

HOUSE BILL 879

E1

4lr1340

By: Delegates Mizeur, Smigiel, Anderson, Barnes, Barve, Bobo, Braveboy, Cardin, Carr, Carter, Cullison, Dwyer, Fraser-Hidalgo, Frick, Gilchrist, Glenn, Gutierrez, Guzzone, Hixson, Hucker, Ivey, Kaiser, A. Kelly, Luedtke, McIntosh, A. Miller, Morhaim, Niemann, Oaks, Reznik, B. Robinson, S. Robinson, Stukes, Summers, Swain, F. Turner, Valderrama, Waldstreicher, A. Washington, M. Washington, and Zucker

Introduced and read first time: February 5, 2014

Assigned to: Judiciary

A BILL ENTITLED

AN ACT concerning

Maryland Marijuana Decriminalization Act

FOR the purpose of altering the penalties for using and possessing marijuana in certain amounts; making the possession of a certain amount of marijuana a civil offense; providing that an individual under a certain age may be ordered to attend a certain program; providing for parental notification for minor offenders; repealing a provision of law authorizing a defendant to introduce and the court to consider as a mitigating factor evidence of medical necessity in a certain prosecution; making conforming changes; and generally relating to possession of marijuana.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 5–601
Annotated Code of Maryland
(2012 Replacement Volume and 2013 Supplement)

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

Article – Criminal Law

5–601.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

(iii) the concealment of a material fact;

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

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

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

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

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

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

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

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

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

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

2. IF AN OFFENDER UNDER THIS SUBPARAGRAPH IS UNDER 21 YEARS OF AGE ON THE DATE OF THE OFFENSE, THE OFFENDER MAY BE ORDERED TO ATTEND A DRUG EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE.

3. IF AN OFFENDER UNDER THIS SUBPARAGRAPH IS A MINOR ON THE DATE OF THE OFFENSE, NOTIFICATION OF THE OFFENSE SHALL BE SENT TO THE MINOR'S PARENT OR GUARDIAN.

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

2. "Bona fide physician-patient relationship" means a relationship in which the physician has ongoing responsibility for the assessment, care, and treatment of a patient's medical condition.

3. "Caregiver" means an individual designated by a patient with a debilitating medical condition to provide physical or medical assistance to the patient, including assisting with the medical use of marijuana, who:

- A. is a resident of the State;
- B. is at least 21 years old;
- C. is an immediate family member, a spouse, or a domestic partner of the patient;
- D. has not been convicted of a crime of violence as defined in § 14-101 of this article;
- E. has not been convicted of a violation of a State or federal controlled dangerous substances law;
- F. has not been convicted of a crime of moral turpitude;
- G. has been designated as caregiver by the patient in writing that has been placed in the patient's medical record prior to arrest;
- H. is the only individual designated by the patient to serve as caregiver; and

I. is not serving as caregiver for any other patient.

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

A. cachexia or wasting syndrome;

B. severe or chronic pain;

C. severe nausea;

D. seizures;

E. severe and persistent muscle spasms; or

F. any other condition that is severe and resistant to conventional medicine.

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

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

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

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

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

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

2. A. In a prosecution for the possession of marijuana under this section, it is an affirmative defense that the defendant possessed marijuana

because the marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver.

B. A defendant may not assert the affirmative defense under this subparagraph unless the defendant notifies the State's Attorney of the defendant's intention to assert the affirmative defense and provides the State's Attorney with all documentation in support of the affirmative defense in accordance with the rules of discovery provided in Maryland Rules 4-262 and 4-263.

3. An affirmative defense under this subparagraph may not be used if the defendant was:

A. using marijuana in a public place or assisting the individual for whom the defendant is a caregiver in using the marijuana in a public place; or

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.