

SENATE BILL 86

E1, E2

8lr0600

By: **Senator Brochin**

Introduced and read first time: January 16, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Possession of Controlled Dangerous Substances – Penalties –**
3 **Distribution to County Residential Drug Abuse Treatment Services Funds**

4 FOR the purpose of altering the penalties for crimes relating to the possession of
5 certain controlled dangerous substances; establishing certain minimum and
6 maximum fines for certain possession of controlled dangerous substances
7 crimes; prohibiting a court from imposing less than a certain minimum fine
8 except under certain circumstances; requiring a court to reduce the fine and
9 impose community service if the court makes certain findings; requiring the
10 clerks of the District Court to remit certain fines to the counties to be
11 distributed into certain funds established in each county; requiring the circuit
12 courts to distribute certain fines to certain funds; requiring each county to
13 establish a county residential drug abuse treatment services fund in the county;
14 providing for the purpose of the fund; providing that the money in the fund may
15 be used only for certain purposes; specifying that the fund is a special,
16 nonlapsing fund; providing for the composition of the fund; requiring the chief
17 financial officer for a county to account for the fund and invest the money in the
18 fund in a certain manner; specifying that certain earnings shall be paid into the
19 fund; providing that each fund is subject to audit by the State or county;
20 providing that certain disbursements from a fund supplement and may not
21 substitute for other funds appropriated in the State or county budget for certain
22 purposes; requiring the chief financial officer for a county to pay out money from
23 the fund as approved in the county budget; defining a certain term; and
24 generally relating to county residential drug abuse treatment services funds in
25 the counties.

26 BY repealing and reenacting, with amendments,
27 Article – Courts and Judicial Proceedings
28 Section 7–302(a) and 7–507(a) and (b)
29 Annotated Code of Maryland
30 (2006 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
 2 Article – Courts and Judicial Proceedings
 3 Section 7–302(g) and 7–507(d)
 4 Annotated Code of Maryland
 5 (2006 Replacement Volume and 2007 Supplement)

6 BY repealing and reenacting, with amendments,
 7 Article – Criminal Law
 8 Section 5–601
 9 Annotated Code of Maryland
 10 (2002 Volume and 2007 Supplement)

11 BY adding to
 12 Article – Health – General
 13 Section 8–1101 through 8–1104 to be under the new subtitle “Subtitle 11.
 14 County Residential Drug Abuse Treatment Services Funds”
 15 Annotated Code of Maryland
 16 (2005 Replacement Volume and 2007 Supplement)

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

19 **Article – Courts and Judicial Proceedings**

20 7–302.

21 (a) Except as provided in subsections (b) through [(e)] (G) of this section, the
 22 clerks of the District Court shall:

23 (1) Collect costs, fines, forfeitures, or penalties imposed by the court;
 24 and

25 (2) Remit them to the State under a system agreed upon by the Chief
 26 Judge of the District Court and the Comptroller.

27 **(G) THE CLERKS OF THE DISTRICT COURT SHALL:**

28 **(1) COLLECT THE FINES, FORFEITURES, AND PENALTIES**
 29 **IMPOSED BY THE COURT FOR VIOLATIONS OF § 5–601 OF THE CRIMINAL LAW**
 30 **ARTICLE; AND**

31 **(2) REMIT THE FINES, FORFEITURES, AND PENALTIES TO THE**
 32 **COUNTY TO BE DISTRIBUTED IN ACCORDANCE WITH TITLE 8, SUBTITLE 11 OF**
 33 **THE HEALTH – GENERAL ARTICLE.**

34 7–507.

1 (a) (1) [This] **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**
2 **SECTION, THIS** section does not apply to Anne Arundel, Howard, and Somerset
3 counties.

4 (2) This section does not apply to fines imposed in gambling cases in
5 Baltimore County.

6 (b) Except as provided in [subsection (c)] **SUBSECTIONS (C) AND (D)** of this
7 section, the fines imposed by and recognizances forfeited to each circuit court shall be
8 distributed as follows:

9 (1) 50% to the clerk of the circuit court, to be used under the direction
10 of the judges of the circuit court to augment the court library; and

11 (2) 5% to the clerk of the circuit court as a commission.

12 **(D) THE FINES IMPOSED BY AND RECOGNIZANCES FORFEITED TO EACH**
13 **CIRCUIT COURT FOR VIOLATIONS OF § 5-601 OF THE CRIMINAL LAW ARTICLE**
14 **SHALL BE DISTRIBUTED IN ACCORDANCE WITH TITLE 8, SUBTITLE 11 OF THE**
15 **HEALTH – GENERAL ARTICLE.**

16 **Article – Criminal Law**

17 5-601.

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

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

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

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

26 (ii) the counterfeiting or alteration of a prescription or a written
27 order;

28 (iii) the concealment of a material fact;

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

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

1 (vi) making, issuing, or presenting a false or counterfeit
2 prescription or written order.

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

6 (c) (1) (I) Except as provided in paragraphs (2) and (3) of this
7 subsection, a person who violates this section is guilty of a misdemeanor and on
8 conviction is subject to [imprisonment not exceeding 4 years or]:

9 **1. FOR A FIRST OFFENSE, IMPRISONMENT NOT**
10 **EXCEEDING 4 YEARS OR a fine OF not LESS THAN \$500 AND NOT exceeding \$25,000**
11 **or both;**

12 **2. FOR A SECOND OFFENSE, IMPRISONMENT NOT**
13 **EXCEEDING 4 YEARS OR A FINE OF NOT LESS THAN \$1,000 AND NOT EXCEEDING**
14 **\$25,000 OR BOTH;**

15 **3. FOR A THIRD OR SUBSEQUENT OFFENSE,**
16 **IMPRISONMENT NOT EXCEEDING 4 YEARS OR A FINE OF NOT LESS THAN \$2,000**
17 **AND NOT EXCEEDING \$25,000 OR BOTH.**

18 (II) **1. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2**
19 **OF THIS SUBPARAGRAPH, THE COURT MAY NOT IMPOSE LESS THAN THE**
20 **APPLICABLE MINIMUM FINE PROVIDED IN SUBPARAGRAPH (I) OF THIS**
21 **PARAGRAPH.**

22 **2. IF THE COURT MAKES A FINDING ON THE RECORD**
23 **THAT THE PERSON IS UNABLE BY REASON OF INDIGENCY TO PAY THE MINIMUM**
24 **APPLICABLE FINE, THE COURT SHALL:**

25 **A. REDUCE THE FINE TO AN AMOUNT THAT THE**
26 **COURT DETERMINES THE PERSON IS ABLE TO PAY; AND**

27 **B. IMPOSE COMMUNITY SERVICE.**

28 (2) (I) **[A] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
29 **SUBSECTION, A person whose violation of this section involves the use or possession**
30 **of marijuana ON CONVICTION is subject to [imprisonment not exceeding 1 year or a**
31 **fine not exceeding \$1,000 or both]:**

32 **1. FOR A FIRST OFFENSE, A FINE OF NOT LESS THAN**
33 **\$250 AND NOT EXCEEDING \$2,500;**

1 **2. FOR A SECOND OFFENSE, A FINE OF NOT LESS**
2 **THAN \$500 AND NOT EXCEEDING \$2,500; AND**

3 **3. FOR A THIRD OR SUBSEQUENT OFFENSE, A FINE**
4 **OF NOT LESS THAN \$1,000 AND NOT EXCEEDING \$2,500.**

5 **(II) 1. EXCEPT AS PROVIDED IN SUBSUBPARAGRAPH 2**
6 **OF THIS SUBPARAGRAPH, THE COURT MAY NOT IMPOSE LESS THAN THE**
7 **APPLICABLE MINIMUM FINE PROVIDED IN SUBPARAGRAPH (I) OF THIS**
8 **PARAGRAPH.**

9 **2. IF THE COURT MAKES A FINDING ON THE RECORD**
10 **THAT THE PERSON IS UNABLE BY REASON OF INDIGENCY TO PAY THE MINIMUM**
11 **APPLICABLE FINE, THE COURT SHALL:**

12 **A. REDUCE THE FINE TO AN AMOUNT THAT THE**
13 **COURT DETERMINES THE PERSON IS ABLE TO PAY; AND**

14 **B. IMPOSE COMMUNITY SERVICE.**

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

18 (ii) Notwithstanding paragraph (2) of this subsection, if the
19 court finds that the person used or possessed marijuana because of medical necessity,
20 on conviction of a violation of this section, the maximum penalty that the court may
21 impose on the person is a fine not exceeding \$100.

22 **(4) THE PENALTIES IMPOSED UNDER THIS SECTION SHALL BE**
23 **PAID INTO A COUNTY RESIDENTIAL DRUG ABUSE TREATMENT SERVICES FUND**
24 **FOR THE COUNTY IN WHICH THE CRIME OCCURRED IN ACCORDANCE WITH**
25 **TITLE 8, SUBTITLE 11 OF THE HEALTH – GENERAL ARTICLE.**

26 **Article – Health – General**

27 **SUBTITLE 11. COUNTY RESIDENTIAL DRUG ABUSE TREATMENT SERVICES**
28 **FUNDS.**

29 **8-1101.**

30 **IN THIS SUBTITLE, “FUND” MEANS A COUNTY RESIDENTIAL DRUG ABUSE**
31 **TREATMENT SERVICES FUND.**

1 8-1102.

**2 (A) EACH COUNTY SHALL ESTABLISH A COUNTY RESIDENTIAL DRUG
3 ABUSE TREATMENT SERVICES FUND.**

**4 (B) A FUND ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION
5 MAY BE USED ONLY FOR THE PROVISION OF RESIDENTIAL DRUG ABUSE
6 TREATMENT SERVICES IN THE COUNTY.**

7 8-1103.

8 (A) EACH FUND IS A SPECIAL, NONLAPSING FUND.

9 (B) EACH FUND CONSISTS OF:

**10 (1) THE FINES IMPOSED BY AND RECOGNIZANCES FORFEITED TO
11 THE COURT FOR VIOLATIONS OF § 5-601 OF THE CRIMINAL LAW ARTICLE
12 COMMITTED IN THE COUNTY IN WHICH THE FUND WAS ESTABLISHED;**

13 (2) MONEY RECEIVED FROM OTHER SOURCES; AND

14 (3) EARNINGS FROM INVESTMENT OF MONEY IN THE FUND.

15 (C) (1) THE CHIEF FINANCIAL OFFICER FOR A COUNTY SHALL:

**16 (I) SEPARATELY HOLD AND ACCOUNT FOR THE FUND IN
17 THE COUNTY; AND**

**18 (II) INVEST AND REINVEST THE MONEY OF THE FUND IN
19 THE SAME MANNER AS OTHER COUNTY FUNDS.**

**20 (2) ANY INVESTMENT EARNINGS OF A FUND SHALL BE CREDITED
21 TO THE FUND.**

**22 (3) EACH FUND IS SUBJECT TO AUDIT BY THE STATE OR THE
23 COUNTY IN WHICH THE FUND IS ESTABLISHED.**

**24 (D) DISBURSEMENTS FROM EACH FUND SHALL SUPPLEMENT AND MAY
25 NOT SUBSTITUTE FOR ANY OTHER FUNDS APPROPRIATED IN THE STATE OR
26 COUNTY BUDGET FOR RESIDENTIAL DRUG ABUSE TREATMENT SERVICES.**

27 8-1104.

1 **THE CHIEF FINANCIAL OFFICER FOR A COUNTY SHALL PAY OUT MONEY**
2 **FROM THE FUND AS APPROVED IN THE COUNTY BUDGET.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2008.