

HOUSE BILL 350

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2lr0457
CF SB 214

By: **Delegates Clippinger, Alston, Anderson, Bobo, Carter, Cluster, Cullison, Dumais, Dwyer, Glenn, Hammen, Kaiser, K. Kelly, Luedtke, McDermott, McHale, McIntosh, Mitchell, Niemann, B. Robinson, Rosenberg, Simmons, Smigiel, Tarrant, Valentino-Smith, Waldstreicher, Washington, Wilson, and Zucker**

Introduced and read first time: January 30, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – De Minimus Quantity**

3 FOR the purpose of establishing a reduced penalty for a person convicted of the use or
4 possession of less than a certain quantity of marijuana; providing that, with a
5 certain exception, the use or possession of less than a certain quantity of
6 marijuana may not be considered a lesser included crime of any other crime;
7 and generally relating to penalties for possession of marijuana.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Law
10 Section 5–601
11 Annotated Code of Maryland
12 (2002 Volume and 2011 Supplement)

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

15 **Article – Criminal Law**

16 5–601.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

7 (iii) the concealment of a material fact;

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

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

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

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

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

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

22 **(II) 1. A PERSON CONVICTED OF THE USE OR**
23 **POSSESSION OF LESS THAN 14 GRAMS OF MARIJUANA IS SUBJECT TO**
24 **IMPRISONMENT NOT EXCEEDING 90 DAYS.**

25 **2. UNLESS SPECIFICALLY CHARGED BY THE STATE,**
26 **THE USE OR POSSESSION OF LESS THAN 14 GRAMS OF MARIJUANA UNDER**
27 **SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A**
28 **LESSER INCLUDED CRIME OF ANY OTHER CRIME.**

29 (3) (i) 1. In this paragraph the following words have the
30 meanings indicated.

31 2. “Bona fide physician–patient relationship” means a
32 relationship in which the physician has ongoing responsibility for the assessment,
33 care, and treatment of a patient’s medical condition.

1 3. “Debilitating medical condition” means a chronic or
2 debilitating disease or medical condition or the treatment of a chronic or debilitating
3 disease or medical condition that produces one or more of the following, as documented
4 by a physician with whom the patient has a bona fide physician–patient relationship:

- 5 A. cachexia or wasting syndrome;
- 6 B. severe or chronic pain;
- 7 C. severe nausea;
- 8 D. seizures;
- 9 E. severe and persistent muscle spasms; or
- 10 F. any other condition that is severe and resistant to
11 conventional medicine.

12 (ii) 1. In a prosecution for the use or possession of
13 marijuana, the defendant may introduce and the court shall consider as a mitigating
14 factor any evidence of medical necessity.

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

19 (iii) 1. In a prosecution for the use or possession of
20 marijuana under this section, it is an affirmative defense that the defendant used or
21 possessed marijuana because:

22 A. the defendant has a debilitating medical condition
23 that has been diagnosed by a physician with whom the defendant has a bona fide
24 physician–patient relationship;

25 B. the debilitating medical condition is severe and
26 resistant to conventional medicine; and

27 C. marijuana is likely to provide the defendant with
28 therapeutic or palliative relief from the debilitating medical condition.

29 2. The affirmative defense may not be used if the
30 defendant was:

31 A. using marijuana in a public place; or

