

# SENATE BILL 517

E1, E2, R5

5lr1843

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By: **Senator Zirkin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Use and Possession of Marijuana and Drug Paraphernalia**

3 FOR the purpose of repealing a certain criminal prohibition on the use or possession of  
4 marijuana; establishing that certain civil penalties apply to the use or possession of  
5 any quantity of marijuana; establishing a civil penalty for the smoking of marijuana  
6 in a public place; requiring a court to dismiss a certain use or possession of marijuana  
7 charge if the court finds that the person used or possessed marijuana because of a  
8 certain medical necessity; providing that the provisions of this Act may not be  
9 construed to authorize certain activities; establishing that certain procedures  
10 regarding the issuance of a citation for the use or possession of marijuana apply to  
11 all amounts and not just certain amounts of marijuana; establishing that a certain  
12 criminal prohibition on the use or possession of drug paraphernalia does not apply  
13 to the use or possession of drug paraphernalia involving the use or possession of  
14 marijuana; repealing a certain affirmative defense regarding a certain medical  
15 necessity as it relates to a certain offense prohibiting the use and possession of drug  
16 paraphernalia; prohibiting the use of marijuana in a vehicle while on a highway;  
17 providing for certain penalties for a violation of this Act; providing for the application  
18 of certain provisions of this Act; and generally relating to the use and possession of  
19 marijuana and drug paraphernalia.

20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Law  
22 Section 5–601, 5–601.1, and 5–619  
23 Annotated Code of Maryland  
24 (2012 Replacement Volume and 2014 Supplement)

25 BY adding to  
26 Article – Transportation  
27 Section 21–903.1 and 27–116  
28 Annotated Code of Maryland  
29 (2012 Replacement Volume and 2014 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Criminal Law**

4 5–601.

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

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

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

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

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

14 (iii) the concealment of a material fact;

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

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

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

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

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

26 (2) (i) Except as provided in subparagraph [(ii)] **(III)** of this paragraph,  
27 a [person whose] violation of this section [involves] **INVOLVING** the use or possession of  
28 marijuana is **A CIVIL OFFENSE** subject to [imprisonment not exceeding 1 year or a fine not  
29 exceeding \$1,000 or both.]:

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

4                    2.     [A] **FOR A** second violation, [of this section involving the  
5 use or possession of less than 10 grams of marijuana is a civil offense punishable by] a fine  
6 not exceeding \$250[.]; **AND**

7                    3.     [A] **FOR A** third or subsequent violation, [of this section  
8 involving the use or possession of less than 10 grams of marijuana is a civil offense  
9 punishable by] a fine not exceeding \$500.

10                    [4. A.] **(II)**     1.     In addition to a fine, a court shall order  
11 a person under the age of 21 years who commits a violation punishable under  
12 [subsubparagraph 1, 2, or 3 of this] subparagraph **(I) OF THIS PARAGRAPH** to attend a  
13 drug education program approved by the Department of Health and Mental Hygiene, refer  
14 the person to an assessment for substance abuse disorder, and refer the person to substance  
15 abuse treatment, if necessary.

16                    [B.] 2.     In addition to a fine, a court shall order a person at  
17 least 21 years old who commits a violation punishable under [subsubparagraph 3 of this]  
18 subparagraph **(I)3 OF THIS PARAGRAPH** to attend a drug education program approved by  
19 the Department of Health and Mental Hygiene, refer the person to an assessment for  
20 substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

21                    **(III) A VIOLATION OF THIS SECTION INVOLVING THE SMOKING**  
22 **OF MARIJUANA IN A PUBLIC PLACE IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT**  
23 **EXCEEDING \$1,000.**

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

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

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

32                    A.     is a resident of the State;

33                    B.     is at least 21 years old;

34                    C.     is an immediate family member, a spouse, or a domestic  
35 partner of the patient;

1 D. has not been convicted of a crime of violence as defined in  
2 § 14–101 of this article;

3 E. has not been convicted of a violation of a State or federal  
4 controlled dangerous substances law;

5 F. has not been convicted of a crime of moral turpitude;

6 G. has been designated as caregiver by the patient in writing  
7 that has been placed in the patient’s medical record prior to arrest;

8 H. is the only individual designated by the patient to serve as  
9 caregiver; and

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

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

15 A. cachexia or wasting syndrome;

16 B. severe or chronic pain;

17 C. severe nausea;

18 D. seizures;

19 E. severe and persistent muscle spasms; or

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

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

25 2. Notwithstanding paragraph (2) of this subsection, if the  
26 court finds that the person used or possessed marijuana because of medical necessity, [on  
27 conviction of a violation of this section, the maximum penalty that the court may impose  
28 on the person is a fine not exceeding \$100] **THE COURT SHALL DISMISS THE CHARGE.**

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

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

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

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

8           2. A. In a prosecution for the possession of marijuana  
9 under this section, it is an affirmative defense that the defendant possessed marijuana  
10 because the marijuana was intended for medical use by an individual with a debilitating  
11 medical condition for whom the defendant is a caregiver.

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

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

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

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

23           (d) The provisions of subsection [(c)(2)(ii)] **(C)(2)(I)** of this section making the  
24 possession of marijuana a civil offense may not be construed to:

25           **(1)** affect the laws relating to:

26           **[(1)] (I)** operating a vehicle or vessel while under the influence of or while  
27 impaired by a controlled dangerous substance; or

28           **[(2)] (II)** **SEARCH, seizure and forfeiture OF A VEHICLE, VESSEL, OR**  
29 **REAL PROPERTY; OR**

30           **(2)** **AUTHORIZE A PERSON TO ENGAGE IN:**

31           **(I)** **SMOKING MARIJUANA IN ANY PUBLIC PLACE;**

1 (II) SMOKING MARIJUANA IN A MOTOR VEHICLE; OR

2 (III) UNDERTAKING ANY TASK UNDER THE INFLUENCE OF  
3 MARIJUANA, WHEN DOING SO WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL  
4 MALPRACTICE.

5 5–601.1.

6 (a) A police officer shall issue a citation to a person who the police officer has  
7 probable cause to believe has committed a violation of § 5–601 of this part involving the use  
8 or possession of [less than 10 grams of] marijuana.

9 (b) (1) A violation of § 5–601 of this part involving the use or possession of [less  
10 than 10 grams of] marijuana is a civil offense.

11 (2) Adjudication of a violation under § 5–601 of this part involving the use  
12 or possession of [less than 10 grams of] marijuana:

13 (i) is not a criminal conviction for any purpose; and

14 (ii) does not impose any of the civil disabilities that may result from  
15 a criminal conviction.

16 (c) (1) A citation issued for a violation of § 5–601 of this part involving the use  
17 or possession of [less than 10 grams of] marijuana shall be signed by the police officer who  
18 issues the citation and shall contain:

19 (i) the name and address of the person charged;

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

21 (iii) the location at which the violation occurred;

22 (iv) the fine that may be imposed;

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

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

26 1. pay the full amount of the preset fine; or

27 2. request a trial date at the date, time, and place established  
28 by the District Court by writ or trial notice.

1           (2)   (i)    If a citation for a violation of § 5–601 of this part involving the  
2 use or possession of [less than 10 grams of] marijuana is issued to a person under the age  
3 of 21 years, the court shall summon the person for trial.

4           (ii)   If the court finds that a person at least 21 years old has  
5 committed a third or subsequent violation of § 5–601 of this part involving the use or  
6 possession of [less than 10 grams of] marijuana, the court shall summon the person for  
7 trial.

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

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

12          (f)    A person issued a citation for a violation of § 5–601 of this part involving the  
13 use or possession of [less than 10 grams of] marijuana who is under the age of 18 years  
14 shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of the  
15 Courts Article.

16          (g)    A citation for a violation of § 5–601 of this part involving the use or possession  
17 of [less than 10 grams of] marijuana and the official record of a court regarding the citation  
18 are not subject to public inspection and may not be included on the public Web site  
19 maintained by the Maryland Judiciary.

20 5–619.

21          (a)    To determine whether an object is drug paraphernalia, a court shall consider,  
22 among other logically relevant factors:

23               (1)   any statement by an owner or a person in control of the object  
24 concerning its use;

25               (2)   any prior conviction of an owner or a person in control of the object  
26 under a State or federal law relating to a controlled dangerous substance;

27               (3)   the proximity of the object, in time and space, to a direct violation of  
28 this section or to a controlled dangerous substance;

29               (4)   a residue of a controlled dangerous substance on the object;

30               (5)   direct or circumstantial evidence of the intent of an owner or a person  
31 in control of the object to deliver it to another who, the owner or the person knows or should  
32 reasonably know, intends to use the object to facilitate a violation of this section;

33               (6)   any instructions, oral or written, provided with the object concerning  
34 its use;

1 (7) any descriptive materials accompanying the object that explain or  
2 depict its use;

3 (8) national and local advertising concerning use of the object;

4 (9) the manner in which the object is displayed for sale;

5 (10) whether the owner or a person in control of the object is a licensed  
6 distributor or dealer of tobacco products or other legitimate supplier of related items to the  
7 community;

8 (11) direct or circumstantial evidence of the ratio of sales of the object to the  
9 total sales of the business enterprise;

10 (12) the existence and scope of legitimate uses for the object in the  
11 community; and

12 (13) expert testimony concerning use of the object.

13 (b) The innocence of an owner or a person in control of the object as to a direct  
14 violation of this section does not prevent a finding that the object is intended for use or  
15 designed for use as drug paraphernalia.

16 (c) (1) **THIS SUBSECTION DOES NOT APPLY TO THE USE OR POSSESSION**  
17 **OF DRUG PARAPHERNALIA INVOLVING THE USE OR POSSESSION OF MARIJUANA.**

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

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

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

25 [(2)] (3) A person who violates this subsection is guilty of a misdemeanor  
26 and on conviction is subject to:

27 (i) for a first violation, a fine not exceeding \$500; and

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



- 1 C. severe nausea;
- 2 D. seizures;
- 3 E. severe and persistent muscle spasms; or
- 4 F. any other condition that is severe and resistant to  
5 conventional medicine.

6 (ii) 1. In a prosecution under this subsection involving drug  
7 paraphernalia related to marijuana, the defendant may introduce and the court shall  
8 consider as a mitigating factor any evidence of medical necessity.

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

13 (iii) 1. In a prosecution under this subsection involving drug  
14 paraphernalia related to marijuana, it is an affirmative defense that the defendant used or  
15 possessed drug paraphernalia related to marijuana because:

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

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

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

23 2. A. In a prosecution under this subsection involving  
24 drug paraphernalia related to marijuana, it is an affirmative defense that the defendant  
25 possessed drug paraphernalia related to marijuana because the drug paraphernalia related  
26 to marijuana was intended for medical use by an individual with a debilitating medical  
27 condition for whom the defendant is a caregiver.

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

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

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

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

5           (d)    (1)   Unless authorized under this title, a person may not deliver or sell, or  
6 manufacture or possess with intent to deliver or sell, drug paraphernalia, knowing, or  
7 under circumstances where one reasonably should know, that the drug paraphernalia will  
8 be used to:

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

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

14           (2)    A person who violates this subsection is guilty of a misdemeanor and  
15 on conviction is subject to:

16                   (i)    for a first violation, a fine not exceeding \$500; and

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

19           (3)    A person who is convicted of violating this subsection for the first time  
20 and who previously has been convicted of violating paragraph (4) of this subsection is  
21 subject to imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

22           (4)    If a person who is at least 18 years old violates paragraph (1) of this  
23 subsection by delivering drug paraphernalia to a minor who is at least 3 years younger than  
24 the person, the person is guilty of a separate misdemeanor and on conviction is subject to  
25 imprisonment not exceeding 8 years or a fine not exceeding \$15,000 or both.

26           (e)    (1)   A person may not advertise in a newspaper, magazine, handbill, poster,  
27 sign, mailing, or other writing or publication, or by sound truck, knowing, or under  
28 circumstances where one reasonably should know, that the purpose of the advertisement,  
29 wholly or partly, is to promote the sale or delivery of drug paraphernalia.

30           (2)    A person who violates this subsection is guilty of a misdemeanor and  
31 on conviction is subject to:

32                   (i)    for a first violation, a fine not exceeding \$500; and

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

