

# SENATE BILL 127

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8lr1398

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By: **Senator Zirkin**

Introduced and read first time: January 11, 2018

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2018

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Criminal Law and Vehicle Laws – ~~Possession of~~ Marijuana – Criminal Threshold**  
3 **and Smoking in Vehicles**

4 FOR the purpose of altering the amount of marijuana below which possession is a civil  
5 offense, rather than a criminal offense; prohibiting a driver of a motor vehicle from  
6 smoking or consuming marijuana in the passenger area of a motor vehicle on a  
7 highway; prohibiting an occupant of a motor vehicle from smoking marijuana in the  
8 passenger area of the motor vehicle on a highway; making conforming changes; and  
9 generally relating to ~~possession of~~ marijuana.

10 BY repealing and reenacting, without amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 3–8A–01(a)  
13 Annotated Code of Maryland  
14 (2013 Replacement Volume and 2017 Supplement)

15 BY repealing and reenacting, with amendments,  
16 Article – Courts and Judicial Proceedings  
17 Section 3–8A–01(dd) and 3–8A–33(a)  
18 Annotated Code of Maryland  
19 (2013 Replacement Volume and 2017 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Law  
22 Section 5–601 and 5–601.1

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
2 (2012 Replacement Volume and 2017 Supplement)

3 BY repealing and reenacting, with amendments,  
4 Article – Transportation  
5 Section 21–903  
6 Annotated Code of Maryland  
7 (2012 Replacement Volume and 2017 Supplement)

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

10 **Article – Courts and Judicial Proceedings**

11 3–8A–01.

12 (a) In this subtitle the following words have the meanings indicated, unless the  
13 context of their use indicates otherwise.

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

15 (1) § 5–601 of the Criminal Law Article involving the use or possession of  
16 less than [10 grams] **1 OUNCE** of marijuana;

17 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

18 (3) § 10–108 of the Criminal Law Article;

19 (4) § 10–132 of the Criminal Law Article;

20 (5) § 10–136 of the Criminal Law Article; or

21 (6) § 26–103 of the Education Article.

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

28 (3) § 10–108 of the Criminal Law Article;

29 (4) § 10–132 of the Criminal Law Article;

1 (5) § 10–136 of the Criminal Law Article; or

2 (6) § 26–103 of the Education Article.

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), (3), and (4) of this subsection, a  
24 person who violates this section is guilty of a misdemeanor and on conviction is subject to:

25 (i) for a first conviction, imprisonment not exceeding 1 year or a fine  
26 not exceeding \$5,000 or both;

27 (ii) for a second or third conviction, imprisonment not exceeding 18  
28 months or a fine not exceeding \$5,000 or both; or

1 (iii) for a fourth or subsequent conviction, imprisonment not  
2 exceeding 2 years or a fine not exceeding \$5,000 or both.

3 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a  
4 person whose violation of this section involves the use or possession of marijuana is guilty  
5 of a misdemeanor of possession of marijuana and is subject to imprisonment not exceeding  
6 6 months or a fine not exceeding \$1,000 or both.

7 (ii) 1. A first finding of guilt under this section involving the use  
8 or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense punishable  
9 by a fine not exceeding \$100.

10 2. A second finding of guilt under this section involving the  
11 use or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense punishable  
12 by a fine not exceeding \$250.

13 3. A third or subsequent finding of guilt under this section  
14 involving the use or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil  
15 offense punishable by a fine not exceeding \$500.

16 4. A. In addition to a fine, a court shall order a person  
17 under the age of 21 years who commits a violation punishable under subparagraph 1,  
18 2, or 3 of this subparagraph to attend a drug education program approved by the Maryland  
19 Department of Health, refer the person to an assessment for substance abuse disorder, and  
20 refer the person to substance abuse treatment, if necessary.

21 B. In addition to a fine, a court shall order a person at least  
22 21 years old who commits a violation punishable under subparagraph 3 of this  
23 subparagraph to attend a drug education program approved by the Maryland Department  
24 of Health, refer the person to an assessment for substance abuse disorder, and refer the  
25 person to substance abuse treatment, if necessary.

26 C. A court that orders a person to a drug education program  
27 or substance abuse assessment or treatment under this subparagraph may hold the  
28 case sub curia pending receipt of proof of completion of the program, assessment, or  
29 treatment.

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

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

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

- 1                   A.     is a resident of the State;
- 2                   B.     is at least 21 years old;
- 3                   C.     is an immediate family member, a spouse, or a domestic  
4 partner of the patient;
- 5                   D.     has not been convicted of a crime of violence as defined in  
6 § 14–101 of this article;
- 7                   E.     has not been convicted of a violation of a State or federal  
8 controlled dangerous substances law;
- 9                   F.     has not been convicted of a crime of moral turpitude;
- 10                  G.     has been designated as caregiver by the patient in writing  
11 that has been placed in the patient’s medical record prior to arrest;
- 12                  H.     is the only individual designated by the patient to serve as  
13 caregiver; and
- 14                  I.     is not serving as caregiver for any other patient.

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

- 19                  A.     cachexia or wasting syndrome;
- 20                  B.     severe or chronic pain;
- 21                  C.     severe nausea;
- 22                  D.     seizures;
- 23                  E.     severe and persistent muscle spasms; or
- 24                  F.     any other condition that is severe and resistant to  
25 conventional medicine.

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

1                                   2.     Notwithstanding paragraph (2) of this subsection, if the  
2 court finds that the person used or possessed marijuana because of medical necessity, the  
3 court shall dismiss the charge.

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

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

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

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

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

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

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

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

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

29                                  (4)    A violation of this section involving the smoking of marijuana in a  
30 public place is a civil offense punishable by a fine not exceeding \$500.

31                                  (d)    The provisions of subsection (c)(2)(ii) of this section making the possession of  
32 marijuana a civil offense may not be construed to affect the laws relating to:

33                                  (1)    operating a vehicle or vessel while under the influence of or while  
34 impaired by a controlled dangerous substance; or

1           (2)     seizure and forfeiture.

2           (e)     (1)     (i)     Before imposing a sentence under subsection (c) of this section,  
3 the court may order the Maryland Department of Health or a certified and licensed  
4 designee to conduct an assessment of the defendant for substance use disorder and  
5 determine whether the defendant is in need of and may benefit from drug treatment.

6                     (ii)    If an assessment for substance use disorder is requested by the  
7 defendant and the court denies the request, the court shall state on the record the basis for  
8 the denial.

9           (2)     On receiving an order under paragraph (1) of this subsection, the  
10 Maryland Department of Health, or the designee, shall conduct an assessment of the  
11 defendant for substance use disorder and provide the results to the court, the defendant or  
12 the defendant's attorney, and the State identifying the defendant's drug treatment needs.

13           (3)     The court shall consider the results of an assessment performed under  
14 paragraph (2) of this subsection when imposing the defendant's sentence and:

15                     (i)     except as provided in subparagraph (ii) of this paragraph, the  
16 court shall suspend the execution of the sentence and order probation and, if the  
17 assessment shows that the defendant is in need of substance abuse treatment, require the  
18 Maryland Department of Health or the designee to provide the medically appropriate level  
19 of treatment as identified in the assessment; or

20                     (ii)    the court may impose a term of imprisonment under subsection  
21 (c) of this section and order the Division of Correction or local correctional facility to  
22 facilitate the medically appropriate level of treatment for the defendant as identified in the  
23 assessment.

24     5-601.1.

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

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

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

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

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

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

4 (i) the name, address, and date of birth of the person charged;

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

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

7 (iv) the fine that may be imposed;

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

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

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

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

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

17 (ii) If the court finds that a person at least 21 years old who has been  
18 issued a citation under this section has at least twice previously been found guilty under §  
19 5–601 of this part involving the use or possession of less than [10 grams] **1 OUNCE** of  
20 marijuana, the court shall summon the person for trial.

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

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

25 (2) Prepayment of a fine shall be considered a plea of guilty to a Code  
26 violation.

27 (3) A person described in subsection (c)(2) of this section may not prepay  
28 the fine.

29 (f) (1) A person may request a trial by sending a request for trial to the District  
30 Court in the jurisdiction where the citation was issued within 30 days of the issuance of the  
31 citation.

1           (2) If a person other than a person described in subsection (c)(2) of this  
2 section does not request a trial or prepay the fine within 30 days of the issuance of the  
3 citation, the court may impose the maximum fine and costs against the person and find the  
4 person is guilty of a Code violation for purposes of subsection (c)(2)(ii) of this section.

5           (g) The issuing jurisdiction shall forward a copy of the citation and a request for  
6 trial to the District Court in the district having venue.

7           (h) (1) The failure of a defendant to respond to a summons described in  
8 subsection (c)(2) of this section shall be governed by § 5–212 of the Criminal Procedure  
9 Article.

10           (2) If a person at least 21 years old fails to appear after having requested  
11 a trial, the court may impose the maximum fine and costs against the person and find the  
12 person is guilty of a Code violation for purposes of subsection (c)(2)(ii) of this section.

13           (i) In any proceeding for a Code violation under § 5–601 of this part involving the  
14 use or possession of less than [10 grams] **1 OUNCE** of marijuana:

15           (1) the State has the burden to prove the guilt of the defendant by a  
16 preponderance of the evidence;

17           (2) the court shall apply the evidentiary standards as prescribed by law or  
18 rule for the trial of a criminal case;

19           (3) the court shall ensure that the defendant has received a copy of the  
20 charges against the defendant and that the defendant understands those charges;

21           (4) the defendant is entitled to cross-examine all witnesses who appear  
22 against the defendant, to produce evidence or witnesses on behalf of the defendant, and to  
23 testify on the defendant's own behalf, if the defendant chooses to do so;

24           (5) the defendant is entitled to be represented by counsel of the defendant's  
25 choice and at the expense of the defendant; and

26           (6) the defendant may enter a plea of guilty or not guilty, and the verdict  
27 of the court in the case shall be:

28           (i) guilty of a Code violation;

29           (ii) not guilty of a Code violation; or

30           (iii) probation before judgment, imposed by the court in the same  
31 manner and to the same extent as is allowed by law in the trial of a criminal case.

32           (j) (1) The defendant is liable for the costs of the proceedings in the District  
33 Court.

1 (2) The court costs in a Code violation case under § 5–601 of this part  
2 involving the use or possession of less than [10 grams] **1 OUNCE** of marijuana in which  
3 costs are imposed are \$5.

4 (k) (1) The State’s Attorney for any county may prosecute a Code violation  
5 under § 5–601 of this part involving the use or possession of less than [10 grams] **1 OUNCE**  
6 of marijuana in the same manner as prosecution of a violation of the criminal laws of the  
7 State.

8 (2) In a Code violation case under § 5–601 of this part involving the use or  
9 possession of less than [10 grams] **1 OUNCE** of marijuana, the State’s Attorney may:

10 (i) enter a nolle prosequi or move to place the case on the stet docket;  
11 and

12 (ii) exercise authority in the same manner as prescribed by law for  
13 violation of the criminal laws of the State.

14 (l) A person issued a citation for a violation of § 5–601 of this part involving the  
15 use or possession of less than [10 grams] **1 OUNCE** of marijuana who is under the age of 18  
16 years shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of  
17 the Courts Article.

18 (m) A citation for a violation of § 5–601 of this part involving the use or possession  
19 of less than [10 grams] **1 OUNCE** of marijuana and the official record of a court regarding  
20 the citation are not subject to public inspection and may not be included on the public Web  
21 site maintained by the Maryland Judiciary if:

22 (1) the defendant has prepaid the fine;

23 (2) the defendant has pled guilty to or been found guilty of the Code  
24 violation and has fully paid the fine and costs imposed for the violation;

25 (3) the defendant has received a probation before judgment and has fully  
26 paid the fine and completed any terms imposed by the court;

27 (4) the case has been removed from the stet docket after the defendant fully  
28 paid the fine and completed any terms imposed by the court;

29 (5) the State has entered a nolle prosequi;

30 (6) the defendant has been found not guilty of the charge; or

31 (7) the charge has been dismissed.

1 21-903.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) “Alcoholic beverage” means a spirituous, vinous, malt, or fermented  
4 liquor, liquid, or compound that contains at least 0.5% alcohol by volume and is fit for  
5 beverage purposes.

6 (3) (i) “Passenger area” means an area that:

7 1. Is designed to seat the driver and any passenger of a motor  
8 vehicle while the motor vehicle is in operation; or

9 2. Is readily accessible to the driver or a passenger of a motor  
10 vehicle while in their seating positions.

11 (ii) “Passenger area” does not include:

12 1. A locked glove compartment;

13 2. The trunk of a motor vehicle; or

14 3. If a motor vehicle is not equipped with a trunk, the area  
15 behind the rearmost upright seat or an area that is not normally occupied by the driver or  
16 a passenger of the motor vehicle.

17 (b) This section applies to a motor vehicle that is driven, stopped, standing, or  
18 otherwise located on a highway.

19 (c) A driver of a motor vehicle may not consume an alcoholic beverage in a  
20 passenger area of a motor vehicle on a highway.

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

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

25 **[(d)] (F) Notwithstanding § 6-320, § 6-321, or § 6-322 of the Alcoholic**  
26 **Beverages Article, or any other provision of law, the prohibition contained in this section**  
27 **applies throughout the State.**

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2018.