

# 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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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – Criminal Threshold**

3 FOR the purpose of altering the amount of marijuana below which possession is a civil  
4 offense, rather than a criminal offense; making conforming changes; and generally  
5 relating to possession of marijuana.

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

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

16 BY repealing and reenacting, with amendments,  
17 Article – Criminal Law  
18 Section 5–601 and 5–601.1  
19 Annotated Code of Maryland  
20 (2012 Replacement Volume and 2017 Supplement)

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

23 **Article – Courts and Judicial Proceedings**

24 3–8A–01.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (dd) "Violation" means a violation for which a citation is issued under:

4 (1) § 5–601 of the Criminal Law Article involving the use or possession of  
5 less than [10 grams] **1 OUNCE** of marijuana;

6 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

7 (3) § 10–108 of the Criminal Law Article;

8 (4) § 10–132 of the Criminal Law Article;

9 (5) § 10–136 of the Criminal Law Article; or

10 (6) § 26–103 of the Education Article.

11 3–8A–33.

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

14 (1) § 5–601 of the Criminal Law Article involving the use or possession of  
15 less than [10 grams] **1 OUNCE** of marijuana;

16 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

17 (3) § 10–108 of the Criminal Law Article;

18 (4) § 10–132 of the Criminal Law Article;

19 (5) § 10–136 of the Criminal Law Article; or

20 (6) § 26–103 of the Education Article.

## 21 Article – Criminal Law

22 5–601.

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

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

27 (2) obtain or attempt to obtain a controlled dangerous substance, or

1 procure or attempt to procure the administration of a controlled dangerous substance by:

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

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

5 (iii) the concealment of a material fact;

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

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

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

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

14 (c) (1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a  
15 person who violates this section is guilty of a misdemeanor and on conviction is subject to:

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

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

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

22 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a  
23 person whose violation of this section involves the use or possession of marijuana is guilty  
24 of a misdemeanor of possession of marijuana and is subject to imprisonment not exceeding  
25 6 months or a fine not exceeding \$1,000 or both.

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

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

32 3. A third or subsequent finding of guilt under this section



1 that has been placed in the patient's medical record prior to arrest;

2 H. is the only individual designated by the patient to serve as  
3 caregiver; and

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

5 4. "Debilitating medical condition" means a chronic or  
6 debilitating disease or medical condition or the treatment of a chronic or debilitating  
7 disease or medical condition that produces one or more of the following, as documented by  
8 a physician with whom the patient has a bona fide physician-patient relationship:

9 A. cachexia or wasting syndrome;

10 B. severe or chronic pain;

11 C. severe nausea;

12 D. seizures;

13 E. severe and persistent muscle spasms; or

14 F. any other condition that is severe and resistant to  
15 conventional medicine.

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

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

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

25 A. the defendant has a debilitating medical condition that  
26 has been diagnosed by a physician with whom the defendant has a bona fide  
27 physician-patient relationship;

28 B. the debilitating medical condition is severe and resistant  
29 to conventional medicine; and

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

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

5                   B.     A defendant may not assert the affirmative defense under  
6 this subparagraph unless the defendant notifies the State's Attorney of the defendant's  
7 intention to assert the affirmative defense and provides the State's Attorney with all  
8 documentation in support of the affirmative defense in accordance with the rules of  
9 discovery provided in Maryland Rules 4-262 and 4-263.

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

12                   A.     using marijuana in a public place or assisting the  
13 individual for whom the defendant is a caregiver in using the marijuana in a public place;  
14 or

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

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

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

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

22                   (2)    seizure and forfeiture.

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

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

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

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

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

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

10 5–601.1.

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

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

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

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

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

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

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

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

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

27 (iv) the fine that may be imposed;

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

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

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





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

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

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

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

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

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

14 (i) guilty of a Code violation;

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

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

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

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

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

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

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

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

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

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

9 (1) the defendant has prepaid the fine;

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

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

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

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

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

18 (7) the charge has been dismissed.

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