing and reenacting, with amendments,  
8 Article – Criminal Law  
9 Section 5–601  
10 Annotated Code of Maryland  
11 (2012 Replacement Volume and 2012 Supplement)

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

14 **Article – Criminal Law**

15 5–601.

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

17 (1) possess or administer to another a controlled dangerous substance,  
18 unless obtained directly or by prescription or order from an authorized provider acting  
19 in the course of professional practice; or

20 (2) obtain or attempt to obtain a controlled dangerous substance, or  
21 procure or attempt to procure the administration of a controlled dangerous substance  
22 by:

23 (i) fraud, deceit, misrepresentation, or subterfuge;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) the counterfeiting or alteration of a prescription or a written  
2 order;

3 (iii) the concealment of a material fact;

4 (iv) the use of a false name or address;

5 (v) falsely assuming the title of or representing to be a  
6 manufacturer, distributor, or authorized provider; or

7 (vi) making, issuing, or presenting a false or counterfeit  
8 prescription or written order.

9 (b) Information that is communicated to a physician in an effort to obtain a  
10 controlled dangerous substance in violation of this section is not a privileged  
11 communication.

12 (c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a  
13 person who violates this section is guilty of a misdemeanor and on conviction is subject  
14 to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

15 (2) (i) A person whose violation of this section involves the use or  
16 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not  
17 exceeding \$1,000 or both.

18 (ii) 1. A [person convicted of] **VIOLATION OF THIS**  
19 **SECTION INVOLVING** the use or possession of less than 10 grams of marijuana is  
20 [subject to imprisonment not exceeding 90 days or] **A CIVIL OFFENSE PUNISHABLE**  
21 **BY** a fine not exceeding [\$500 or both] **\$100**.

22 [2. Unless specifically charged by the State, the use or  
23 possession of less than 10 grams of marijuana under subparagraph 1 of this  
24 subparagraph may not be considered a lesser included crime of any other crime.

25 3. If a person is convicted under this subparagraph, the  
26 court shall stay any sentence imposed that includes an unserved, nonsuspended period  
27 of imprisonment without requiring an appeal bond:

28 A. until the time for filing an appeal has expired; and

29 B. if an appeal is filed, during the pendency of the  
30 appeal.]

31 (3) (i) 1. In this paragraph the following words have the  
32 meanings indicated.

1                   2.     “Bona fide physician–patient relationship” means a  
2 relationship in which the physician has ongoing responsibility for the assessment,  
3 care, and treatment of a patient’s medical condition.

4                   3.     “Debilitating medical condition” means a chronic or  
5 debilitating disease or medical condition or the treatment of a chronic or debilitating  
6 disease or medical condition that produces one or more of the following, as documented  
7 by a physician with whom the patient has a bona fide physician–patient relationship:

- 8                   A.     cachexia or wasting syndrome;
- 9                   B.     severe or chronic pain;
- 10                  C.     severe nausea;
- 11                  D.     seizures;
- 12                  E.     severe and persistent muscle spasms; or
- 13                  F.     any other condition that is severe and resistant to  
14 conventional medicine.

15                   (ii)    1.     In a prosecution for the use or possession of  
16 marijuana, the defendant may introduce and the court shall consider as a mitigating  
17 factor any evidence of medical necessity.

18                   2.     Notwithstanding paragraph (2) of this subsection, if  
19 the court finds that the person used or possessed marijuana because of medical  
20 necessity, on conviction of a violation of this section, the maximum penalty that the  
21 court may impose on the person is a fine not exceeding \$100.

22                   (iii)   1.     In a prosecution for the use or possession of  
23 marijuana under this section, it is an affirmative defense that the defendant used or  
24 possessed marijuana because:

25                   A.     the defendant has a debilitating medical condition  
26 that has been diagnosed by a physician with whom the defendant has a bona fide  
27 physician–patient relationship;

28                   B.     the debilitating medical condition is severe and  
29 resistant to conventional medicine; and

30                   C.     marijuana is likely to provide the defendant with  
31 therapeutic or palliative relief from the debilitating medical condition.

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1  
2 defendant was:

2. The affirmative defense may not be used if the

3 A. using marijuana in a public place; or

4 B. in possession of more than 1 ounce of marijuana.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
6 October 1, 2013.