

Chapter 62

(House Bill 180)

AN ACT concerning

Medical Marijuana – Caregiver – Affirmative Defense

FOR the purpose of establishing that it is an affirmative defense to a prosecution for the possession of marijuana or the possession of certain drug paraphernalia that the marijuana or drug paraphernalia was intended for medical use by an individual with a certain debilitating medical condition for whom the defendant is a certain caregiver; prohibiting a certain defendant from asserting a certain affirmative defense unless, ~~at least a certain number of days before trial,~~ the defendant notifies the State's Attorney of the defendant's intention to assert the affirmative defense and provides the State's Attorney with certain documentation in accordance with certain rules of discovery; prohibiting a certain affirmative defense from being used under certain circumstances; defining a certain term; and generally relating to the medical use of marijuana.

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 5–601(c)(3) and 5–619(c)(4)
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

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

Article – Criminal Law

5–601.

(c) (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. “CAREGIVER” MEANS AN INDIVIDUAL DESIGNATED BY A PATIENT WITH A DEBILITATING MEDICAL CONDITION TO PROVIDE PHYSICAL OR MEDICAL ASSISTANCE TO THE PATIENT, INCLUDING ASSISTING WITH THE MEDICAL USE OF MARIJUANA, WHO:

- A. IS A RESIDENT OF THE STATE;**
- B. IS AT LEAST 21 YEARS OLD;**
- C. IS AN IMMEDIATE FAMILY MEMBER, A SPOUSE, OR A DOMESTIC PARTNER OF THE PATIENT;**
- D. HAS NOT BEEN CONVICTED OF A CRIME OF VIOLENCE AS DEFINED IN § 14–101 OF THIS ARTICLE;**
- E. HAS NOT BEEN CONVICTED OF A VIOLATION OF A STATE OR FEDERAL CONTROLLED DANGEROUS SUBSTANCES LAW;**
- F. HAS NOT BEEN CONVICTED OF A CRIME OF MORAL TURPITUDE;**
- G. HAS BEEN DESIGNATED AS CAREGIVER BY THE PATIENT IN WRITING THAT HAS BEEN PLACED IN THE PATIENT’S MEDICAL RECORD PRIOR TO ARREST;**
- H. IS THE ONLY INDIVIDUAL DESIGNATED BY THE PATIENT TO SERVE AS CAREGIVER; AND**
- I. IS NOT SERVING AS CAREGIVER FOR ANY OTHER PATIENT.**

[3.] 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:

- 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.

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. A. IN A PROSECUTION FOR THE POSSESSION OF MARIJUANA UNDER THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT POSSESSED MARIJUANA BECAUSE THE MARIJUANA WAS INTENDED FOR MEDICAL USE BY AN INDIVIDUAL WITH A DEBILITATING MEDICAL CONDITION FOR WHOM THE DEFENDANT IS A CAREGIVER.

B. A DEFENDANT MAY NOT ASSERT THE AFFIRMATIVE DEFENSE UNDER THIS SUBSUBPARAGRAPH UNLESS, ~~AT LEAST 30 DAYS BEFORE TRIAL,~~ 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 DOCUMENTATION IN SUPPORT OF THE AFFIRMATIVE DEFENSE IN ACCORDANCE WITH THE RULES OF DISCOVERY PROVIDED IN MARYLAND RULES 4-262 AND 4-263.

[2.] **3. [The] AN affirmative defense UNDER THIS SUBPARAGRAPH may not be used if the defendant was:**

A. using marijuana in a public place **OR ASSISTING THE INDIVIDUAL FOR WHOM THE DEFENDANT IS A CAREGIVER IN USING THE MARIJUANA IN A PUBLIC PLACE;** or

B. in possession of more than 1 ounce of marijuana.

5–619.

(c) (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. “CAREGIVER” MEANS AN INDIVIDUAL DESIGNATED BY A PATIENT WITH A DEBILITATING MEDICAL CONDITION TO PROVIDE PHYSICAL OR MEDICAL ASSISTANCE TO THE PATIENT, INCLUDING ASSISTING WITH THE MEDICAL USE OF MARIJUANA, WHO:

A. IS A RESIDENT OF THE STATE;

B. IS AT LEAST 21 YEARS OLD;

C. IS AN IMMEDIATE FAMILY MEMBER, A SPOUSE, OR A DOMESTIC PARTNER OF THE PATIENT;

D. HAS NOT BEEN CONVICTED OF A CRIME OF VIOLENCE AS DEFINED IN § 14–101 OF THIS ARTICLE;

E. HAS NOT BEEN CONVICTED OF A VIOLATION OF A STATE OR FEDERAL CONTROLLED DANGEROUS SUBSTANCES LAW;

F. HAS NOT BEEN CONVICTED OF A CRIME OF MORAL TURPITUDE;

G. HAS BEEN DESIGNATED AS CAREGIVER BY THE PATIENT IN WRITING THAT HAS BEEN PLACED IN THE PATIENT’S MEDICAL RECORD PRIOR TO ARREST;

H. IS THE ONLY INDIVIDUAL DESIGNATED BY THE PATIENT TO SERVE AS CAREGIVER; AND

I. IS NOT SERVING AS CAREGIVER FOR ANY OTHER PATIENT.

[3.] 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:

- 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.

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. A. IN A PROSECUTION UNDER THIS SUBSECTION INVOLVING DRUG PARAPHERNALIA RELATED TO MARIJUANA, IT IS AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT POSSESSED DRUG PARAPHERNALIA RELATED TO MARIJUANA BECAUSE THE DRUG PARAPHERNALIA RELATED TO MARIJUANA WAS INTENDED FOR MEDICAL USE

BY AN INDIVIDUAL WITH A DEBILITATING MEDICAL CONDITION FOR WHOM THE DEFENDANT IS A CAREGIVER.

B. A DEFENDANT MAY NOT ASSERT THE AFFIRMATIVE DEFENSE UNDER THIS SUBSUBPARAGRAPH UNLESS, ~~AT LEAST 30 DAYS BEFORE TRIAL,~~ 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 DOCUMENTATION IN SUPPORT OF THE AFFIRMATIVE DEFENSE IN ACCORDANCE WITH THE RULES OF DISCOVERY PROVIDED IN MARYLAND RULES 4-262 AND 4-263.

[2.] 3. [The] AN affirmative defense UNDER THIS SUBPARAGRAPH may not be used if the defendant was:

A. using marijuana in a public place OR ASSISTING THE INDIVIDUAL FOR WHOM THE DEFENDANT IS A CAREGIVER IN USING THE MARIJUANA IN A PUBLIC PLACE; or

B. in possession of more than 1 ounce of marijuana.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2013.

Approved by the Governor, April 9, 2013.