HOUSE BILL 324

E11lr0368 HB 550/20 – JUD CF SB 143 (PRE-FILED) By: Delegate Moon Requested: June 16, 2020 Introduced and read first time: January 13, 2021 Assigned to: Judiciary Committee Report: Favorable House action: Adopted Read second time: February 11, 2021 CHAPTER AN ACT concerning Criminal Law - Marijuana - Possession and Possession With Intent to **Distribute** FOR the purpose of altering the amount of marijuana below which possession is a civil offense, rather than a criminal offense; creating a presumption that a person in possession of less than a certain amount of marijuana is not in violation of a certain provision of law with regard to marijuana in the absence of certain evidence; making conforming changes; and generally relating to crimes involving marijuana. BY repealing and reenacting, without amendments, Article – Courts and Judicial Proceedings Section 3-8A-01(a)Annotated Code of Maryland (2020 Replacement Volume) BY repealing and reenacting, with amendments, Article – Courts and Judicial Proceedings Section 3–8A–01(dd) and 3–8A–33(a) Annotated Code of Maryland (2020 Replacement Volume) BY repealing and reenacting, with amendments, Article – Criminal Law Section 5–601, 5–601.1, and 5–602

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

<u>Underlining</u> indicates amendments to bill.

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



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(a)

1 2	Annotated Code of Maryland (2012 Replacement Volume and 2020 Supplement)
3 4	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
5	Article - Courts and Judicial Proceedings
6	3-8A-01.
7 8	(a) In this subtitle the following words have the meanings indicated, unless the context of their use indicates otherwise.
9	(dd) "Violation" means a violation for which a citation is issued under:
10	(1) § 5–601 of the Criminal Law Article involving the use or possession of less than [10 grams] 1 OUNCE of marijuana;
2	(2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;
13	(3) § 10–132 of the Criminal Law Article;
4	(4) § 10–136 of the Criminal Law Article; or
5	(5) § 26–103 of the Education Article.
6	3–8A–33.
17 18	(a) A law enforcement officer authorized to make arrests shall issue a citation to a child if the officer has probable cause to believe that the child is violating:
19 20	(1) § 5–601 of the Criminal Law Article involving the use or possession of less than [10 grams] 1 OUNCE of marijuana;
21	(2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;
22	(3) § 10–132 of the Criminal Law Article;
23	(4) § 10–136 of the Criminal Law Article; or
24	(5) § 26–103 of the Education Article.
25	Article – Criminal Law
26	5-601.

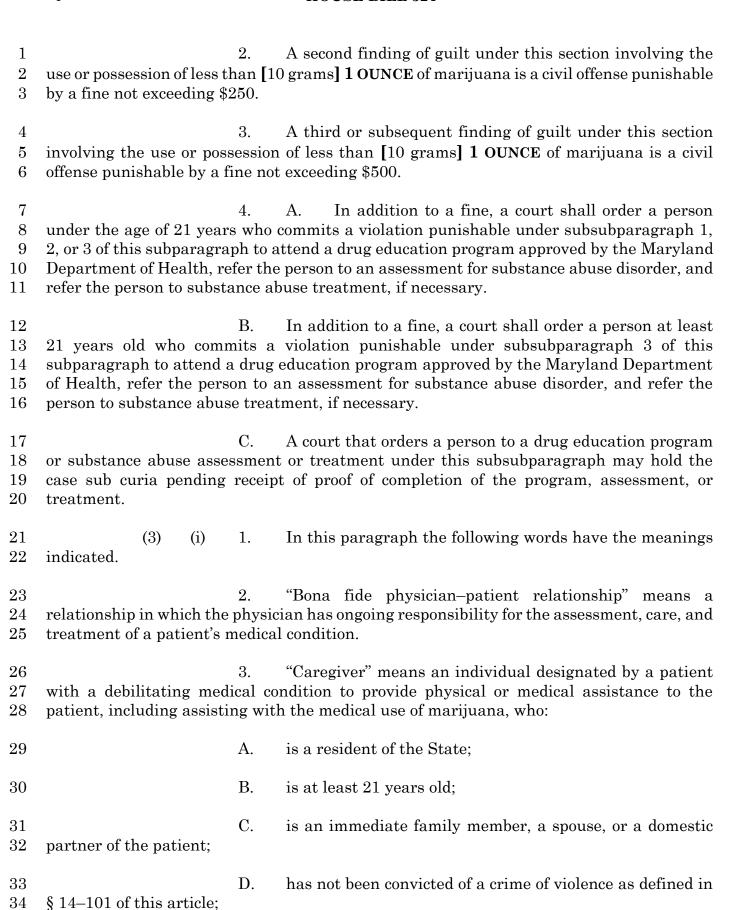
Except as otherwise provided in this title, a person may not:

1 possess or administer to another a controlled dangerous substance, (1) 2 unless obtained directly or by prescription or order from an authorized provider acting in 3 the course of professional practice; or 4 (2) obtain or attempt to obtain a controlled dangerous substance, or procure or attempt to procure the administration of a controlled dangerous substance by: 5 6 (i) fraud, deceit, misrepresentation, or subterfuge; 7 (ii) the counterfeiting or alteration of a prescription or a written 8 order; 9 the concealment of a material fact; (iii) 10 the use of a false name or address; (iv) 11 falsely assuming the title of or representing to be a manufacturer, distributor, or authorized provider; or 12 13 making, issuing, or presenting a false or counterfeit prescription (vi) 14 or written order. 15 Information that is communicated to a physician in an effort to obtain a 16 controlled dangerous substance in violation of this section is not a privileged 17 communication. 18 Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to: 19 20 (i) for a first conviction, imprisonment not exceeding 1 year or a fine 21 not exceeding \$5,000 or both; 22 for a second or third conviction, imprisonment not exceeding 18 (ii) 23 months or a fine not exceeding \$5,000 or both; or 24for a fourth or subsequent conviction, imprisonment not 25exceeding 2 years or a fine not exceeding \$5,000 or both. 26 (2)Except as provided in subparagraph (ii) of this paragraph, a 27 person whose violation of this section involves the use or possession of marijuana is guilty of a misdemeanor of possession of marijuana and is subject to imprisonment not exceeding 2829 6 months or a fine not exceeding \$1,000 or both. 30 A first finding of guilt under this section involving the use (ii) 1.

or possession of less than [10 grams] 1 OUNCE of marijuana is a civil offense punishable

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by a fine not exceeding \$100.

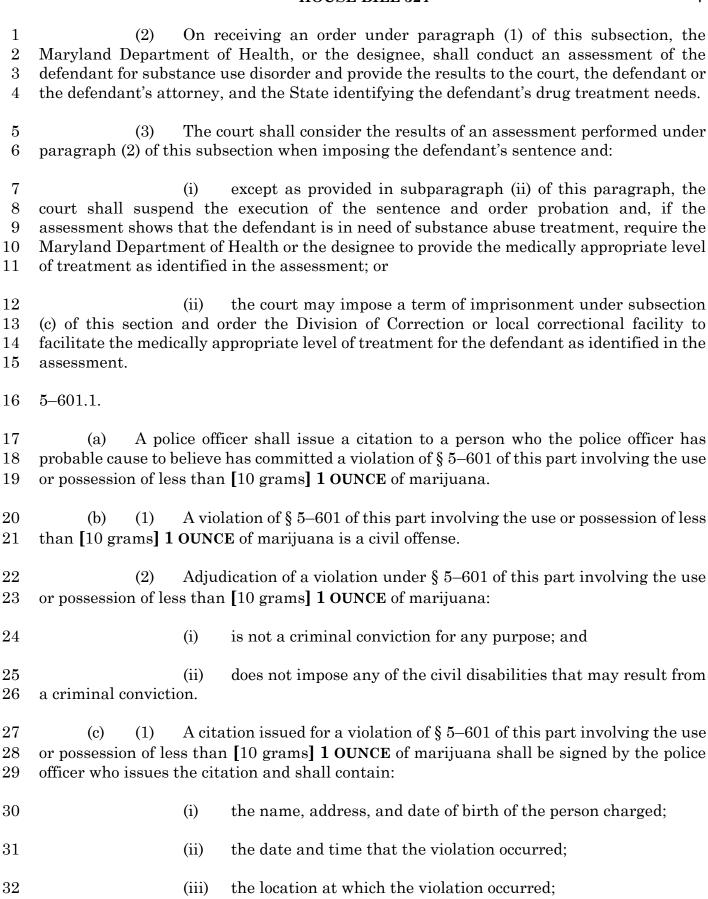


$\frac{1}{2}$	E. has not been convicted of a violation of a State or federal controlled dangerous substances law;
3	F. has not been convicted of a crime of moral turpitude;
4 5	G. has been designated as caregiver by the patient in writing that has been placed in the patient's medical record prior to arrest;
6 7	H. is the only individual designated by the patient to serve as caregiver; and
8	I. is not serving as caregiver for any other patient.
9 10 11 12	4. "Debilitating medical condition" means a chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician—patient relationship:
13	A. cachexia or wasting syndrome;
14	B. severe or chronic pain;
15	C. severe nausea;
16	D. seizures;
17	E. severe and persistent muscle spasms; or
18 19	F. any other condition that is severe and resistant to conventional medicine.
20 21 22	(ii) 1. In a prosecution for the use or possession of marijuana, the defendant may introduce and the court shall consider as a mitigating factor any evidence of medical necessity.
23 24 25	2. Notwithstanding paragraph (2) of this subsection, if the court finds that the person used or possessed marijuana because of medical necessity, the court shall dismiss the charge.
26 27 28	(iii) 1. In a prosecution for the use or possession of marijuana under this section, it is an affirmative defense that the defendant used or possessed marijuana because:
29 30	A. the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide

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physician-patient relationship;

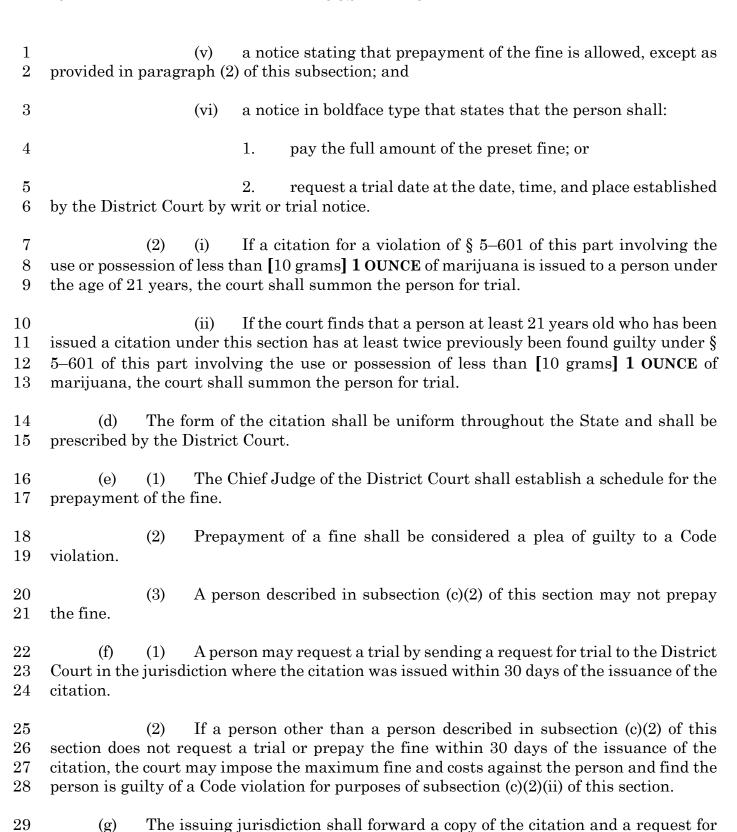
- 1 В. the debilitating medical condition is severe and resistant 2 to conventional medicine; and 3 C. marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition. 4 5 A. In a prosecution for the possession of marijuana 6 under this section, it is an affirmative defense that the defendant possessed marijuana 7 because the marijuana was intended for medical use by an individual with a debilitating 8 medical condition for whom the defendant is a caregiver. 9 В. A defendant may not assert the affirmative defense under 10 this subsubparagraph unless the defendant notifies the State's Attorney of the defendant's intention to assert the affirmative defense and provides the State's Attorney with all 11 12 documentation in support of the affirmative defense in accordance with the rules of 13 discovery provided in Maryland Rules 4–262 and 4–263. 14 3. An affirmative defense under this subparagraph may not 15 be used if the defendant was: 16 using marijuana in a public place or assisting the Α. 17 individual for whom the defendant is a caregiver in using the marijuana in a public place; 18 or 19 В. in possession of more than 1 ounce of marijuana. 20 **(4)** A violation of this section involving the smoking of marijuana in a 21public place is a civil offense punishable by a fine not exceeding \$500. 22The provisions of subsection (c)(2)(ii) of this section making the possession of 23marijuana a civil offense may not be construed to affect the laws relating to: 24operating a vehicle or vessel while under the influence of or while (1) impaired by a controlled dangerous substance; or 2526 (2) seizure and forfeiture. 27 Before imposing a sentence under subsection (c) of this section, (e) (1)(i) 28 the court may order the Maryland Department of Health or a certified and licensed 29 designee to conduct an assessment of the defendant for substance use disorder and 30 determine whether the defendant is in need of and may benefit from drug treatment.
- 31 (ii) If an assessment for substance use disorder is requested by the 32 defendant and the court denies the request, the court shall state on the record the basis for 33 the denial.



the fine that may be imposed;

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(iv)

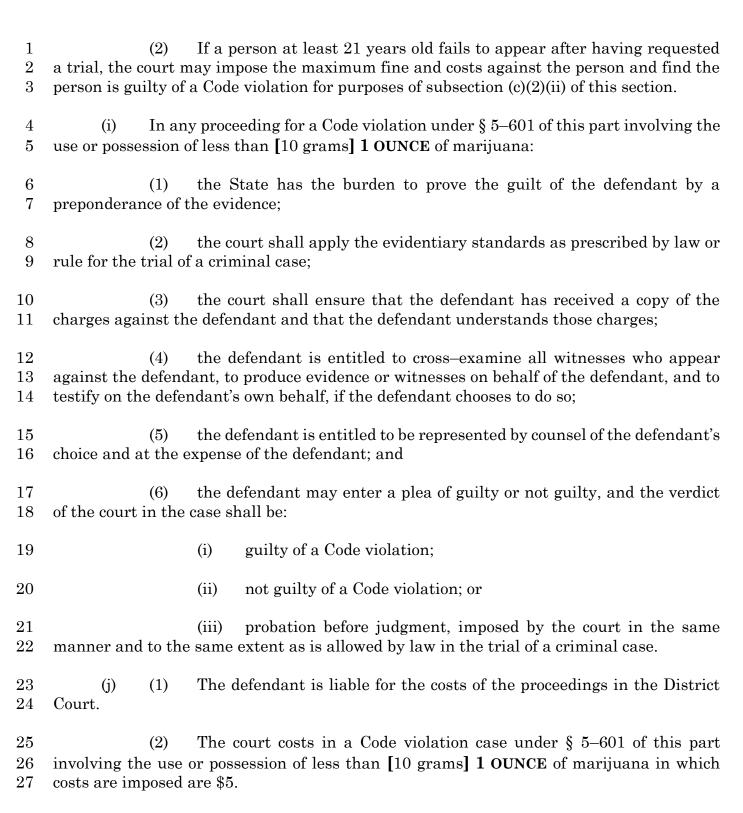


31 (h) (1) The failure of a defendant to respond to a summons described in 32 subsection (c)(2) of this section shall be governed by § 5–212 of the Criminal Procedure

trial to the District Court in the district having venue.

33 Article.

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

1 In a Code violation case under § 5–601 of this part involving the use or (2) 2 possession of less than [10 grams] 1 OUNCE of marijuana, the State's Attorney may: 3 enter a nolle prosegui or move to place the case on the stet docket: (i) and 4 5 (ii) exercise authority in the same manner as prescribed by law for violation of the criminal laws of the State. 6 7 A person issued a citation for a violation of § 5–601 of this part involving the 8 use or possession of less than [10 grams] 1 OUNCE of marijuana who is under the age of 18 years shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of 9 the Courts Article. 10 11 A citation for a violation of § 5–601 of this part involving the use or possession 12 of less than [10 grams] 1 OUNCE of marijuana and the official record of a court regarding 13 the citation are not subject to public inspection and may not be included on the public website maintained by the Maryland Judiciary if: 14 the defendant has prepaid the fine; 15 (1) 16 the defendant has pled guilty to or been found guilty of the Code (2)17 violation and has fully paid the fine and costs imposed for the violation; 18 the defendant has received a probation before judgment and has fully 19 paid the fine and completed any terms imposed by the court; 20 the case has been removed from the stet docket after the defendant fully **(4)** 21paid the fine and completed any terms imposed by the court; 22 (5)the State has entered a nolle prosequi; 23 the defendant has been found not guilty of the charge; or (6)24(7)the charge has been dismissed. 255-602.26 (A) Except as otherwise provided in this title, a person may not: 27 (1) distribute or dispense a controlled dangerous substance; or 28 possess a controlled dangerous substance in sufficient quantity 29 reasonably to indicate under all circumstances an intent to distribute or dispense a 30 controlled dangerous substance.

(B) THERE IS A PRESUMPTION THAT A PERSON IN POSSESSION OF LESS THAN 1 OUNCE OF MARIJUANA IS NOT IN VIOLATION OF SUBSECTION (A) OF THIS SECTION WITH REGARD TO MARIJUANA IN THE ABSENCE OF ANY OTHER EVIDENCE OF A VIOLATION OF SUBSECTION (A) OF THIS SECTION.
SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.
Approved:
Governor.
Speaker of the House of Delegates.
President of the Senate.