

# SENATE BILL 364

E1, D3

4lr1804

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By: **Senators Zirkin and Kittleman**

Introduced and read first time: January 22, 2014

Assigned to: Judicial Proceedings

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Committee Report: Favorable

Senate action: Adopted with floor amendments

Read second time: March 9, 2014

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

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – Civil Offense**

3 FOR the purpose of altering the penalty for the use or possession of less than a certain  
4 quantity of marijuana; making the use or possession of less than a certain  
5 quantity of marijuana a civil offense; establishing that a person who violates  
6 this Act may be issued a certain citation; requiring a court to summon a certain  
7 person to appear in court under certain circumstances; authorizing a court to  
8 order a person convicted of a violation of this Act for a third or subsequent time  
9 to attend a certain program; authorizing a police officer to issue a certain  
10 citation under certain circumstances; establishing that a certain violation of this  
11 Act is not a criminal conviction and does not impose any of the civil disabilities  
12 that may result from a criminal conviction; establishing certain requirements  
13 for a citation issued under this Act; providing that persons who receive a certain  
14 citation may pay the civil penalty or may elect to stand trial in the District  
15 Court; requiring a civil penalty collected under this Act to be remitted to the  
16 Department of Health and Mental Hygiene; requiring the Department of Health  
17 and Mental Hygiene to use certain money for certain purposes; requiring the  
18 District Court to prescribe a certain form of citation; requiring the Chief Judge  
19 of the District Court to establish a certain schedule for the prepayment of a  
20 certain fine; providing that a minor who violates certain provisions of this Act is  
21 subject to certain procedures and dispositions; prohibiting a certain citation for  
22 a violation of certain provisions of this Act from being subject to public  
23 inspection or included on a certain public Web site; authorizing a certain law  
24 enforcement officer to issue a citation to a child for a violation of a certain  
25 provision of this Act under certain circumstances; authorizing a court to order a

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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 certain child to participate in a certain substance abuse education or  
 2 rehabilitation program under certain circumstances; altering a certain defined  
 3 term; making conforming changes; and generally relating to penalties for  
 4 possession of marijuana.

5 BY repealing and reenacting, with amendments,  
 6 Article – Courts and Judicial Proceedings  
 7 Section 3–8A–01(dd), 3–8A–19(e)(2), ~~and~~ 3–8A–33(a), and 7–302(a)  
 8 Annotated Code of Maryland  
 9 (2013 Replacement Volume and 2013 Supplement)

10 BY repealing and reenacting, without amendments,  
 11 Article – Courts and Judicial Proceedings  
 12 Section 3–8A–19(e)(1)  
 13 Annotated Code of Maryland  
 14 (2013 Replacement Volume and 2013 Supplement)

15 BY adding to  
 16 Article – Courts and Judicial Proceedings  
 17 Section 7–302(g)  
 18 Annotated Code of Maryland  
 19 (2013 Replacement Volume and 2013 Supplement)

20 BY repealing and reenacting, with amendments,  
 21 Article – Criminal Law  
 22 Section 5–601  
 23 Annotated Code of Maryland  
 24 (2012 Replacement Volume and 2013 Supplement)

25 BY adding to  
 26 Article – Criminal Law  
 27 Section 5–601.1  
 28 Annotated Code of Maryland  
 29 (2012 Replacement Volume and 2013 Supplement)

30 BY repealing and reenacting, without amendments,  
 31 Article – Criminal Procedure  
 32 Section 5–212  
 33 Annotated Code of Maryland  
 34 (2008 Replacement Volume and 2013 Supplement)

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

37 **Article – Courts and Judicial Proceedings**

38 3–8A–01.

1 (dd) “Violation” means a violation for which a citation is issued under:

2 (1) § 5–601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE  
3 OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA;

4 [(1)] (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal  
5 Law Article;

6 [(2)] (3) § 10–108 of the Criminal Law Article;

7 [(3)] (4) § 10–132 of the Criminal Law Article; or

8 [(4)] (5) § 26–103 of the Education Article.

9 3–8A–19.

10 (e) (1) (i) Subject to the provisions of subparagraphs (iii) and (iv) of  
11 this paragraph, in making a disposition on a finding that the child has committed the  
12 violation specified in a citation, the court may order the Motor Vehicle Administration  
13 to initiate an action, under the motor vehicle laws, to suspend the driving privilege of  
14 a child licensed to operate a motor vehicle by the Motor Vehicle Administration for a  
15 specified period of not less than 30 days nor more than 90 days.

16 (ii) In this paragraph, “driver’s license” means a license or  
17 permit to drive a motor vehicle that is issued under the laws of this State or any other  
18 jurisdiction.

19 (iii) In making a disposition on a finding that the child has  
20 committed a violation of § 10–113 of the Criminal Law Article specified in a citation  
21 that involved the use of a driver’s license or a document purporting to be a driver’s  
22 license, the court may order the Motor Vehicle Administration to initiate an action  
23 under the Maryland Vehicle Law to suspend the driving privilege of a child licensed to  
24 operate a motor vehicle by the Motor Vehicle Administration:

25 1. For a first offense, for 6 months; and

26 2. For a second or subsequent offense, until the child is  
27 21 years old.

28 (iv) In making a disposition on a finding that the child has  
29 committed a violation under § 26–103 of the Education Article, the court shall order  
30 the Motor Vehicle Administration to initiate an action, under the motor vehicle laws,  
31 to suspend the driving privilege of a child licensed to operate a motor vehicle by the  
32 Motor Vehicle Administration for a specified period of not less than 30 days nor more  
33 than 90 days.

1 (v) If a child subject to a suspension under this subsection does  
 2 not hold a license to operate a motor vehicle on the date of the disposition, the  
 3 suspension shall commence:

4 1. If the child is at least 16 years of age on the date of  
 5 the disposition, on the date of the disposition; or

6 2. If the child is younger than 16 years of age on the date  
 7 of the disposition, on the date the child reaches the child's 16th birthday.

8 (2) In addition to the dispositions under paragraph (1) of this  
 9 subsection, the court also may:

10 (i) Counsel the child or the parent or both, or order the child to  
 11 participate in an alcohol **OR A SUBSTANCE ABUSE** education or rehabilitation  
 12 program that is in the best interest of the child;

13 (ii) Impose a civil fine of not more than \$25 for the first violation  
 14 and a civil fine of not more than \$100 for the second and subsequent violations; or

15 (iii) Order the child to participate in a supervised work program  
 16 for not more than 20 hours for the first violation and not more than 40 hours for the  
 17 second and subsequent violations.

18 3-8A-33.

19 (a) A law enforcement officer authorized to make arrests shall issue a  
 20 citation to a child if the officer has probable cause to believe that the child is violating:

21 **(1) § 5-601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE**  
 22 **OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA;**

23 **[(1)] (2)** § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal  
 24 Law Article;

25 **[(2)] (3)** § 10-108 of the Criminal Law Article;

26 **[(3)] (4)** § 10-132 of the Criminal Law Article; or

27 **[(4)] (5)** § 26-103 of the Education Article.

28 7-302.

29 (a) Except as provided in subsections (b) through [(f)](G) of this section, the  
 30 clerks of the District Court shall:

1                   (1)   Collect costs, fines, forfeitures, or penalties imposed by the court;  
 2 and

3                   (2)   Remit them to the State under a system agreed upon by the Chief  
 4 Judge of the District Court and the Comptroller.

5           **(G) (1) A CIVIL PENALTY COLLECTED BY THE DISTRICT COURT**  
 6 **RESULTING FROM CITATIONS ISSUED UNDER § 5-601(C)(2)(II) OF THE**  
 7 **CRIMINAL LAW ARTICLE SHALL BE REMITTED TO THE DEPARTMENT OF**  
 8 **HEALTH AND MENTAL HYGIENE.**

9                   **(2) THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE MAY**  
 10 **USE MONEY RECEIVED UNDER THIS SUBSECTION ONLY FOR THE PURPOSE OF**  
 11 **FUNDING DRUG TREATMENT AND EDUCATION PROGRAMS.**

#### Article – Criminal Law

12           5-601.

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

14                   (1)   possess or administer to another a controlled dangerous substance,  
 15 unless obtained directly or by prescription or order from an authorized provider acting  
 16 in the course of professional practice; or  
 17

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

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

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

24                           (iii)   the concealment of a material fact;

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

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

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

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

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

7 (2) (i) **[A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF**  
 8 **THIS PARAGRAPH, A** person whose violation of this section involves the use or  
 9 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not  
 10 exceeding \$1,000 or both.

11 (ii) **[1.] 1.** A [person convicted of] **FIRST OR SECOND**  
 12 **VIOLATION OF THIS SECTION INVOLVING** the use or possession of less than 10  
 13 grams of marijuana is [subject to imprisonment not exceeding 90 days or] **A CIVIL**  
 14 **OFFENSE PUNISHABLE BY** a fine not exceeding [\$500 or both] **\$100.**

15 **2. IN ADDITION TO A FINE, A COURT MAY ORDER A**  
 16 **PERSON CONVICTED OF A THIRD OR SUBSEQUENT VIOLATION PUNISHABLE**  
 17 **UNDER THIS SUBPARAGRAPH TO ATTEND A DRUG TREATMENT AND EDUCATION**  
 18 **PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL**  
 19 **HYGIENE.**

20 [2. Unless specifically charged by the State, the use or  
 21 possession of less than 10 grams of marijuana under subparagraph 1 of this  
 22 subparagraph may not be considered a lesser included crime of any other crime.

23 3. If a person is convicted under this subparagraph, the  
 24 court shall stay any sentence imposed that includes an unserved, nonsuspended period  
 25 of imprisonment without requiring an appeal bond:

26 A. until the time for filing an appeal has expired; and

27 B. if an appeal is filed, during the pendency of the  
 28 appeal.]

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.     “Caregiver” means an individual designated by a  
2 patient with a debilitating medical condition to provide physical or medical assistance  
3 to the patient, including assisting with the medical use of marijuana, who:

4                   A.     is a resident of the State;

5                   B.     is at least 21 years old;

6                   C.     is an immediate family member, a spouse, or a  
7 domestic partner of the patient;

8                   D.     has not been convicted of a crime of violence as  
9 defined in § 14–101 of this article;

10                  E.     has not been convicted of a violation of a State or  
11 federal controlled dangerous substances law;

12                  F.     has not been convicted of a crime of moral turpitude;

13                  G.     has been designated as caregiver by the patient in  
14 writing that has been placed in the patient’s medical record prior to arrest;

15                  H.     is the only individual designated by the patient to  
16 serve as caregiver; and

17                  I.     is not serving as caregiver for any other patient.

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

22                  A.     cachexia or wasting syndrome;

23                  B.     severe or chronic pain;

24                  C.     severe nausea;

25                  D.     seizures;

26                  E.     severe and persistent muscle spasms; or

27                  F.     any other condition that is severe and resistant to  
28 conventional medicine.

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

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

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

11 A. the defendant has a debilitating medical condition  
12 that has been diagnosed by a physician with whom the defendant has a bona fide  
13 physician–patient relationship;

14 B. the debilitating medical condition is severe and  
15 resistant to conventional medicine; and

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

18 2. A. In a prosecution for the possession of marijuana  
19 under this section, it is an affirmative defense that the defendant possessed marijuana  
20 because the marijuana was intended for medical use by an individual with a  
21 debilitating medical condition for whom the defendant is a caregiver.

22 B. A defendant may not assert the affirmative defense  
23 under this subparagraph unless the defendant notifies the State’s Attorney of the  
24 defendant’s intention to assert the affirmative defense and provides the State’s  
25 Attorney with all documentation in support of the affirmative defense in accordance  
26 with the rules of discovery provided in Maryland Rules 4–262 and 4–263.

27 3. An affirmative defense under this subparagraph may  
28 not be used if the defendant was:

29 A. using marijuana in a public place or assisting the  
30 individual for whom the defendant is a caregiver in using the marijuana in a public  
31 place; or

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

33 **5–601.1.**

34 (A) A POLICE OFFICER SHALL ISSUE A CITATION TO A PERSON WHO THE  
35 POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE HAS COMMITTED A



1 VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF  
2 LESS THAN 10 GRAMS OF MARIJUANA.

3 (B) (1) A VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE  
4 OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE.

5 (2) ADJUDICATION OF A VIOLATION UNDER § 5-601 OF THIS PART  
6 INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA:

7 (I) IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE;  
8 AND

9 (II) DOES NOT IMPOSE ANY OF THE CIVIL DISABILITIES  
10 THAT MAY RESULT FROM A CRIMINAL CONVICTION.

11 (C) (1) A CITATION ISSUED FOR A VIOLATION OF § 5-601 OF THIS  
12 PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF  
13 MARIJUANA SHALL BE SIGNED BY THE POLICE OFFICER WHO ISSUES THE  
14 CITATION AND SHALL CONTAIN:

15 ~~(1)~~ (I) THE NAME AND ADDRESS OF THE PERSON CHARGED;

16 ~~(2)~~ (II) THE DATE AND TIME THAT THE VIOLATION OCCURRED;

17 ~~(3)~~ (III) THE LOCATION AT WHICH THE VIOLATION OCCURRED;

18 ~~(4)~~ (IV) THE FINE THAT MAY BE IMPOSED;

19 ~~(5)~~ (V) A NOTICE STATING THAT PREPAYMENT OF THE FINE IS  
20 ALLOWED, EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION;

21 ~~(6)~~ (VI) A NOTICE IN BOLDFACE TYPE THAT STATES THAT THE  
22 PERSON SHALL:

23 ~~(H)~~ 1. PAY THE FULL AMOUNT OF THE PRESET FINE; OR

24 ~~(H)~~ 2. REQUEST A TRIAL DATE AT THE DATE, TIME, AND  
25 PLACE ESTABLISHED BY THE DISTRICT COURT BY WRIT OR TRIAL NOTICE; AND

26 ~~(7)~~ (VII) A NOTICE STATING THAT AFTER REQUESTING A TRIAL  
27 DATE, FAILURE TO APPEAR IS A MISDEMEANOR AND SUBJECT TO PENALTIES  
28 UNDER § 5-212 OF THE CRIMINAL PROCEDURE ARTICLE.

1           **(2) IF THE COURT FINDS THAT A PERSON HAS COMMITTED A**  
2 **THIRD OR SUBSEQUENT VIOLATION OF § 5-601 OF THIS PART INVOLVING THE**  
3 **USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA, THE COURT**  
4 **SHALL SUMMON THE PERSON FOR TRIAL FOR THE PURPOSE OF DETERMINING**  
5 **WHETHER TO ORDER THE PERSON TO ATTEND A PROGRAM DESCRIBED IN §**  
6 **5-601(C)(2)(II)2 OF THIS SUBTITLE.**

7           **(D) THE FORM OF THE CITATION SHALL BE UNIFORM THROUGHOUT**  
8 **THE STATE AND SHALL BE PRESCRIBED BY THE DISTRICT COURT.**

9           **(E) THE CHIEF JUDGE OF THE DISTRICT COURT SHALL ESTABLISH A**  
10 **SCHEDULE FOR THE PREPAYMENT OF THE FINE.**

11           **(F) A PERSON ISSUED A CITATION FOR A VIOLATION OF § 5-601 OF THIS**  
12 **PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF**  
13 **MARIJUANA WHO IS UNDER THE AGE OF 18 YEARS SHALL BE SUBJECT TO THE**  
14 **PROCEDURES AND DISPOSITIONS PROVIDED IN TITLE 3, SUBTITLE 8A OF THE**  
15 **COURTS ARTICLE.**

16           **(G) A CITATION FOR A VIOLATION OF § 5-601 OF THIS PART INVOLVING**  
17 **THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA AND THE**  
18 **OFFICIAL RECORD OF A COURT REGARDING THE CITATION ARE NOT SUBJECT**  
19 **TO PUBLIC INSPECTION AND MAY NOT BE INCLUDED ON THE PUBLIC WEB SITE**  
20 **MAINTAINED BY THE MARYLAND JUDICIARY.**

21                                           **Article – Criminal Procedure**

22           5-212.

23           (a) This section does not apply to a citation:

24                           (1) for a violation of a parking ordinance or regulation adopted under  
25 Title 26, Subtitle 3 of the Transportation Article;

26                           (2) adopted by the Chief Judge of the District Court under § 1-605(d)  
27 of the Courts Article, for use in traffic offenses; or

28                           (3) issued by a Natural Resources police officer under § 1-205 of the  
29 Natural Resources Article.

30           (b) A bench warrant may be issued for the arrest of a defendant who fails to  
31 appear in court in response to a citation.

1           (c)    A person who fails to appear in court in response to a citation is guilty of  
2 a misdemeanor and on conviction is subject to a fine not exceeding \$500 or  
3 imprisonment not exceeding 90 days or both.

4           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2014.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.