

# SENATE BILL 364

E1, D3

(4lr1804)

## ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senators Zirkin and Kittleman**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

\_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

### 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~~ requiring a  
8 court to order a person convicted of a violation of this Act for a third or  
9 subsequent time certain persons to attend a certain program, refer the person to  
10 a certain assessment, and refer the person to certain treatment, if necessary;  
11 authorizing a police officer to issue a certain citation under certain  
12 circumstances; establishing that a certain violation of this Act is not a criminal  
13 conviction and does not impose any of the civil disabilities that may result from  
14 a criminal conviction; establishing certain requirements for a citation issued  
15 under this Act; providing that persons who receive a certain citation may pay

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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.

*Italics indicate opposite chamber/conference committee amendments.*



1 the civil penalty or may elect to stand trial in the District Court; requiring a  
 2 civil penalty collected under this Act to be remitted to the Department of Health  
 3 and Mental Hygiene; requiring the Department of Health and Mental Hygiene  
 4 to use certain money for certain purposes; requiring the District Court to  
 5 prescribe a certain form of citation; requiring the Chief Judge of the District  
 6 Court to establish a certain schedule for the prepayment of a certain fine;  
 7 providing that a minor who violates certain provisions of this Act is subject to  
 8 certain procedures and dispositions; prohibiting a certain citation for a violation  
 9 of certain provisions of this Act from being subject to public inspection or  
 10 included on a certain public Web site; authorizing a certain law enforcement  
 11 officer to issue a citation to a child for a violation of a certain provision of this  
 12 Act under certain circumstances; authorizing a court to order a certain child to  
 13 participate in a certain substance abuse education or rehabilitation program  
 14 under certain circumstances; providing for the construction of certain provisions  
 15 of this Act; altering a certain defined term; making conforming changes; and  
 16 generally relating to penalties for possession of marijuana.

17 BY repealing and reenacting, with amendments,  
 18 Article – Courts and Judicial Proceedings  
 19 Section 3–8A–01(dd), 3–8A–19(e)(2), ~~and~~ 3–8A–33(a), and 7–302(a)  
 20 Annotated Code of Maryland  
 21 (2013 Replacement Volume and 2013 Supplement)

22 BY repealing and reenacting, without amendments,  
 23 Article – Courts and Judicial Proceedings  
 24 Section 3–8A–19(e)(1)  
 25 Annotated Code of Maryland  
 26 (2013 Replacement Volume and 2013 Supplement)

27 BY adding to  
 28 Article – Courts and Judicial Proceedings  
 29 Section 7–302(g)  
 30 Annotated Code of Maryland  
 31 (2013 Replacement Volume and 2013 Supplement)

32 BY repealing and reenacting, with amendments,  
 33 Article – Criminal Law  
 34 Section 5–601  
 35 Annotated Code of Maryland  
 36 (2012 Replacement Volume and 2013 Supplement)

37 BY adding to  
 38 Article – Criminal Law  
 39 Section 5–601.1  
 40 Annotated Code of Maryland  
 41 (2012 Replacement Volume and 2013 Supplement)

1 BY repealing and reenacting, without amendments,  
2 Article – Criminal Procedure  
3 Section 5–212  
4 Annotated Code of Maryland  
5 (2008 Replacement Volume and 2013 Supplement)

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

8 **Article – Courts and Judicial Proceedings**

9 3–8A–01.

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

11 **(1) § 5–601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE**  
12 **OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA;**

13 **[(1)] (2)** § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal  
14 Law Article;

15 **[(2)] (3)** § 10–108 of the Criminal Law Article;

16 **[(3)] (4)** § 10–132 of the Criminal Law Article; or

17 **[(4)] (5)** § 26–103 of the Education Article.

18 3–8A–19.

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

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

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

- 1                                   1.     For a first offense, for 6 months; and
- 2                                   2.     For a second or subsequent offense, until the child is
- 3 21 years old.

4                                   (iv)   In making a disposition on a finding that the child has

5 committed a violation under § 26–103 of the Education Article, the court shall order

6 the Motor Vehicle Administration to initiate an action, under the motor vehicle laws,

7 to suspend the driving privilege of a child licensed to operate a motor vehicle by the

8 Motor Vehicle Administration for a specified period of not less than 30 days nor more

9 than 90 days.

10                                  (v)    If a child subject to a suspension under this subsection does

11 not hold a license to operate a motor vehicle on the date of the disposition, the

12 suspension shall commence:

13                                   1.     If the child is at least 16 years of age on the date of

14 the disposition, on the date of the disposition; or

15                                   2.     If the child is younger than 16 years of age on the date

16 of the disposition, on the date the child reaches the child’s 16th birthday.

17                                  (2)   In addition to the dispositions under paragraph (1) of this

18 subsection, the court also may:

19                                   (i)    Counsel the child or the parent or both, or order the child to

20 participate in an alcohol **OR A SUBSTANCE ABUSE** education or rehabilitation

21 program that is in the best interest of the child;

22                                   (ii)   Impose a civil fine of not more than \$25 for the first violation

23 and a civil fine of not more than \$100 for the second and subsequent violations; or

24                                   (iii)  Order the child to participate in a supervised work program

25 for not more than 20 hours for the first violation and not more than 40 hours for the

26 second and subsequent violations.

27 3–8A–33.

28                                  (a)   A law enforcement officer authorized to make arrests shall issue a

29 citation to a child if the officer has probable cause to believe that the child is violating:

30                                   **(1) § 5–601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE**

31 **OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA;**



1 (ii) the counterfeiting or alteration of a prescription or a written  
2 order;

3 (iii) the concealment of a material fact;

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

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

7 (vi) making, issuing, or presenting a false or counterfeit  
8 prescription or written order.

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

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

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

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

23 **2. A SECOND VIOLATION OF THIS SECTION**  
24 **INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS**  
25 **A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$250.**

26 **3. A THIRD OR SUBSEQUENT VIOLATION OF THIS**  
27 **SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF**  
28 **MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$500.**

29 **~~2.~~ 4. A. IN ADDITION TO A FINE, A COURT SHALL**  
30 **ORDER A PERSON UNDER THE AGE OF 21 YEARS WHO COMMITS A VIOLATION**  
31 **PUNISHABLE UNDER SUBSUBPARAGRAPH 1, 2, OR 3 OF THIS SUBPARAGRAPH TO**  
32 **ATTEND A DRUG ~~TREATMENT AND~~ EDUCATION PROGRAM APPROVED BY THE**  
33 **DEPARTMENT OF HEALTH AND MENTAL HYGIENE, REFER THE PERSON TO AN**

1 ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND REFER THE PERSON TO  
 2 SUBSTANCE ABUSE TREATMENT, IF NECESSARY.

3 **B. IN ADDITION TO A FINE, A COURT ~~MAY~~ SHALL**  
 4 **ORDER A PERSON ~~CONVICTED OF A THIRD OR SUBSEQUENT~~ AT LEAST 21 YEARS**  
 5 **OLD WHO COMMITS A VIOLATION PUNISHABLE UNDER SUBSUBPARAGRAPH 3 OF**  
 6 **THIS SUBPARAGRAPH TO ATTEND A DRUG ~~TREATMENT AND~~ EDUCATION**  
 7 **PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL**  
 8 **HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE**  
 9 **DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF**  
 10 **NECESSARY.**

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

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

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

18 B. if an appeal is filed, during the pendency of the  
 19 appeal.]

20 (3) (i) 1. In this paragraph the following words have the  
 21 meanings indicated.

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

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

28 A. is a resident of the State;

29 B. is at least 21 years old;

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

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

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

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

4 G. has been designated as caregiver by the patient in  
5 writing that has been placed in the patient's medical record prior to arrest;

6 H. is the only individual designated by the patient to  
7 serve as caregiver; and

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

9 4. "Debilitating medical condition" means a chronic or  
10 debilitating disease or medical condition or the treatment of a chronic or debilitating  
11 disease or medical condition that produces one or more of the following, as documented  
12 by a physician with whom the patient has a bona fide physician-patient relationship:

13 A. cachexia or wasting syndrome;

14 B. severe or chronic pain;

15 C. severe nausea;

16 D. seizures;

17 E. severe and persistent muscle spasms; or

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

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

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

27 (iii) 1. In a prosecution for the use or possession of  
28 marijuana under this section, it is an affirmative defense that the defendant used or  
29 possessed 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 for the possession of marijuana  
6 under this section, it is an affirmative defense that the defendant possessed marijuana  
7 because the marijuana was intended for medical use by an individual with a  
8 debilitating medical condition for whom the defendant is a caregiver.

9 B. A defendant may not assert the affirmative defense  
10 under this subsubparagraph unless the defendant notifies the State's Attorney of the  
11 defendant's intention to assert the affirmative defense and provides the State's  
12 Attorney with all documentation in support of the affirmative defense in accordance  
13 with the rules of discovery provided in Maryland Rules 4-262 and 4-263.

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

16 A. using marijuana in a public place or assisting the  
17 individual for whom the defendant is a caregiver in using the marijuana in a public  
18 place; or

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

20 **(D) THE PROVISIONS OF SUBSECTION (C)(2)(II) OF THIS SECTION**  
21 **MAKING THE POSSESSION OF MARIJUANA A CIVIL OFFENSE MAY NOT BE**  
22 **CONSTRUED TO AFFECT THE LAWS RELATING TO:**

23 **(1) OPERATING A VEHICLE OR VESSEL WHILE UNDER THE**  
24 **INFLUENCE OF OR WHILE IMPAIRED BY A CONTROLLED DANGEROUS**  
25 **SUBSTANCE; OR**

26 **(2) SEIZURE AND FORFEITURE.**

27 **5-601.1.**

28 **(A) A POLICE OFFICER SHALL ISSUE A CITATION TO A PERSON WHO THE**  
29 **POLICE OFFICER HAS PROBABLE CAUSE TO BELIEVE HAS COMMITTED A**  
30 **VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION OF**  
31 **LESS THAN 10 GRAMS OF MARIJUANA.**

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

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

3                   (I) IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE;  
4 AND

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

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

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

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

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

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

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

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

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

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

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

25                   (2) (I) IF A CITATION FOR A VIOLATION OF § 5-601 OF THIS  
26 PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF  
27 MARIJUANA IS ISSUED TO A PERSON UNDER THE AGE OF 21 YEARS, THE COURT  
28 SHALL SUMMON THE PERSON FOR TRIAL.

1                   **(II) IF THE COURT FINDS THAT A PERSON AT LEAST 21**  
2 **YEARS OLD HAS COMMITTED A THIRD OR SUBSEQUENT VIOLATION OF § 5-601**  
3 **OF THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF**  
4 **MARIJUANA, THE COURT SHALL SUMMON THE PERSON FOR TRIAL ~~FOR THE~~**  
5 **~~PURPOSE OF DETERMINING WHETHER TO ORDER THE PERSON TO ATTEND A~~**  
6 **~~PROGRAM DESCRIBED IN § 5-601(C)(2)(H)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.