

HB0495/742614/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 495

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, before “Possession” insert “Drug Paraphernalia”; in line 7, after “fine;” insert “requiring that a certain citation contain the date of birth of the person charged;”; strike beginning with “authorizing” in line 12 down through “law;” in line 13 and substitute “establishing that a certain provision of law providing that a certain citation and a certain record of a court are not subject to public inspection and may not be included on a certain Web site only applies under certain circumstances; altering the penalty for the possession or use of certain drug paraphernalia involving the use or possession of less than a certain quantity of marijuana; making the use or possession of certain drug paraphernalia under certain circumstances a civil offense; requiring a court to order certain persons to attend a certain program, refer the person to a certain assessment, and refer the person to a certain treatment, if necessary; providing for the effective date of certain provisions of this Act; providing for the termination of certain provisions of this Act;”; in line 17, after “(c)(1)” insert “, 5-619(c)(1), and 5-620(a)”; and in line 22, strike “and 5-601.1” and substitute “, 5-601.1, 5-619(c)(2), and 5-620(d)”.

AMENDMENT NO. 2

On page 3, in line 34, strike “name and address” and substitute “NAME, ADDRESS, AND DATE OF BIRTH”.

AMENDMENT NO. 3

On page 5, in line 3, strike “ENTER JUDGMENT” and substitute “IMPOSE THE MAXIMUM FINE”; strike beginning with “IN” in line 3 down through “FINE” in line 4; and strike beginning with “AND” in line 28 down through “FUND” in line 29.

AMENDMENT NO. 4

(Over)

On page 6, in line 22, after “Judiciary” insert “**IF:**”

(1) THE DEFENDANT HAS PLED GUILTY TO OR BEEN FOUND GUILTY OF THE CHARGE AND HAS FULLY PAID THE FINE AND COSTS IMPOSED FOR THE VIOLATION;

(2) THE DEFENDANT HAS BEEN FOUND NOT GUILTY OF THE CHARGE; OR

(3) THE CHARGE HAS BEEN DISMISSED”.

AMENDMENT NO. 5

On page 6, strike in their entirety lines 23 through 26, inclusive, and substitute:

“SECTION 2. AND BE IT FURTHER ENACTED, 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:

(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.

(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) Except as provided in subparagraph (ii) of this paragraph, a person whose violation of this section involves the use or possession of marijuana **IN THE AMOUNT OF 10 GRAMS OR MORE IS GUILTY OF THE MISDEMEANOR OF POSSESSION OF MARIJUANA AND** is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

(ii) 1. A first [violation of] **FINDING OF GUILT UNDER** this section involving the use or possession of less than 10 grams of marijuana is a civil offense punishable by a fine not exceeding \$100.

2. A second [violation of] **FINDING OF GUILT UNDER** this section involving the use or possession of less than 10 grams of marijuana is a civil offense punishable by a fine not exceeding \$250.

(Over)

3. A third or subsequent [violation of] FINDING OF GUILT UNDER this section involving the use or possession of less than 10 grams of marijuana is a civil offense punishable by a fine not exceeding \$500.

4. A. In addition to a fine, a court shall order a person under the age of 21 years who commits a violation punishable under subparagraph 1, 2, or 3 of this subparagraph to attend a drug education program approved by the Department of Health and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

B. In addition to a fine, a court shall order a person at least 21 years old who commits a violation punishable under subparagraph 3 of this subparagraph to attend a drug education program approved by the Department of Health and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

C. A COURT THAT ORDERS A PERSON TO A DRUG EDUCATION PROGRAM OR SUBSTANCE ABUSE ASSESSMENT OR TREATMENT UNDER THIS SUBSUBPARAGRAPH MAY HOLD THE CASE SUB CURIA PENDING RECEIPT OF PROOF OF COMPLETION OF THE PROGRAM, ASSESSMENT, OR TREATMENT, SUBJECT TO DISCRETIONARY MODIFICATION OF SENTENCE OR SANCTIONS FOR ENFORCEMENT PURPOSES.

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, OR § 5-619 OR § 5-620 OF THIS SUBTITLE involving the use or possession of less than 10 grams of marijuana.

(b) (1) A violation of § 5-601 of this part, OR § 5-619 OR § 5-620 OF THIS SUBTITLE 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, OR § 5-619 OR § 5-620 OF THIS SUBTITLE 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) (1) A citation issued for a violation of § 5-601 of this part, OR § 5-619 OR § 5-620 OF THIS SUBTITLE 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:

(i) the [name and address] NAME, ADDRESS, AND DATE OF BIRTH of the person charged;

(ii) the date and time that the violation occurred;

(iii) the location at which the violation occurred;

(iv) the fine that may be imposed;

(v) a notice stating that prepayment of the fine is allowed, except as provided in paragraph (2) of this subsection; and

(vi) a notice in boldface type that states that the person shall:

1. pay the full amount of the preset fine; or
2. request a trial date at the date, time, and place established by the District Court by writ or trial notice.

(2) (i) If a citation for a violation of § 5–601 of this part, OR § 5-619 OR § 5-620 OF THIS SUBTITLE involving the use or possession of less than 10 grams of marijuana is issued to a person under the age of 21 years, the court shall summon the person for trial.

(ii) If the court finds that a person at least 21 years old WHO HAS BEEN ISSUED A CITATION UNDER THIS SECTION has [committed a third or subsequent violation of] AT LEAST TWICE PREVIOUSLY BEEN FOUND GUILTY UNDER § 5–601 of this part, OR § 5-619 OR § 5-620 OF THIS SUBTITLE involving the use or possession of less than 10 grams of marijuana, the court shall summon the person for trial.

(d) The form of the citation shall be uniform throughout the State and shall be prescribed by the District Court.

(e) (1) The Chief Judge of the District Court shall establish a schedule for the prepayment of the fine.

(2) IF THE DEFENDANT OTHER THAN A DEFENDANT DESCRIBED IN SUBSECTION (C)(2) OF THIS SECTION DOES NOT PREPAY THE FINE WITHIN 30 DAYS, THE COURT SHALL SCHEDULE THE CASE FOR TRIAL AND SUMMON THE DEFENDANT TO APPEAR.

(F) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE CITATION AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE DISTRICT HAVING VENUE.

(G) (1) THE FAILURE OF A DEFENDANT TO RESPOND TO A SUMMONS DESCRIBED IN SUBSECTION (C)(2) OF THIS SECTION SHALL BE GOVERNED BY § 5-212 OF THE CRIMINAL PROCEDURE ARTICLE.

(2) IF A PERSON AT LEAST 21 YEARS OLD FAILS TO APPEAR IN RESPONSE TO A SUMMONS ISSUED UNDER SUBSECTION (E)(2) OF THIS SECTION, THE COURT SHALL IMPOSE THE MAXIMUM FINE AGAINST THE DEFENDANT.

(H) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER § 5-601 OF THIS PART, OR § 5-619 OR § 5-620 OF THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA:

(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE DEFENDANT BY A PREPONDERANCE OF THE EVIDENCE;

(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF A CRIMINAL CASE;

(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT UNDERSTANDS THOSE CHARGES;

(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR

WITNESSES ON BEHALF OF THE DEFENDANT, AND TO TESTIFY ON THE DEFENDANT'S OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;

(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE DEFENDANT; AND

(6) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:

(I) GUILTY OF A CODE VIOLATION;

(II) NOT GUILTY OF A CODE VIOLATION;

(III) PROBATION BEFORE JUDGMENT, IMPOSED BY THE COURT IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW IN THE TRIAL OF A CRIMINAL CASE.

(I) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE PROCEEDINGS IN THE DISTRICT COURT.

(2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER § 5-601 OF THIS PART, OR § 5-619 OR § 5-620 OF THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IN WHICH COSTS ARE IMPOSED ARE \$5.

(J) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A CODE VIOLATION UNDER § 5-601 OF THIS PART, OR § 5-619 OR § 5-620 OF THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF

MARIJUANA IN THE SAME MANNER AS PROSECUTION OF A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

(2) IN A CODE VIOLATION CASE UNDER § 5-601 OF THIS PART, OR § 5-619 OR § 5-620 OF THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA, THE STATE’S ATTORNEY MAY:

(I) ENTER A NOLLE PROSEQUI OR PLACE THE CASE ON THE STET DOCKET; AND

(II) EXERCISE AUTHORITY IN THE SAME MANNER AS PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.

[(f)](K) A person issued a citation for a violation of § 5–601 of this part, OR § 5-619 OR § 5-620 OF THIS SUBTITLE 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)](L) A citation for a violation of § 5–601 of this part, OR § 5-619 OR § 5-620 OF THIS SUBTITLE 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 IF:

(1) THE DEFENDANT HAS PLED GUILTY TO OR BEEN FOUND GUILTY OF THE CHARGE AND HAS FULLY PAID THE FINE AND COSTS IMPOSED FOR THE VIOLATION;

(2) THE DEFENDANT HAS BEEN FOUND NOT GUILTY OF THE CHARGE; OR

(3) THE CHARGE HAS BEEN DISMISSED.

5-619.

(c) (1) Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to:

(i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or

(ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.

(2) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to:

[(i)] 1. for a first violation, a fine not exceeding \$500; and

[(ii)] 2. for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(II) 1. A FIRST FINDING OF GUILT UNDER THIS SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$100.

2. A SECOND FINDING OF GUILT UNDER THIS SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$250.

3. A THIRD OR SUBSEQUENT FINDING OF GUILT UNDER THIS SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$500.

4. A. IN ADDITION TO A FINE, A COURT SHALL ORDER A PERSON UNDER THE AGE OF 21 YEARS WHO COMMITS A VIOLATION PUNISHABLE UNDER SUBSUBPARAGRAPH 1, 2, OR 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.

B. IN ADDITION TO A FINE, A COURT SHALL ORDER A PERSON AT LEAST 21 YEARS OLD WHO COMMITS A VIOLATION PUNISHABLE UNDER SUBSUBPARAGRAPH 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.

5-620.

- (a) Unless authorized under this title, a person may not:
 - (1) obtain or attempt to obtain controlled paraphernalia by:
 - (i) fraud, deceit, misrepresentation, or subterfuge;

(Over)

- (ii) counterfeiting a prescription or a written order;
 - (iii) concealing a material fact or the use of a false name or address;
 - (iv) falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider; or
 - (v) making or issuing a false or counterfeit prescription or written order; or
- (2) possess or distribute controlled paraphernalia under circumstances which reasonably indicate an intention to use the controlled paraphernalia for purposes of illegally administering a controlled dangerous substance.

(d) (1) Except as provided in paragraph (2) 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 who violates this section involving 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 FIRST FINDING OF GUILT UNDER THIS SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$100.

2. A SECOND FINDING OF GUILT UNDER THIS SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$250.

3. A THIRD OR SUBSEQUENT FINDING OF GUILT UNDER THIS SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$500.

4. A. IN ADDITION TO A FINE, A COURT SHALL ORDER A PERSON UNDER THE AGE OF 21 YEARS WHO COMMITS A VIOLATION PUNISHABLE UNDER SUBSUBPARAGRAPH 1, 2, OR 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.

B. IN ADDITION TO A FINE, A COURT SHALL ORDER A PERSON AT LEAST 21 YEARS OLD WHO COMMITS A VIOLATION PUNISHABLE UNDER SUBSUBPARAGRAPH 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall take effect on the taking effect of Chapter ____ (H.B. 105) of the Acts of the General Assembly of 2015. If Section 2 of this Act takes effect, Section 1 of this Act shall be abrogated and of no further force and effect.”; in line 27, strike “2.” and substitute “4.”; and in the same line, after “That” insert “, subject to the provisions of Section 3 of this Act.”.