

# HOUSE BILL 495

E1, E2

5lr2285

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By: **Delegate Dumais**

Introduced and read first time: February 11, 2015

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Possession of Less Than 10 Grams of Marijuana – Code Violation**

3 FOR the purpose of specifying that a person who violates a certain provision of law  
4 involving the use or possession of marijuana in the amount of 10 grams or more is  
5 guilty of the misdemeanor of possession of marijuana; altering a certain provision of  
6 law so as to provide that a finding of guilt, rather than a violation, of a certain  
7 provision of law is a civil offense punishable by a certain fine; requiring the District  
8 Court to schedule a certain case for trial if a certain defendant does not prepay a  
9 certain fine within a certain amount of time; establishing certain procedures for a  
10 certain Code violation proceeding; providing that a certain defendant is liable for  
11 certain costs; authorizing the State’s Attorney to prosecute a certain violation in a  
12 certain manner; authorizing the court to collect the date of birth of an individual  
13 charged with violating a certain provision of law; and generally relating to possession  
14 of marijuana.

15 BY repealing and reenacting, without amendments,  
16 Article – Criminal Law  
17 Section 5–601(a) and (c)(1)  
18 Annotated Code of Maryland  
19 (2012 Replacement Volume and 2014 Supplement)

20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Law  
22 Section 5–601(c)(2) and 5–601.1  
23 Annotated Code of Maryland  
24 (2012 Replacement Volume and 2014 Supplement)

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

27 **Article – Criminal Law**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-601.

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

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

6 (2) obtain or attempt to obtain a controlled dangerous substance, or  
7 procure or attempt to procure the administration of a controlled dangerous substance by:

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

9 (ii) the counterfeiting or alteration of a prescription or a written  
10 order;

11 (iii) the concealment of a material fact;

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

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

15 (vi) making, issuing, or presenting a false or counterfeit prescription  
16 or written order.

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

20 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a  
21 person whose violation of this section involves the use or possession of marijuana **IN THE**  
22 **AMOUNT OF 10 GRAMS OR MORE IS GUILTY OF THE MISDEMEANOR OF POSSESSION**  
23 **OF MARIJUANA AND** is subject to imprisonment not exceeding 1 year or a fine not  
24 exceeding \$1,000 or both.

25 (ii) 1. A first [violation of] **FINDING OF GUILT UNDER** this  
26 section involving the use or possession of less than 10 grams of marijuana is a civil offense  
27 punishable by a fine not exceeding \$100.

28 2. A second [violation of] **FINDING OF GUILT UNDER** this  
29 section involving the use or possession of less than 10 grams of marijuana is a civil offense  
30 punishable by a fine not exceeding \$250.

1                   3.     A third or subsequent [violation of] **FINDING OF GUILT**  
2 **UNDER** this section involving the use or possession of less than 10 grams of marijuana is a  
3 civil offense punishable by a fine not exceeding \$500.

4                   4.     A.     In addition to a fine, a court shall order a person  
5 under the age of 21 years who commits a violation punishable under subparagraph 1,  
6 2, or 3 of this subparagraph to attend a drug education program approved by the  
7 Department of Health and Mental Hygiene, refer the person to an assessment for substance  
8 abuse disorder, and refer the person to substance abuse treatment, if necessary.

9                   B.     In addition to a fine, a court shall order a person at least  
10 21 years old who commits a violation punishable under subparagraph 3 of this  
11 subparagraph to attend a drug education program approved by the Department of Health  
12 and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and  
13 refer the person to substance abuse treatment, if necessary.

14                   **C.     A COURT THAT ORDERS A PERSON TO A DRUG**  
15 **EDUCATION PROGRAM OR SUBSTANCE ABUSE ASSESSMENT OR TREATMENT UNDER**  
16 **THIS SUBSUBPARAGRAPH MAY HOLD THE CASE SUB CURIA PENDING RECEIPT OF**  
17 **PROOF OF COMPLETION OF THE PROGRAM, ASSESSMENT, OR TREATMENT, SUBJECT**  
18 **TO DISCRETIONARY MODIFICATION OF SENTENCE OR SANCTIONS FOR**  
19 **ENFORCEMENT PURPOSES.**

20 5–601.1.

21                   (a)     A police officer shall issue a citation to a person who the police officer has  
22 probable cause to believe has committed a violation of § 5–601 of this part involving the use  
23 or possession of less than 10 grams of marijuana.

24                   (b)     (1)     A violation of § 5–601 of this part involving the use or possession of less  
25 than 10 grams of marijuana is a civil offense.

26                   (2)     Adjudication of a violation under § 5–601 of this part involving the use  
27 or possession of less than 10 grams of marijuana:

28                   (i)     is not a criminal conviction for any purpose; and

29                   (ii)    does not impose any of the civil disabilities that may result from  
30 a criminal conviction.

31                   (c)     (1)     A citation issued for a violation of § 5–601 of this part involving the use  
32 or possession of less than 10 grams of marijuana shall be signed by the police officer who  
33 issues the citation and shall contain:

34                   (i)     the name and address of the person charged;

- 1 (ii) the date and time that the violation occurred;
- 2 (iii) the location at which the violation occurred;
- 3 (iv) the fine that may be imposed;
- 4 (v) a notice stating that prepayment of the fine is allowed, except as  
5 provided in paragraph (2) of this subsection; and
- 6 (vi) a notice in boldface type that states that the person shall:
- 7 1. pay the full amount of the preset fine; or
- 8 2. request a trial date at the date, time, and place established  
9 by the District Court by writ or trial notice.

10 (2) (i) If a citation for a violation of § 5–601 of this part involving the  
11 use or possession of less than 10 grams of marijuana is issued to a person under the age of  
12 21 years, the court shall summon the person for trial.

13 (ii) If the court finds that a person at least 21 years old **WHO HAS**  
14 **BEEN ISSUED A CITATION UNDER THIS SECTION** has [committed a third or subsequent  
15 violation of] **AT LEAST TWICE PREVIOUSLY BEEN FOUND GUILTY UNDER § 5–601** of this  
16 part involving the use or possession of less than 10 grams of marijuana, the court shall  
17 summon the person for trial.

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

20 (e) **(1)** The Chief Judge of the District Court shall establish a schedule for the  
21 prepayment of the fine.

22 **(2) IF THE DEFENDANT OTHER THAN A DEFENDANT DESCRIBED IN**  
23 **SUBSECTION (C)(2) OF THIS SECTION DOES NOT PREPAY THE FINE WITHIN 30 DAYS,**  
24 **THE COURT SHALL SCHEDULE THE CASE FOR TRIAL AND SUMMON THE DEFENDANT**  
25 **TO APPEAR.**

26 **(F) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE CITATION**  
27 **AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE DISTRICT HAVING**  
28 **VENUE.**

29 **(G) (1) THE FAILURE OF A DEFENDANT TO RESPOND TO A SUMMONS**  
30 **DESCRIBED IN SUBSECTION (C)(2) OF THIS SECTION SHALL BE GOVERNED BY §**  
31 **5–212 OF THE CRIMINAL PROCEDURE ARTICLE.**

1           **(2) IF A PERSON AT LEAST 21 YEARS OLD FAILS TO APPEAR IN**  
2 **RESPONSE TO A SUMMONS ISSUED UNDER SUBSECTION (E)(2) OF THIS SECTION, THE**  
3 **COURT SHALL ENTER JUDGMENT AGAINST THE DEFENDANT IN THE AMOUNT OF THE**  
4 **MAXIMUM APPLICABLE FINE.**

5           **(H) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER § 5-601 OF THIS**  
6 **PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA:**

7           **(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE**  
8 **DEFENDANT BY A PREPONDERANCE OF THE EVIDENCE;**

9           **(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS**  
10 **PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF A CRIMINAL CASE;**

11           **(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED**  
12 **A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT**  
13 **UNDERSTANDS THOSE CHARGES;**

14           **(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL**  
15 **WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR**  
16 **WITNESSES ON BEHALF OF THE DEFENDANT, AND TO TESTIFY ON THE DEFENDANT'S**  
17 **OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;**

18           **(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY COUNSEL**  
19 **OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE DEFENDANT; AND**

20           **(6) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT GUILTY,**  
21 **AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:**

22                   **(I) GUILTY OF A CODE VIOLATION;**

23                   **(II) NOT GUILTY OF A CODE VIOLATION; OR**

24                   **(III) PROBATION BEFORE JUDGMENT, IMPOSED BY THE COURT**  
25 **IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW IN THE**  
26 **TRIAL OF A CRIMINAL CASE.**

27           **(I) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE**  
28 **PROCEEDINGS IN THE DISTRICT COURT AND FOR PAYMENT TO THE CRIMINAL**  
29 **INJURIES COMPENSATION FUND.**

1           **(2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER § 5-601 OF**  
2 **THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF**  
3 **MARIJUANA IN WHICH COSTS ARE IMPOSED ARE \$5.**

4           **(J) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A**  
5 **CODE VIOLATION UNDER § 5-601 OF THIS PART INVOLVING THE USE OR POSSESSION**  
6 **OF LESS THAN 10 GRAMS OF MARIJUANA IN THE SAME MANNER AS PROSECUTION OF**  
7 **A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

8           **(2) IN A CODE VIOLATION CASE UNDER § 5-601 OF THIS PART**  
9 **INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA, THE**  
10 **STATE'S ATTORNEY MAY:**

11           **(I) ENTER A NOLLE PROSEQUI OR PLACE THE CASE ON THE**  
12 **STET DOCKET; AND**

13           **(II) EXERCISE AUTHORITY IN THE SAME MANNER AS**  
14 **PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

15           **[(f)](K)** A person issued a citation for a violation of § 5-601 of this part involving  
16 the use or possession of less than 10 grams of marijuana who is under the age of 18 years  
17 shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of the  
18 Courts Article.

19           **[(g)](L)** A citation for a violation of § 5-601 of this part involving the use or  
20 possession of less than 10 grams of marijuana and the official record of a court regarding  
21 the citation are not subject to public inspection and may not be included on the public Web  
22 site maintained by the Maryland Judiciary.

23           **(M) THE COURT MAY COLLECT THE DATE OF BIRTH OF AN INDIVIDUAL**  
24 **CHARGED WITH A VIOLATION OF § 5-601 OF THIS PART INVOLVING THE USE OR**  
25 **POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA TO AID IN ENFORCEMENT OF**  
26 **THIS PART.**

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