

# HOUSE BILL 180

E1, J1  
HB 1809/1SS12 – HRU

3lr1950  
CF SB 580

By: **Delegates Glenn, Morhaim, Anderson, Carter, Conaway, Mitchell, Oaks,  
B. Robinson, and Vallario**

Introduced and read first time: January 21, 2013

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 19, 2013

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

### 2 **Medical Marijuana – Caregiver – Affirmative Defense**

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

14 BY repealing and reenacting, with amendments,  
15 Article – Criminal Law  
16 Section 5–601(c)(3) and 5–619(c)(4)  
17 Annotated Code of Maryland  
18 (2012 Replacement Volume and 2012 Supplement)

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

### 21 **Article – Criminal Law**

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 5-601.

2 (c) (3) (i) 1. In this paragraph the following words have the  
3 meanings indicated.

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

7 **3. “CAREGIVER” MEANS AN INDIVIDUAL**  
8 **DESIGNATED BY A PATIENT WITH A DEBILITATING MEDICAL CONDITION TO**  
9 **PROVIDE PHYSICAL OR MEDICAL ASSISTANCE TO THE PATIENT, INCLUDING**  
10 **ASSISTING WITH THE MEDICAL USE OF MARIJUANA, WHO:**

11 **A. IS A RESIDENT OF THE STATE;**

12 **B. IS AT LEAST 21 YEARS OLD;**

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

15 **D. HAS NOT BEEN CONVICTED OF A CRIME OF**  
16 **VIOLENCE AS DEFINED IN § 14-101 OF THIS ARTICLE;**

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

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

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

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

26 **I. IS NOT SERVING AS CAREGIVER FOR ANY OTHER**  
27 **PATIENT.**

28 [3.] 4. “Debilitating medical condition” means a chronic or  
29 debilitating disease or medical condition or the treatment of a chronic or debilitating  
30 disease or medical condition that produces one or more of the following, as documented  
31 by a physician with whom the patient has a bona fide physician–patient relationship:

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

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

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

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

18                   A.   the defendant has a debilitating medical condition  
19 that has been diagnosed by a physician with whom the defendant has a bona fide  
20 physician–patient relationship;

21                   B.   the debilitating medical condition is severe and  
22 resistant to conventional medicine; and

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

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

30                   **B.   A DEFENDANT MAY NOT ASSERT THE**  
31 **AFFIRMATIVE DEFENSE UNDER THIS SUBSUBPARAGRAPH UNLESS, ~~AT LEAST 30~~**  
32 **~~DAYS BEFORE TRIAL,~~ THE DEFENDANT NOTIFIES THE STATE’S ATTORNEY OF**

1 THE DEFENDANT'S INTENTION TO ASSERT THE AFFIRMATIVE DEFENSE AND  
 2 PROVIDES THE STATE'S ATTORNEY WITH ALL DOCUMENTATION IN SUPPORT OF  
 3 THE AFFIRMATIVE DEFENSE IN ACCORDANCE WITH THE RULES OF DISCOVERY  
 4 PROVIDED IN MARYLAND RULES 4-262 AND 4-263.

5 [2.] 3. [The] AN affirmative defense UNDER THIS  
 6 SUBPARAGRAPH may not be used if the defendant was:

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

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

11 5-619.

12 (c) (4) (i) 1. In this paragraph the following words have the  
 13 meanings indicated.

14 2. "Bona fide physician-patient relationship" means a  
 15 relationship in which the physician has ongoing responsibility for the assessment,  
 16 care, and treatment of a patient's medical condition.

17 3. "CAREGIVER" MEANS AN INDIVIDUAL  
 18 DESIGNATED BY A PATIENT WITH A DEBILITATING MEDICAL CONDITION TO  
 19 PROVIDE PHYSICAL OR MEDICAL ASSISTANCE TO THE PATIENT, INCLUDING  
 20 ASSISTING WITH THE MEDICAL USE OF MARIJUANA, WHO:

21 A. IS A RESIDENT OF THE STATE;

22 B. IS AT LEAST 21 YEARS OLD;

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

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

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

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

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

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

6                   **I. IS NOT SERVING AS CAREGIVER FOR ANY OTHER**  
7 **PATIENT.**

8                   [3.] 4. “Debilitating medical condition” means a chronic or  
9 debilitating disease or medical condition or the treatment of a chronic or debilitating  
10 disease or medical condition that produces one or more of the following, as documented  
11 by a physician with whom the patient has a bona fide physician–patient relationship:

12                   A. cachexia or wasting syndrome;

13                   B. severe or chronic pain;

14                   C. severe nausea;

15                   D. seizures;

16                   E. severe and persistent muscle spasms; or

17                   F. any other condition that is severe and resistant to  
18 conventional medicine.

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

22                   2. Notwithstanding paragraph (2) of this subsection, if  
23 the court finds that the person used or possessed drug paraphernalia related to  
24 marijuana because of medical necessity, on conviction of a violation of this subsection,  
25 the maximum penalty that the court may impose on the person is a fine not exceeding  
26 \$100.

27                   (iii) 1. In a prosecution under this subsection involving drug  
28 paraphernalia related to marijuana, it is an affirmative defense that the defendant  
29 used or possessed drug paraphernalia related to marijuana because:

30                   A. the defendant has a debilitating medical condition  
31 that has been diagnosed by a physician with whom the defendant has a bona fide  
32 physician–patient relationship;

1                   B. the debilitating medical condition is severe and  
2 resistant to conventional medicine; and

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

5                   **2. A. IN A PROSECUTION UNDER THIS**  
6 **SUBSECTION INVOLVING DRUG PARAPHERNALIA RELATED TO MARIJUANA, IT IS**  
7 **AN AFFIRMATIVE DEFENSE THAT THE DEFENDANT POSSESSED DRUG**  
8 **PARAPHERNALIA RELATED TO MARIJUANA BECAUSE THE DRUG**  
9 **PARAPHERNALIA RELATED TO MARIJUANA WAS INTENDED FOR MEDICAL USE**  
10 **BY AN INDIVIDUAL WITH A DEBILITATING MEDICAL CONDITION FOR WHOM THE**  
11 **DEFENDANT IS A CAREGIVER.**

12                   **B. A DEFENDANT MAY NOT ASSERT THE**  
13 **AFFIRMATIVE DEFENSE UNDER THIS SUBSUBPARAGRAPH UNLESS, ~~AT LEAST 30~~**  
14 **~~DAYS BEFORE TRIAL,~~ THE DEFENDANT NOTIFIES THE STATE'S ATTORNEY OF**  
15 **THE DEFENDANT'S INTENTION TO ASSERT THE AFFIRMATIVE DEFENSE AND**  
16 **PROVIDES THE STATE'S ATTORNEY WITH ALL DOCUMENTATION IN SUPPORT OF**  
17 **THE AFFIRMATIVE DEFENSE IN ACCORDANCE WITH THE RULES OF DISCOVERY**  
18 **PROVIDED IN MARYLAND RULES 4-262 AND 4-263.**

19                   [2.] **3. [The] AN affirmative defense UNDER THIS**  
20 **SUBPARAGRAPH may not be used if the defendant was:**

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

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

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