

SENATE BILL 364

E1, D3

4lr1804

By: **Senators Zirkin and Kittleman**

Introduced and read first time: January 22, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Criminal Law – Possession of Marijuana – Civil Offense

FOR the purpose of altering the penalty for the use or possession of less than a certain quantity of marijuana; making the use or possession of less than a certain quantity of marijuana a civil offense; establishing that a person who violates this Act may be issued a certain citation; authorizing a police officer to issue a certain citation under certain circumstances; establishing that a certain violation of this Act is not a criminal conviction and does not impose any of the civil disabilities that may result from a criminal conviction; establishing certain requirements for a citation issued under this Act; providing that persons who receive a certain citation may pay the civil penalty or may elect to stand trial in the District Court; requiring the District Court to prescribe a certain form of citation; requiring the Chief Judge of the District Court to establish a certain schedule for the prepayment of a certain fine; providing that a minor who violates certain provisions of this Act is subject to certain procedures and dispositions; prohibiting a certain citation for a violation of certain provisions of this Act from being subject to public inspection or included on a certain public Web site; authorizing a certain law enforcement officer to issue a citation to a child for a violation of a certain provision of this Act under certain circumstances; authorizing a court to order a certain child to participate in a certain substance abuse education or rehabilitation program under certain circumstances; altering a certain defined term; making conforming changes; and generally relating to penalties for possession of marijuana.

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–01(dd), 3–8A–19(e)(2), and 3–8A–33(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Courts and Judicial Proceedings
 Section 3–8A–19(e)(1)
 Annotated Code of Maryland
 (2013 Replacement Volume and 2013 Supplement)

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

BY adding to
 Article – Criminal Law
 Section 5–601.1
 Annotated Code of Maryland
 (2012 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,
 Article – Criminal Procedure
 Section 5–212
 Annotated Code of Maryland
 (2008 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 – Courts and Judicial Proceedings

3–8A–01.

(dd) “Violation” means a violation for which a citation is issued under:

(1) § 5–601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA;

[(1)] (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

[(2)] (3) § 10–108 of the Criminal Law Article;

[(3)] (4) § 10–132 of the Criminal Law Article; or

[(4)] (5) § 26–103 of the Education Article.

3–8A–19.

(e) (1) (i) Subject to the provisions of subparagraphs (iii) and (iv) of this paragraph, in making a disposition on a finding that the child has committed the violation specified in a citation, the court may order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(ii) In this paragraph, “driver’s license” means a license or permit to drive a motor vehicle that is issued under the laws of this State or any other jurisdiction.

(iii) In making a disposition on a finding that the child has committed a violation of § 10–113 of the Criminal Law Article specified in a citation that involved the use of a driver’s license or a document purporting to be a driver’s license, the court may order the Motor Vehicle Administration to initiate an action under the Maryland Vehicle Law to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration:

1. For a first offense, for 6 months; and
2. For a second or subsequent offense, until the child is 21 years old.

(iv) In making a disposition on a finding that the child has committed a violation under § 26–103 of the Education Article, the court shall order the Motor Vehicle Administration to initiate an action, under the motor vehicle laws, to suspend the driving privilege of a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a specified period of not less than 30 days nor more than 90 days.

(v) If a child subject to a suspension under this subsection does not hold a license to operate a motor vehicle on the date of the disposition, the suspension shall commence:

1. If the child is at least 16 years of age on the date of the disposition, on the date of the disposition; or
2. If the child is younger than 16 years of age on the date of the disposition, on the date the child reaches the child’s 16th birthday.

(2) In addition to the dispositions under paragraph (1) of this subsection, the court also may:

(i) Counsel the child or the parent or both, or order the child to participate in an alcohol **OR A SUBSTANCE ABUSE** education or rehabilitation program that is in the best interest of the child;

(ii) Impose a civil fine of not more than \$25 for the first violation and a civil fine of not more than \$100 for the second and subsequent violations; or

(iii) Order the child to participate in a supervised work program for not more than 20 hours for the first violation and not more than 40 hours for the second and subsequent violations.

3-8A-33.

(a) A law enforcement officer authorized to make arrests shall issue a citation to a child if the officer has probable cause to believe that the child is violating:

(1) § 5-601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA;

~~[(1)]~~ **(2)** § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law Article;

~~[(2)]~~ **(3)** § 10-108 of the Criminal Law Article;

~~[(3)]~~ **(4)** § 10-132 of the Criminal Law Article; or

~~[(4)]~~ **(5)** § 26-103 of the Education Article.

Article – Criminal Law

5-601.

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

(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] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,** A person whose violation of this section involves the use or possession 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 of marijuana is **[subject to imprisonment not exceeding 90 days or] A CIVIL OFFENSE PUNISHABLE BY** a fine not exceeding **[\$500 or both] \$100.**

[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.]

(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.

5–601.1.

(A) A POLICE OFFICER SHALL ISSUE A CITATION TO A PERSON WHO THE POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE HAS COMMITTED A

VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA.

(B) (1) A VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE.

(2) ADJUDICATION OF A VIOLATION UNDER § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA:

**(I) IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE;
AND**

(II) DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES THAT MAY RESULT FROM A CRIMINAL CONVICTION.

(C) A CITATION ISSUED FOR A VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA SHALL BE SIGNED BY THE POLICE OFFICER WHO ISSUES THE CITATION AND SHALL CONTAIN:

- (1) THE NAME AND ADDRESS OF THE PERSON CHARGED;**
- (2) THE DATE AND TIME THAT THE VIOLATION OCCURRED;**
- (3) THE LOCATION AT WHICH THE VIOLATION OCCURRED;**
- (4) THE FINE THAT MAY BE IMPOSED;**
- (5) A NOTICE STATING THAT PREPAYMENT OF THE FINE IS ALLOWED;**
- (6) A NOTICE IN BOLDFACE TYPE THAT STATES THAT THE PERSON SHALL:**

(I) PAY THE FULL AMOUNT OF THE PRESET FINE; OR

(II) REQUEST A TRIAL DATE AT THE DATE, TIME, AND PLACE ESTABLISHED BY THE DISTRICT COURT BY WRIT OR TRIAL NOTICE; AND

(7) A NOTICE STATING THAT AFTER REQUESTING A TRIAL DATE, FAILURE TO APPEAR IS A MISDEMEANOR AND SUBJECT TO PENALTIES UNDER § 5-212 OF THE CRIMINAL PROCEDURE ARTICLE.

(D) THE FORM OF THE CITATION SHALL BE UNIFORM THROUGHOUT THE STATE AND SHALL BE PRESCRIBED BY THE DISTRICT COURT.

(E) THE CHIEF JUDGE OF THE DISTRICT COURT SHALL ESTABLISH A SCHEDULE FOR THE PREPAYMENT OF THE FINE.

(F) A PERSON ISSUED A CITATION FOR A VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA WHO IS UNDER THE AGE OF 18 YEARS SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

(G) A CITATION FOR A VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA AND THE OFFICIAL RECORD OF A COURT REGARDING THE CITATION ARE NOT SUBJECT TO PUBLIC INSPECTION AND MAY NOT BE INCLUDED ON THE PUBLIC WEB SITE MAINTAINED BY THE MARYLAND JUDICIARY.

Article – Criminal Procedure

5-212.

(a) This section does not apply to a citation:

(1) for a violation of a parking ordinance or regulation adopted under Title 26, Subtitle 3 of the Transportation Article;

(2) adopted by the Chief Judge of the District Court under § 1-605(d) of the Courts Article, for use in traffic offenses; or

(3) issued by a Natural Resources police officer under § 1-205 of the Natural Resources Article.

(b) A bench warrant may be issued for the arrest of a defendant who fails to appear in court in response to a citation.

(c) A person who fails to appear in court in response to a citation is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not exceeding 90 days or both.

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