

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 308  
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 2, strike “Public Health –”; and in the same line, after “Marijuana” insert “ – Affirmative Defenses – Maryland Medical Marijuana Model Program Workgroup”.

On pages 1 and 2, strike beginning with “making” in line 3 on page 1 down through “use” in line 45 on page 2 and substitute “establishing that, in a prosecution for the use or possession of marijuana, the defendant may introduce and the court shall consider as an affirmative defense certain evidence of medical necessity; requiring a court to enter a finding of not guilty if the court finds that a person possessed marijuana because of a medical necessity; establishing that, in a prosecution for the use of or possession with intent to use drug paraphernalia related to marijuana, the defendant may introduce and the court shall consider as an affirmative defense certain evidence of medical necessity; requiring a court to enter a finding of not guilty if the court finds that a person used or possessed with intent to use drug paraphernalia related to marijuana or manufactured marijuana for personal use because of a medical necessity; requiring the court to make a certain finding of medical necessity if the defendant establishes certain facts by clear and convincing evidence; establishing that certain evidence may include certain statements, records, or testimony; 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; requiring the Secretary of Health and Mental Hygiene to convene a Work Group to develop a model program to facilitate patient access to marijuana for medical

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purposes; providing for the membership and staffing of the Work Group; providing for the designation of the chair of the Work Group; prohibiting a member of the Work Group from receiving certain compensation; authorizing a member of the Work Group to receive certain reimbursement; specifying the duties of the Work Group; requiring the Work Group to make a certain report to certain committees of the General Assembly on or before a certain date; providing for the termination of a certain provision of this Act; and generally relating to medical marijuana”.

On pages 2 and 3, strike in their entirety the lines beginning with line 46 on page 2 through line 20 on page 3, inclusive, and substitute:

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

On page 3, strike beginning with “Section(s)” in line 22 down through “That” in line 25.

**AMENDMENT NO. 2**

On pages 3 through 23, strike in their entirety the lines beginning with line 28 on page 3 through line 28 on page 23, inclusive, and substitute:

“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.

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(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) In a prosecution for the use or possession of marijuana, the defendant may introduce and the court shall consider as [a mitigating factor] AN AFFIRMATIVE DEFENSE any evidence of medical necessity.

(ii) 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] THE COURT SHALL ENTER A FINDING OF NOT GUILTY.

(III) 1. THE COURT SHALL FIND THAT MARIJUANA WAS USED OR POSSESSED BECAUSE OF MEDICAL NECESSITY IF THE DEFENDANT ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS SUFFERING FROM AN ILLNESS OR AILMENT, OR SYMPTOMS CREATED BY TREATMENT OF AN ILLNESS OR AILMENT, FOR WHICH THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM MARIJUANA.

2. EVIDENCE OF MEDICAL NECESSITY MAY INCLUDE:

A. A WRITTEN STATEMENT FROM A LICENSED PHYSICIAN STATING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM MARIJUANA;

B. MEDICAL RECORDS DEMONSTRATING ILLNESS OR AILMENT, OR SYMPTOMS CREATED BY TREATMENT OF AN ILLNESS OR AILMENT, FOR WHICH THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM MARIJUANA; OR

C. TESTIMONY BY THE DEFENDANT'S LICENSED PHYSICIAN THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM 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;

(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;

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(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) 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] AN AFFIRMATIVE DEFENSE any evidence of medical necessity.

(ii) 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] THE COURT SHALL ENTER A FINDING OF NOT GUILTY.

(III) 1. THE COURT SHALL FIND THAT THE DRUG PARAPHERNALIA RELATED TO MARIJUANA WAS USED OR POSSESSED BECAUSE OF MEDICAL NECESSITY IF THE DEFENDANT ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT IS SUFFERING FROM AN ILLNESS

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OR AILMENT, OR SYMPTOMS CREATED BY TREATMENT OF AN ILLNESS OR AILMENT, FOR WHICH THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM MARIJUANA.

2. EVIDENCE OF MEDICAL NECESSITY MAY INCLUDE:

A. A WRITTEN STATEMENT FROM A LICENSED PHYSICIAN STATING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM MARIJUANA;

B. MEDICAL RECORDS DEMONSTRATING ILLNESS OR AILMENT, OR SYMPTOMS CREATED BY TREATMENT OF AN ILLNESS OR AILMENT, FOR WHICH THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM MARIJUANA; OR

C. TESTIMONY BY THE DEFENDANT'S LICENSED PHYSICIAN THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, THE DEFENDANT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE RELIEF FROM 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, 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

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(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.**

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Secretary of Health and Mental Hygiene shall convene a Work Group to develop a model program to facilitate patient access to marijuana for medical purposes.

(b) The Work Group shall include the following members:

(1) two members of the Senate of Maryland, appointed by the President of the Senate;

- (2) two members of the House of Delegates, appointed by the Speaker of the House;
- (3) the Secretary of Health and Mental Hygiene, or the Secretary's designee; and
- (4) the following members, appointed by the Governor:
  - (i) one member of the public who supports the use of marijuana for medical purposes;
  - (ii) one member of the public designated by the National Coalition on Alcohol and Other Drug Dependencies;
  - (iii) three physicians licensed in the State, who specialize in addiction, pain, oncology, neurology, or clinical research;
  - (iv) one nurse licensed in the State, with experience in hospice care, nominated by a State research institution or trade association;
  - (v) one pharmacist licensed in the State, nominated by a State research institution or trade association;
  - (vi) one scientist with experience in the science of marijuana, nominated by a State research institution;
  - (vii) one representative of the Maryland State's Attorneys' Association;
  - (viii) one representative of the Maryland Chiefs of Police;
  - (ix) one representative of the Maryland Sheriffs' Association;

(x) one representative of the Maryland Fraternal Order of Police; and

(xi) an attorney who is knowledgeable about medical marijuana laws in the United States.

(c) The Governor shall designate the chair of the Work Group.

(d) The Department of Health and Mental Hygiene and the Governor's Office of Crime Control and Prevention shall provide staff for the Work Group.

(e) A member of the Work Group:

(1) may not receive compensation as a member of the Work Group;  
but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) (1) (i) The Work Group shall assess the feasibility of and develop a State-specific proposal, including draft legislation, for providing access to marijuana to patients in the State for medical purposes.

(ii) The proposal required under subparagraph (i) of this paragraph shall strongly consider a program model that is analogous to a compassionate use protocol for unapproved drugs.

(2) The draft legislation required under paragraph (1) of this subsection shall:

(i) outline the key elements of the program model; and

(ii) include provisions that:

1. provide for oversight and responsibility by programs located in academic medical research institutions in the State;

2. provide for the licensing of a program by the State;

3. establish a program application and review process that includes consideration of best practices and procedures for obtaining review input that is external to the Department of Health and Mental Hygiene;

4. expand the base of information on the use of marijuana for medical purposes on a scientific and policy implementation basis; and

5. implement a program as soon as feasible and incorporate the goals of:

A. regulations adopted and applications received by September 1, 2012; and

B. program operation beginning in January 2013.

(3) The Work Group shall provide guidance on the criteria for assessing program applications, including an applying program's plans for:

(i) determining the medical conditions to be treated and the duration of therapy proposed;

(ii) identifying sources of marijuana;

(iii) determining patient eligibility and informed consent;

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- (iv) conducting any associated research projects;
- (v) reporting data and outcomes;
- (vi) instituting strict controls against illegal diversion; and
- (vii) securing grants or other sources of funding to facilitate the affordability of the program.

(g) The Work Group may consult with experts and stakeholders in conducting its duties.

(h) On or before December 1, 2011, the Secretary shall report, in accordance with § 2-1246 of the State Government Article, to the Senate Judicial Proceedings Committee, the House Health and Government Operations Committee, and the House Judiciary Committee on the findings of the Work Group, including draft legislation that establishes a program to provide access to marijuana to patients in the State for medical purposes under a model analogous to a compassionate use protocol for unapproved drugs.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2011. Section 2 of this Act shall remain effective for a period of 1 year and, at the end of May 31, 2012, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.”.