

SENATE BILL 891

E1, E2, R5

6lr0594

By: **Senator Zirkin**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of altering the amount of marijuana a person may use or possess and be
4 subject to certain civil penalties; requiring a police officer to issue a citation under
5 certain circumstances; establishing that certain violations involving the use or
6 possession of a certain amount of marijuana is a Code violation; providing that
7 prepayment of a certain fine is considered a plea of guilty for certain purposes;
8 establishing a penalty for the failure to prepay certain fines for a Code violation;
9 establishing a penalty for the failure to respond to a summons issued for a Code
10 violation in certain circumstances; establishing certain procedures for citations
11 issued for a Code violation; altering the circumstances under which the official court
12 record regarding a citation for a Code violation may be shielded; prohibiting a driver
13 from consuming marijuana in a motor vehicle under certain circumstances;
14 prohibiting an occupant from smoking marijuana in a motor vehicle under certain
15 circumstances; and generally relating to the use and possession of marijuana.

16 BY repealing and reenacting, with amendments,
17 Article – Courts and Judicial Proceedings
18 Section 3–8A–01(dd)(1) and 3–8A–33(a)(1)
19 Annotated Code of Maryland
20 (2013 Replacement Volume and 2015 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Criminal Law
23 Section 5–601(a), (b), and (c)(1)
24 Annotated Code of Maryland
25 (2012 Replacement Volume and 2015 Supplement)
26 (As enacted by Chapter 4 of the Acts of the General Assembly of 2016)

27 BY repealing and reenacting, with amendments,
28 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 5–601(c)(2)
2 Annotated Code of Maryland
3 (2012 Replacement Volume and 2015 Supplement)
4 (As enacted by Chapter 4 of the Acts of the General Assembly of 2016)

5 BY repealing and reenacting, with amendments,
6 Article – Criminal Law
7 Section 5–601.1
8 Annotated Code of Maryland
9 (2012 Replacement Volume and 2015 Supplement)

10 BY repealing and reenacting, with amendments,
11 Article – Transportation
12 Section 21–903
13 Annotated Code of Maryland
14 (2012 Replacement Volume and 2015 Supplement)

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

17 **Article – Courts and Judicial Proceedings**

18 3–8A–01.

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

20 (1) § 5–601 of the Criminal Law Article involving the use or possession of
21 less than [10 grams] **1 OUNCE** of marijuana;

22 3–8A–33.

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

25 (1) § 5–601 of the Criminal Law Article involving the use or possession of
26 less than [10 grams] **1 OUNCE** of marijuana;

27 **Article – Criminal Law**

28 5–601.

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

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

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

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

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

6 (iii) the concealment of a material fact;

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

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

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

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

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

18 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
19 person whose violation of this section involves the use or possession of marijuana is subject
20 to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

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

24 2. A second violation of this section involving the use or
25 possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense punishable by a
26 fine not exceeding \$250.

27 3. A third or subsequent violation of this section involving
28 the use or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense
29 punishable by a fine not exceeding \$500.

30 4. A. In addition to a fine, a court shall order a person
31 under the age of 21 years who commits a violation punishable under subparagraph 1,
32 2, or 3 of this subparagraph to attend a drug education program approved by the
33 Department of Health and Mental Hygiene, refer the person to an assessment for substance
34 abuse disorder, and refer the person to substance abuse treatment, if necessary.

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

6 5–601.1.

7 (a) A police officer shall issue a citation to a person who the police officer has
8 probable cause to believe has committed a violation of § 5–601 of this part involving the use
9 or possession of less than [10 grams] **1 OUNCE** of marijuana.

10 (b) (1) **[A] FOR THE PURPOSES OF THIS SECTION, A** violation of § 5–601 of
11 this part involving the use or possession of less than [10 grams] **1 OUNCE** of marijuana is
12 **A CODE VIOLATION AND IS** a civil offense.

13 (2) Adjudication of a **CODE** violation under § 5–601 of this part involving
14 the use or possession of less than [10 grams] **1 OUNCE** of marijuana:

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

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

18 (c) (1) A citation issued **UNDER THIS SECTION** for a **CODE** violation [of §
19 5–601 of this part involving the use or possession of less than 10 grams of marijuana] shall
20 be signed by the police officer who issues the citation and shall contain:

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

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

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

24 (iv) the fine that may be imposed;

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

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

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

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

1 (2) (i) If a citation for a **CODE** violation [of § 5–601 of this part
2 involving the use or possession of less than 10 grams of marijuana] is issued **UNDER THIS**
3 **SECTION** to a person under the age 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 **WHO** has
5 [committed a third or subsequent] **BEEN ISSUED A CITATION UNDER THIS SECTION HAS**
6 **AT LEAST TWICE PREVIOUSLY BEEN FOUND GUILTY OF A CODE VIOLATION FOR A**
7 violation of § 5–601 of this part involving the use or possession of less than 10 grams of
8 marijuana, the court shall summon the person for trial.

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

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

13 **(2)** **PREPAYMENT OF A FINE SHALL BE CONSIDERED A PLEA OF**
14 **GUILTY TO A CODE VIOLATION FOR PURPOSES OF SUBSECTION (C)(2)(II) OF THIS**
15 **SECTION.**

16 **(3)** **IF A PERSON ISSUED A CITATION UNDER THIS SECTION DOES NOT**
17 **PREPAY THE FINE WITHIN 30 DAYS, THE COURT SHALL IMPOSE THE MAXIMUM FINE**
18 **AGAINST THE PERSON AND FIND THAT THE PERSON IS GUILTY OF A CODE VIOLATION**
19 **FOR PURPOSES OF SUBSECTION (C)(2)(II) OF THIS SECTION.**

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

23 **(G)** **THE FAILURE OF A PERSON TO RESPOND TO A SUMMONS DESCRIBED IN**
24 **SUBSECTION (C)(2) OF THIS SECTION MAY BE GOVERNED BY § 5–212 OF THE**
25 **CRIMINAL PROCEDURE ARTICLE.**

26 **(H)** **IN ANY PROCEEDING FOR A CODE VIOLATION UNDER THIS SECTION:**

27 **(1)** **THE STATE SHALL PROSECUTE THE DEFENDANT BY A**
28 **PREPONDERANCE OF THE EVIDENCE;**

29 **(2)** **THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED**
30 **A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT**
31 **UNDERSTANDS THOSE CHARGES;**

1 **(3) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL**
2 **WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR**
3 **WITNESSES ON BEHALF OF THE DEFENDANT, OR TO TESTIFY ON THE DEFENDANT'S**
4 **OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;**

5 **(4) THE DEFENDANT MAY BE REPRESENTED BY COUNSEL OF THE**
6 **DEFENDANT'S CHOICE AT THE EXPENSE OF THE DEFENDANT; AND**

7 **(5) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT GUILTY**
8 **OF A CODE VIOLATION AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:**

9 **(I) GUILTY OF A CODE VIOLATION; OR**

10 **(II) NOT GUILTY OF A CODE VIOLATION.**

11 **(I) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE PROCEEDING**
12 **IN THE DISTRICT COURT.**

13 **(2) THE COURT COSTS FOR A CODE VIOLATION PROCEEDING UNDER**
14 **THIS SECTION ARE \$5.**

15 **(J) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A**
16 **CODE VIOLATION UNDER THIS SECTION IN THE SAME MANNER AS A PROSECUTION**
17 **OF A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

18 **(2) IN A CODE VIOLATION PROCEEDING UNDER THIS SECTION, THE**
19 **STATE'S ATTORNEY MAY:**

20 **(I) ENTER A NOLLE PROSEQUI OR PLACE THE CASE ON THE**
21 **STATE DOCKET; AND**

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

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

28 **[(g)] (L) A citation for a [violation of § 5-601 of this part involving the use or**
29 **possession of less than 10 grams of marijuana] CODE VIOLATION and the official record**
30 **of a court regarding the citation are not subject to public inspection and may not be included**
31 **on the public Web site maintained by the Maryland Judiciary IF:**

1 **(D) A DRIVER OF A MOTOR VEHICLE MAY NOT SMOKE OR OTHERWISE**
2 **CONSUME MARIJUANA IN A PASSENGER AREA OF A MOTOR VEHICLE ON A HIGHWAY.**

3 **(E) AN OCCUPANT OF A MOTOR VEHICLE MAY NOT SMOKE MARIJUANA IN A**
4 **PASSENGER AREA OF A MOTOR VEHICLE ON A HIGHWAY.**

5 **[(d)] (F)** Notwithstanding Article 2B, Title 19 of the Code or any other provision
6 of law, the prohibition contained in this section applies throughout the State.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2016.