

HOUSE BILL 105

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5lr0643

By: **Delegates Anderson, Barron, Branch, Carr, Carter, Conaway, Cullison, Fennell, Fraser-Hidalgo, Gilchrist, Glenn, Gutierrez, Hayes, Hixson, Jackson, Kelly, Lierman, Luedtke, McCray, McIntosh, Moon, Morales, Oaks, Platt, Reznik, B. Robinson, Rosenberg, Smith, Turner, Valderrama, Vaughn, and M. Washington**

Introduced and read first time: January 23, 2015

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted with floor amendments

Read second time: March 16, 2015

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Drug Paraphernalia Possession With Marijuana – Civil Offense**
3 **and Marijuana – Penalties**

4 FOR the purpose of altering the penalty for the possession or use of certain drug
5 paraphernalia involving the use or possession of less than a certain quantity of
6 marijuana; making the use or possession of certain drug paraphernalia under certain
7 circumstances a civil offense; establishing that a person who violates certain
8 provisions of this Act may be issued a certain citation; prohibiting a person from
9 smoking marijuana in certain areas; providing penalties for smoking marijuana in
10 certain areas; requiring the court to summon a certain person to appear in court
11 under certain circumstances; requiring a court to order certain persons to attend a
12 certain program, refer the person to a certain assessment, and refer the person to a
13 certain treatment, if necessary; authorizing a police officer to issue a certain citation
14 under certain circumstances; establishing that a certain violation of this Act is not a
15 criminal conviction and does not impose any of the civil disabilities that may result
16 from a criminal conviction; establishing certain requirements for a citation issued
17 under this Act; providing that persons who receive a certain citation may pay the
18 civil penalty or may elect to stand trial in the District Court; requiring a civil penalty
19 collected under this Act to be remitted to the Department of Health and Mental
20 Hygiene; requiring the Department to use certain money for certain purposes;
21 providing that a minor who violates certain provisions of this Act is subject to certain

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.



procedures and dispositions; prohibiting a certain citation for a violation of certain provisions of this Act from being subject to public inspection or included on a certain public Web site; authorizing a certain law enforcement officer to issue a citation to a child for a violation of a certain provision of this Act under certain circumstances; making conforming changes; and generally relating to penalties for possession of drug paraphernalia with marijuana.

BY repealing and reenacting, without amendments,
Article – Courts and Judicial Proceedings
Section 3–8A–01(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2014 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 3-8A-01(dd), 3-8A-33(a), and 7-302(g)
15 Annotated Code of Maryland
16 (2013 Replacement Volume and 2014 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Criminal Law
19 Section 5–601.1, 5–619, and 5–620
20 Annotated Code of Maryland
21 (2012 Replacement Volume and 2014 Supplement)

22 BY adding to
23 Article – Criminal Law
24 Section 5-601.2
25 Annotated Code of Maryland
26 (2012 Replacement Volume and 2014 Supplement)

27 BY repealing and reenacting, without amendments,
28 Article – Criminal Procedure
29 Section 5–212
30 Annotated Code of Maryland
31 (2008 Replacement Volume and 2014 Supplement)

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

Article – Courts and Judicial Proceedings

35 3-8A-01.

36 (a) In this subtitle the following words have the meanings indicated, unless the
37 context of their use indicates otherwise.

(dd) "Violation" means a violation for which a citation is issued under:

(1) § 5-601, § 5-619, OR § 5-620 of the Criminal Law Article involving the use or possession of less than 10 grams of marijuana;

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

6 (4) § 10–132 of the Criminal Law Article;

(5) § 10–136 of the Criminal Law Article; or

8 (6) § 26–103 of the Education Article.

9 3-8A-33.

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

(1) § 5-601, § 5-619, OR § 5-620 of the Criminal Law Article involving the use or possession of less than 10 grams of marijuana;

14 (2) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law Article;

15 (3) § 10–108 of the Criminal Law Article;

¹⁶ (4) § 10–132 of the Criminal Law Article;

¹⁷ (5) § 10–136 of the Criminal Law Article;

18 (6) § 26–103 of the Education Article.

19 7-302.

20

(g) (1) A civil penalty collected by the District Court resulting from citations issued under § 5-601(c)(2)(ii), **§ 5-619(C)(2)(II), OR § 5-620(D)(2)(II)** of the Criminal Law Article shall be remitted to the Department of Health and Mental Hygiene.

(2) The Department of Health and Mental Hygiene may use money received under this subsection only for the purpose of funding drug treatment and education programs.

Article – Criminal Law

27 5-601.1.

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1 (a) A police officer shall issue a citation to a person who the police officer has
2 probable cause to believe has committed a violation of § 5–601 of this part, **OR § 5–619 OR**
3 **§ 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
4 marijuana.

5 (b) (1) A violation of § 5–601 of this part, **OR § 5–619 OR § 5–620 OF THIS**
6 **SUBTITLE** involving the use or possession of less than 10 grams of marijuana is a civil
7 offense.

8 (2) Adjudication of a violation under § 5–601 of this part, **OR § 5–619 OR**
9 **§ 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
10 marijuana:

11 (i) is not a criminal conviction for any purpose; and
12 (ii) does not impose any of the civil disabilities that may result from
13 a criminal conviction.

14 (c) (1) A citation issued for a violation of § 5–601 of this part, **OR § 5–619 OR**
15 **§ 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
16 marijuana shall be signed by the police officer who issues the citation and shall contain:

17 (i) the name and address of the person charged;
18 (ii) the date and time that the violation occurred;
19 (iii) the location at which the violation occurred;
20 (iv) the fine that may be imposed;
21 (v) a notice stating that prepayment of the fine is allowed, except as
22 provided in paragraph (2) of this subsection; and
23 (vi) a notice in boldface type that states that the person shall:

24 1. pay the full amount of the preset fine; or
25 2. request a trial date at the date, time, and place established
26 by the District Court by writ or trial notice.

27 (2) (i) If a citation for a violation of § 5–601 of this part involving the
28 use or possession of less than 10 grams of marijuana is issued to a person under the age of
29 21 years, the court shall summon the person for trial.

30 (ii) If the court finds that a person at least 21 years old has
31 committed a third or subsequent violation of § 5–601 of this part, **OR § 5–619 OR § 5–620**

1 OF THIS SUBTITLE involving the use or possession of less than 10 grams of marijuana, the
2 court shall summon the person for trial.

3 (d) The form of the citation shall be uniform throughout the State and shall be
4 prescribed by the District Court.

5 (e) The Chief Judge of the District Court shall establish a schedule for the
6 prepayment of the fine.

7 (f) A person issued a citation for a violation of § 5–601 of this part, **OR § 5–619**
8 **OR § 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
9 marijuana who is under the age of 18 years shall be subject to the procedures and
10 dispositions provided in Title 3, Subtitle 8A of the Courts Article.

11 (g) A citation for a violation of § 5–601 of this part, **OR § 5–619 OR § 5–620 OF**
12 **THIS SUBTITLE** involving the use or possession of less than 10 grams of marijuana and the
13 official record of a court regarding the citation are not subject to public inspection and may
14 not be included on the public Web site maintained by the Maryland Judiciary.

15 **5–601.2.**

16 **(A) UNLESS AUTHORIZED BY A GOVERNMENTAL ENTITY THAT HAS**
17 **JURISDICTION OVER THE PROPERTY, A PERSON MAY NOT SMOKE MARIJUANA:**

18 **(1) ON PUBLIC PROPERTY;**

19 **(2) ON THE MALL, ADJACENT PARKING AREA, OR OTHER OUTSIDE**
20 **AREA OF ANY COMBINATION OF PRIVATELY OWNED RETAIL ESTABLISHMENTS,**
21 **INCLUDING A SHOPPING CENTER, WHERE THE GENERAL PUBLIC IS INVITED FOR**
22 **BUSINESS PURPOSES;**

23 **(3) ON AN ADJACENT PARKING AREA OR OTHER OUTSIDE AREA OF**
24 **ANY OTHER RETAIL ESTABLISHMENT; OR**

25 **(4) IN A PARKED VEHICLE LOCATED ON ANY OF THE PLACES**
26 **IDENTIFIED IN THIS SUBSECTION.**

27 **(B) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR**
28 **AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$100.**

29 5–619.

30 (a) To determine whether an object is drug paraphernalia, a court shall consider,
31 among other logically relevant factors:

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1 (1) any statement by an owner or a person in control of the object
2 concerning its use;

3 (2) any prior conviction of an owner or a person in control of the object
4 under a State or federal law relating to a controlled dangerous substance;

5 (3) the proximity of the object, in time and space, to a direct violation of
6 this section or to a controlled dangerous substance;

7 (4) a residue of a controlled dangerous substance on the object;

8 (5) direct or circumstantial evidence of the intent of an owner or a person
9 in control of the object to deliver it to another who, the owner or the person knows or should
10 reasonably know, intends to use the object to facilitate a violation of this section;

11 (6) any instructions, oral or written, provided with the object concerning
12 its use;

13 (7) any descriptive materials accompanying the object that explain or
14 depict its use;

15 (8) national and local advertising concerning use of the object;

16 (9) the manner in which the object is displayed for sale;

17 (10) whether the owner or a person in control of the object is a licensed
18 distributor or dealer of tobacco products or other legitimate supplier of related items to the
19 community;

20 (11) direct or circumstantial evidence of the ratio of sales of the object to the
21 total sales of the business enterprise;

22 (12) the existence and scope of legitimate uses for the object in the
23 community; and

24 (13) expert testimony concerning use of the object.

25 (b) The innocence of an owner or a person in control of the object as to a direct
26 violation of this section does not prevent a finding that the object is intended for use or
27 designed for use as drug paraphernalia.

28 (c) (1) Unless authorized under this title, a person may not use or possess with
29 intent to use drug paraphernalia to:

30 (i) plant, propagate, cultivate, grow, harvest, manufacture,
31 compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or
32 conceal a controlled dangerous substance; or

(ii) inject, ingest, inhale, or otherwise introduce into the human body
a controlled dangerous substance.

3 **(2) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
4 **PARAGRAPH, A person who violates this subsection is guilty of a misdemeanor and on**
5 **conviction is subject to:**

6 [i] 1. for a first violation, a fine not exceeding \$500; and

7 [(ii)] 2. for each subsequent violation, imprisonment not
8 exceeding 2 years or a fine not exceeding \$2,000 or both.

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

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

18 **4. A. IN ADDITION TO A FINE, A COURT SHALL ORDER**
19 **A PERSON UNDER THE AGE OF 21 YEARS WHO COMMITS A VIOLATION PUNISHABLE**
20 **UNDER SUBSUBPARAGRAPH 1, 2, OR 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG**
21 **EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL**
22 **HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE**
23 **DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF**
24 **NECESSARY.**

25 B. IN ADDITION TO A FINE, A COURT SHALL ORDER A
26 PERSON AT LEAST 21 YEARS OLD WHO COMMITS A VIOLATION PUNISHABLE UNDER
27 SUBSUBPARAGRAPH 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION
28 PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE,
29 REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND
30 REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.

(3) A person who is convicted of violating this subsection for the first time and who previously has been convicted of violating subsection (d)(4) of this section is subject to the penalty specified under paragraph [(2)(ii)] **(2)(i)2** of this subsection.

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

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

6 3. "Caregiver" means an individual designated by a patient
7 with a debilitating medical condition to provide physical or medical assistance to the
8 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
 - D. has not been convicted of a crime of violence as defined in
 - E. has not been convicted of a violation of a State or federal
stances law;
 - F. has not been convicted of a crime of moral turpitude;
 - G. has been designated as caregiver by the patient in writing
he patient's medical record prior to arrest;
 - H. is the only individual designated by the patient to serve as
 - I. is not serving as caregiver for any other patient.

4. "Debilitating medical condition" means a chronic or medical condition or the treatment of a chronic or debilitating condition that produces one or more of the following, as documented by 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

(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.

7 2. Notwithstanding paragraph (2) of this subsection, if the
8 court finds that the person used or possessed drug paraphernalia related to marijuana
9 because of medical necessity, on conviction of a violation of this subsection, the maximum
10 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:

14 A. the defendant has a debilitating medical condition that
15 has been diagnosed by a physician with whom the defendant has a bona fide
16 physician-patient relationship;

17 B. the debilitating medical condition is severe and resistant
18 to conventional medicine; and

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

21 2. A. In a prosecution under this subsection involving
22 drug paraphernalia related to marijuana, it is an affirmative defense that the defendant
23 possessed drug paraphernalia related to marijuana because the drug paraphernalia related
24 to marijuana was intended for medical use by an individual with a debilitating medical
25 condition for whom the defendant is a caregiver.

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

33 A. using marijuana in a public place or assisting the
34 individual for whom the defendant is a caregiver in using the marijuana in a public place;
35 or

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

2 (d) (1) Unless authorized under this title, a person may not deliver or sell, or
3 manufacture or possess with intent to deliver or sell, drug paraphernalia, knowing, or
4 under circumstances where one reasonably should know, that the drug paraphernalia will
5 be used to:

6 (i) plant, propagate, cultivate, grow, harvest, manufacture,
7 compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or
8 conceal a controlled dangerous substance; or

9 (ii) inject, ingest, inhale, or otherwise introduce into the human body
10 a controlled dangerous substance.

11 (2) A person who violates this subsection is guilty of a misdemeanor and
12 on conviction is subject to:

13 (i) for a first violation, a fine not exceeding \$500; and

14 (ii) for each subsequent violation, imprisonment not exceeding 2
15 years or a fine not exceeding \$2,000 or both.

16 (3) A person who is convicted of violating this subsection for the first time
17 and who previously has been convicted of violating paragraph (4) of this subsection is
18 subject to imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

19 (4) If a person who is at least 18 years old violates paragraph (1) of this
20 subsection by delivering drug paraphernalia to a minor who is at least 3 years younger than
21 the person, the person is guilty of a separate misdemeanor and on conviction is subject to
22 imprisonment not exceeding 8 years or a fine not exceeding \$15,000 or both.

23 (e) (1) A person may not advertise in a newspaper, magazine, handbill, poster,
24 sign, mailing, or other writing or publication, or by sound truck, knowing, or under
25 circumstances where one reasonably should know, that the purpose of the advertisement,
26 wholly or partly, is to promote the sale or delivery of drug paraphernalia.

27 (2) A person who violates this subsection is guilty of a misdemeanor and
28 on conviction is subject to:

29 (i) for a first violation, a fine not exceeding \$500; and

30 (ii) for each subsequent violation, imprisonment not exceeding 2
31 years or a fine not exceeding \$2,000 or both.

32 5–620.

33 (a) Unless authorized under this title, a person may not:

- (1) obtain or attempt to obtain controlled paraphernalia by:

 - (i) fraud, deceit, misrepresentation, or subterfuge;
 - (ii) counterfeiting a prescription or a written order;
 - (iii) concealing a material fact or the use of a false name or address;
 - (iv) falsely assuming the title of or representing to be a
er, distributor, or authorized provider; or
 - (v) making or issuing a false or counterfeit prescription or written

(2) possess or distribute controlled paraphernalia under circumstances
nably indicate an intention to use the controlled paraphernalia for purposes of
ministering a controlled dangerous substance.

(b) Evidence of circumstances that reasonably indicate an intent to use controlled paraphernalia to manufacture, administer, distribute, or dispense a controlled dangerous substance unlawfully include the close proximity of the controlled paraphernalia to an alterant, diluent, or equipment commonly used to illegally manufacture, administer, distribute, or dispense controlled dangerous substances, including:

- (1) a scale;
 - (2) a sieve;
 - (3) a strainer;
 - (4) a measuring spoon;
 - (5) staples;
 - (6) a stapler;
 - (7) a glassine envelope;
 - (8) a gelatin capsule;
 - (9) procaine hydrochloride;
 - (10) mannitol;
 - (11) lactose;

- 1 (12) quinine; and
2 (13) a controlled dangerous substance.

3 (c) Information that is communicated to a physician to obtain controlled
4 paraphernalia from the physician in violation of this subtitle is not a privileged
5 communication.

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

9 (2) **(I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
10 **PARAGRAPH, A person who violates this section involving the use or possession of**
11 **marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000**
12 **or both.**

13 **(II) 1. A FIRST VIOLATION OF THIS SECTION INVOLVING THE**
14 **USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE**
15 **PUNISHABLE BY A FINE NOT EXCEEDING \$100.**

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

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

22 **4. A. IN ADDITION TO A FINE, A COURT SHALL ORDER**
23 **A PERSON UNDER THE AGE OF 21 YEARS WHO COMMITS A VIOLATION PUNISHABLE**
24 **UNDER SUBSUBPARAGRAPH 1, 2, OR 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG**
25 **EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL**
26 **HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE**
27 **DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF**
28 **NECESSARY.**

29 **B. IN ADDITION TO A FINE, A COURT SHALL ORDER A**
30 **PERSON AT LEAST 21 YEARS OLD WHO COMMITS A VIOLATION PUNISHABLE UNDER**
31 **SUBSUBPARAGRAPH 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION**
32 **PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE,**
33 **REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND**
34 **REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.**

1 5–212.

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

3 (1) for a violation of a parking ordinance or regulation adopted under Title
4 26, Subtitle 3 of the Transportation Article;

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

7 (3) issued by a Natural Resources police officer under § 1–205 of the
8 Natural Resources Article.

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.