

# HOUSE BILL 875

E2, E1

9lr0503

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By: **Delegates Moon, Barron, and J. Lewis**  
Introduced and read first time: February 8, 2019  
Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Marijuana – Urinalyses, Civil Offense Threshold, and Evidence**  
3 **Standards**

4 FOR the purpose of prohibiting the Division of Pretrial Detention and Services and the  
5 Division of Parole and Probation from considering the submission of a urine sample  
6 that is positive for marijuana as a violation of pretrial release, parole, or probation  
7 under certain circumstances; altering the threshold amount of marijuana of which  
8 use and possession is a civil offense; establishing a presumption that a person who  
9 possesses a certain amount of marijuana does not intend to distribute or dispense  
10 the marijuana; authorizing the State to rebut a certain presumption by showing  
11 certain evidence; establishing that the odor of marijuana emanating from a  
12 particular person does not, in itself, constitute probable cause to arrest the person  
13 for the commission of a crime; making conforming changes; providing for the  
14 application of this Act; and generally relating to marijuana.

15 BY adding to  
16 Article – Correctional Services  
17 Section 6–122  
18 Annotated Code of Maryland  
19 (2017 Replacement Volume and 2018 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Law  
22 Section 5–601(c)(2), 5–601.1, and 5–602  
23 Annotated Code of Maryland  
24 (2012 Replacement Volume and 2018 Supplement)

25 BY adding to  
26 Article – Criminal Procedure  
27 Section 2–202.1  
28 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



1 (2018 Replacement Volume)

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

4 **Article – Correctional Services**

5 **6–122.**

6 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION AND  
7 NOTWITHSTANDING ANY OTHER LAW, THE DIVISION OF PRETRIAL DETENTION AND  
8 SERVICES AND THE DIVISION MAY NOT CONSIDER THE SUBMISSION OF A URINE  
9 SAMPLE THAT IS POSITIVE FOR MARIJUANA AS A VIOLATION OF A CONDITION OF  
10 PRETRIAL RELEASE, PAROLE, OR PROBATION.

11 (B) THIS SECTION DOES NOT APPLY TO AN INMATE, AN OFFENDER, OR A  
12 PROBATIONER WHO HAS BEEN EXPRESSLY PROHIBITED FROM USING OR  
13 POSSESSING MARIJUANA, AS OPPOSED TO CONTROLLED DANGEROUS SUBSTANCES  
14 GENERALLY, AS A CONDITION OF PRETRIAL RELEASE, PAROLE, OR PROBATION.

15 **Article – Criminal Law**

16 **5–601.**

17 (c) (2) (i) Except as provided in subparagraph (ii) of this paragraph, a  
18 person whose violation of this section involves the use or possession of marijuana is guilty  
19 of a misdemeanor of possession of marijuana and is subject to imprisonment not exceeding  
20 6 months or a fine not exceeding \$1,000 or both.

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

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

27 3. A third or subsequent finding of guilt under this section  
28 involving the use or possession of less than [10 grams] 1 OUNCE of marijuana is a civil  
29 offense 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 Maryland  
33 Department of Health, refer the person to an assessment for substance abuse disorder, and  
34 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 Maryland Department  
4 of Health, refer the person to an assessment for substance abuse disorder, and refer the  
5 person to substance abuse treatment, if necessary.

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

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

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

6                           (ii)   If the court finds that a person at least 21 years old who has been  
7 issued a citation under this section has at least twice previously been found guilty under §  
8 5–601 of this part involving the use or possession of less than [10 grams] **1 OUNCE** of  
9 marijuana, the court shall summon the person for trial.

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

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

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

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

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

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

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

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

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

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

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 5–602.

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

21 (1) distribute or dispense a controlled dangerous substance; or

22 (2) possess a controlled dangerous substance in sufficient quantity  
23 reasonably to indicate under all circumstances an intent to distribute or dispense a  
24 controlled dangerous substance.

25 (B) (1) **THERE IS A PRESUMPTION THAT A QUANTITY OF MARIJUANA OF**  
26 **WHICH POSSESSION IS A CIVIL OFFENSE UNDER § 5–601 OF THIS SUBTITLE IS NOT A**  
27 **SUFFICIENT QUANTITY TO REASONABLY INDICATE UNDER ALL CIRCUMSTANCES AN**  
28 **INTENT TO DISTRIBUTE OR DISPENSE MARIJUANA.**

29 (2) **THE STATE MAY REBUT THE PRESUMPTION ESTABLISHED UNDER**  
30 **PARAGRAPH (1) OF THIS SUBSECTION BY SHOWING EVIDENCE OF AN INTENT TO**  
31 **SELL MARIJUANA.**

