

SENATE BILL 394

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3lr1435

By: **Senator Zirkin**

Introduced and read first time: January 28, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Possession of Marijuana – Maximum Penalties**

3 FOR the purpose of altering the maximum penalties for possession of marijuana;
4 making the possession of marijuana a civil offense; repealing a provision of law
5 authorizing a defendant to introduce and the court to consider as a mitigating
6 factor any evidence of medical necessity in a certain prosecution; making
7 conforming changes; and generally relating to possession of marijuana.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Law
10 Section 5–601
11 Annotated Code of Maryland
12 (2012 Replacement Volume and 2012 Supplement)

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

15 **Article – Criminal Law**

16 5–601.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) fraud, deceit, misrepresentation, or subterfuge;
- 2 (ii) the counterfeiting or alteration of a prescription or a written
3 order;
- 4 (iii) the concealment of a material fact;
- 5 (iv) the use of a false name or address;
- 6 (v) falsely assuming the title of or representing to be a
7 manufacturer, distributor, or authorized provider; or
- 8 (vi) making, issuing, or presenting a false or counterfeit
9 prescription or written order.

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

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

16 (2) [(i)] A [person whose] violation of this section [involves]
17 INVOLVING the use or possession of marijuana is [subject to imprisonment not
18 exceeding 1 year or] A CIVIL OFFENSE PUNISHABLE BY a fine not exceeding [\$1,000
19 or both.

20 (ii) 1. A person convicted of the use or possession of less
21 than 10 grams of marijuana is subject to imprisonment not exceeding 90 days or a fine
22 not exceeding \$500 or both.

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

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

- 29 A. until the time for filing an appeal has expired; and
- 30 B. if an appeal is filed, during the pendency of the
31 appeal] **\$100.**

32 (3) (i) 1. In this paragraph the following words have the
33 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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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.