

**HB0291/868277/1**

BY: Judicial Proceedings Committee

AMENDMENTS TO HOUSE BILL 291  
(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Public Health” and substitute “Medical Marijuana - Affirmative Defenses”.

On page 3, in line 10, before “requiring” insert “establishing that, in a prosecution for the use or possession of marijuana, or the use or possession with intent to use drug paraphernalia related to marijuana, it is an affirmative defense that the defendant used or possessed marijuana or drug paraphernalia related to marijuana because the defendant has a certain debilitating medical condition, the debilitating medical condition is severe and resistant to conventional medicine, and marijuana is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition; providing that a certain affirmative defense may not be used under certain circumstances; prohibiting the State Board of Physicians from reprimanding, placing on probation, or suspending or revoking a license of a licensee for providing a patient with a written statement, medical records, or testimony that, in the licensee’s professional opinion, the patient is likely to receive therapeutic or palliative relief from marijuana; providing that this Act shall not be deemed to release a licensee from the duty to exercise a professional standard of care when evaluating a patient’s medical condition;”; in line 19, after “Act;” insert “defining certain terms;”; and after line 20, insert:

“BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 5–601 and 5–619

Annotated Code of Maryland

(2002 Volume and 2010 Supplement)

BY adding to

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Article – Health Occupations  
Section 14–404(c)  
Annotated Code of Maryland  
(2009 Replacement Volume and 2010 Supplement)”.

On page 4, in line 2, after “That” insert “the Laws of Maryland read as follows:”.

AMENDMENT NO. 2

On page 4, after line 6, insert:

“Article – Criminal Law

5–601.

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

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

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

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

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

(iii) the concealment of a material fact;

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

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

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

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

(c) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

(2) A person whose violation of this section involves the use or possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

(3) (i) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

2. “BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP” MEANS A RELATIONSHIP IN WHICH THE PHYSICIAN HAS ONGOING RESPONSIBILITY FOR THE ASSESSMENT, CARE, AND TREATMENT OF A PATIENT’S MEDICAL CONDITION.

3. “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

(Over)

PHYSICIAN WITH WHOM THE PATIENT HAS A BONA FIDE PHYSICIAN-PATIENT  
RELATIONSHIP:

- A. CACHEXIA OR WASTING SYNDROME;
- B. SEVERE OR CHRONIC PAIN;
- C. SEVERE NAUSEA;
- D. SEIZURES;
- E. SEVERE AND PERSISTENT MUSCLE SPASMS; OR
- F. ANY OTHER CONDITION THAT IS SEVERE AND  
RESISTANT TO CONVENTIONAL MEDICINE.

(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.

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

(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:

A. THE DEFENDANT HAS A DEBILITATING MEDICAL CONDITION THAT HAS BEEN DIAGNOSED BY A PHYSICIAN WITH WHOM THE DEFENDANT HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP;

B. THE DEBILITATING MEDICAL CONDITION IS SEVERE AND RESISTANT TO CONVENTIONAL MEDICINE; AND

C. MARIJUANA IS LIKELY TO PROVIDE THE DEFENDANT WITH THERAPEUTIC OR PALLIATIVE RELIEF FROM THE DEBILITATING MEDICAL CONDITION.

2. THE AFFIRMATIVE DEFENSE MAY NOT BE USED IF THE DEFENDANT WAS:

A. USING MARIJUANA IN A PUBLIC PLACE; OR

B. IN POSSESSION OF MORE THAN 1 OUNCE OF MARIJUANA.

5-619.

(a) To determine whether an object is drug paraphernalia, a court shall consider, among other logically relevant factors:

(1) any statement by an owner or a person in control of the object concerning its use;

(2) any prior conviction of an owner or a person in control of the object under a State or federal law relating to a controlled dangerous substance;

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- (3) the proximity of the object, in time and space, to a direct violation of this section or to a controlled dangerous substance;
- (4) a residue of a controlled dangerous substance on the object;
- (5) direct or circumstantial evidence of the intent of an owner or a person in control of the object to deliver it to another who, the owner or the person knows or should reasonably know, intends to use the object to facilitate a violation of this section;
- (6) any instructions, oral or written, provided with the object concerning its use;
- (7) any descriptive materials accompanying the object that explain or depict its use;
- (8) national and local advertising concerning use of the object;
- (9) the manner in which the object is displayed for sale;
- (10) whether the owner or a person in control of the object is a licensed distributor or dealer of tobacco products or other legitimate supplier of related items to the community;
- (11) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;
- (12) the existence and scope of legitimate uses for the object in the community; and
- (13) expert testimony concerning use of the object.

(b) The innocence of an owner or a person in control of the object as to a direct violation of this section does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(c) (1) Unless authorized under this title, a person may not use or possess with intent to use drug paraphernalia to:

(i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or

(ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to:

(i) for a first violation, a fine not exceeding \$500; and

(ii) for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(3) A person who is convicted of violating this subsection for the first time and who previously has been convicted of violating subsection (d)(4) of this section is subject to the penalty specified under paragraph (2)(ii) of this subsection.

(4) (i) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

2. "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP" MEANS A RELATIONSHIP IN WHICH THE PHYSICIAN HAS ONGOING

RESPONSIBILITY FOR THE ASSESSMENT, CARE, AND TREATMENT OF A PATIENT'S MEDICAL CONDITION.

3. "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:

A. CACHEXIA OR WASTING SYNDROME;

B. SEVERE OR CHRONIC PAIN;

C. SEVERE NAUSEA;

D. SEIZURES;

E. SEVERE AND PERSISTENT MUSCLE SPASMS; OR

F. ANY OTHER CONDITION THAT IS SEVERE AND RESISTANT TO CONVENTIONAL MEDICINE.

(II) 1. In a prosecution under this subsection involving drug paraphernalia related to marijuana, the defendant may introduce and the court shall consider as a mitigating factor any evidence of medical necessity.

[(ii)] 2. Notwithstanding paragraph (2) of this subsection, if the court finds that the person used or possessed drug paraphernalia related to marijuana because of medical necessity, on conviction of a violation of this subsection,



the maximum penalty that the court may impose on the person is a fine not exceeding \$100.

(III) 1. IN A PROSECUTION UNDER THIS SUBSECTION INVOLVING DRUG PARAPHERNALIA RELATED TO MARIJUANA, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT USED OR POSSESSED DRUG PARAPHERNALIA RELATED TO MARIJUANA BECAUSE:

A. THE DEFENDANT HAS A DEBILITATING MEDICAL CONDITION THAT HAS BEEN DIAGNOSED BY A PHYSICIAN WITH WHOM THE DEFENDANT HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP;

B. THE DEBILITATING MEDICAL CONDITION IS SEVERE AND RESISTANT TO CONVENTIONAL MEDICINE; AND

C. MARIJUANA IS LIKELY TO PROVIDE THE DEFENDANT WITH THERAPEUTIC OR PALLIATIVE RELIEF FROM THE DEBILITATING MEDICAL CONDITION.

2. THE AFFIRMATIVE DEFENSE MAY NOT BE USED IF THE DEFENDANT WAS:

A. USING MARIJUANA IN A PUBLIC PLACE; OR

B. IN POSSESSION OF MORE THAN 1 OUNCE OF MARIJUANA.

(d) (1) Unless authorized under this title, a person may not deliver or sell, or manufacture or possess with intent to deliver or sell, drug paraphernalia, knowing,

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or under circumstances where one reasonably should know, that the drug paraphernalia will be used to:

(i) plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled dangerous substance; or

(ii) inject, ingest, inhale, or otherwise introduce into the human body a controlled dangerous substance.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to:

(i) for a first violation, a fine not exceeding \$500; and

(ii) for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(3) A person who is convicted of violating this subsection for the first time and who previously has been convicted of violating paragraph (4) of this subsection is subject to imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(4) If a person who is at least 18 years old violates paragraph (1) of this subsection by delivering drug paraphernalia to a minor who is at least 3 years younger than the person, the person is guilty of a separate misdemeanor and on conviction is subject to imprisonment not exceeding 8 years or a fine not exceeding \$15,000 or both.

(e) (1) A person may not advertise in a newspaper, magazine, handbill, poster, sign, mailing, or other writing or publication, or by sound truck, knowing, or under circumstances where one reasonably should know, that the purpose of the

advertisement, wholly or partly, is to promote the sale or delivery of drug paraphernalia.

(2) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to:

(i) for a first violation, a fine not exceeding \$500; and

(ii) for each subsequent violation, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

Article – Health Occupations

14–404.

**(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE BOARD MAY NOT REPRIMAND, PLACE ON PROBATION, OR SUSPEND OR REVOKE A LICENSE OF A LICENSEE FOR PROVIDING A PATIENT WITH A WRITTEN STATEMENT, MEDICAL RECORDS, OR TESTIMONY THAT, IN THE LICENSEE’S PROFESSIONAL OPINION, THE PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM MARIJUANA.**

**(2) NOTHING IN THIS SUBSECTION SHALL BE DEEMED TO RELEASE A LICENSEE FROM THE DUTY TO EXERCISE A PROFESSIONAL STANDARD OF CARE WHEN EVALUATING A PATIENT’S MEDICAL CONDITION.”.**

AMENDMENT NO. 3

On page 24, after line 24, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That:”.

(Over)

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**Amendments to HB 291**  
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**JPR**

On page 27, in line 16, strike "2." and substitute "3.".