

SENATE BILL 456

E1

5lr2024

By: **Senators Zirkin and Raskin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Marijuana and Drug Paraphernalia – Medical Necessity**

3 FOR the purpose of requiring a court to dismiss a certain possession of marijuana charge
4 if the court finds that the person used or possessed marijuana because of medical
5 necessity; requiring a court to dismiss a certain possession of drug paraphernalia
6 charge related to marijuana if the court finds that the person possessed the drug
7 paraphernalia related to marijuana because of medical necessity; and generally
8 relating to the use or possession of marijuana and drug paraphernalia.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Law
11 Section 5–601 and 5–619
12 Annotated Code of Maryland
13 (2012 Replacement Volume and 2014 Supplement)

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

16 **Article – Criminal Law**

17 5–601.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) fraud, deceit, misrepresentation, or subterfuge;
- 2 (ii) the counterfeiting or alteration of a prescription or a written
3 order;
- 4 (iii) the concealment of a material fact;
- 5 (iv) the use of a false name or address;
- 6 (v) falsely assuming the title of or representing to be a
7 manufacturer, distributor, or authorized provider; or
- 8 (vi) making, issuing, or presenting a false or counterfeit prescription
9 or written order.

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

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

16 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
17 person whose violation of this section involves the use or possession of marijuana is subject
18 to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

19 (ii) 1. A first violation of this section involving the use or
20 possession of less than 10 grams of marijuana is a civil offense punishable by a fine not
21 exceeding \$100.

22 2. A second violation of this section involving the use or
23 possession of less than 10 grams of marijuana is a civil offense punishable by a fine not
24 exceeding \$250.

25 3. A third or subsequent violation of this section involving
26 the use or possession of less than 10 grams of marijuana is a civil offense punishable by a
27 fine not exceeding \$500.

28 4. A. In addition to a fine, a court shall order a person
29 under the age of 21 years who commits a violation punishable under subparagraph 1,
30 2, or 3 of this subparagraph to attend a drug education program approved by the
31 Department of Health and Mental Hygiene, refer the person to an assessment for substance
32 abuse disorder, and refer the person to substance abuse treatment, if necessary.

33 B. In addition to a fine, a court shall order a person at least
34 21 years old who commits a violation punishable under subparagraph 3 of this

1 subparagraph to attend a drug education program approved by the Department of Health
2 and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and
3 refer the person to substance abuse treatment, if necessary.

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

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

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

12 A. is a resident of the State;

13 B. is at least 21 years old;

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

16 D. has not been convicted of a crime of violence as defined in
17 § 14–101 of this article;

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

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

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

23 H. is the only individual designated by the patient to serve as
24 caregiver; and

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

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

30 A. cachexia or wasting syndrome;

31 B. severe or chronic pain;

- 1 C. severe nausea;
- 2 D. seizures;
- 3 E. severe and persistent muscle spasms; or
- 4 F. any other condition that is severe and resistant to
5 conventional medicine.

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

9 2. Notwithstanding paragraph (2) of this subsection, if the
10 court finds that the person used or possessed marijuana because of medical necessity, [on
11 conviction of a violation of this section, the maximum penalty that the court may impose
12 on the person is a fine not exceeding \$100] **THE COURT SHALL DISMISS THE CHARGE.**

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

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

19 B. the debilitating medical condition is severe and resistant
20 to conventional medicine; and

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

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

27 B. A defendant may not assert the affirmative defense under
28 this subparagraph unless the defendant notifies the State’s Attorney of the defendant’s
29 intention to assert the affirmative defense and provides the State’s Attorney with all
30 documentation in support of the affirmative defense in accordance with the rules of
31 discovery provided in Maryland Rules 4–262 and 4–263.

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

1 A. using marijuana in a public place or assisting the
2 individual for whom the defendant is a caregiver in using the marijuana in a public place;
3 or

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

5 (d) The provisions of subsection (c)(2)(ii) of this section making the possession of
6 marijuana a civil offense may not be construed to affect the laws relating to:

7 (1) operating a vehicle or vessel while under the influence of or while
8 impaired by a controlled dangerous substance; or

9 (2) seizure and forfeiture.

10 5–619.

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

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

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

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

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

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

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

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

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

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

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

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

3 (12) the existence and scope of legitimate uses for the object in the
4 community; and

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

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

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

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

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

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

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

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

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

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

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

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

32 A. is a resident of the State;

- 1 B. is at least 21 years old;
- 2 C. is an immediate family member, a spouse, or a domestic
3 partner of the patient;
- 4 D. has not been convicted of a crime of violence as defined in
5 § 14–101 of this article;
- 6 E. has not been convicted of a violation of a State or federal
7 controlled dangerous substances law;
- 8 F. has not been convicted of a crime of moral turpitude;
- 9 G. has been designated as caregiver by the patient in writing
10 that has been placed in the patient’s medical record prior to arrest;
- 11 H. is the only individual designated by the patient to serve as
12 caregiver; and
- 13 I. is not serving as caregiver for any other patient.

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

- 18 A. cachexia or wasting syndrome;
- 19 B. severe or chronic pain;
- 20 C. severe nausea;
- 21 D. seizures;
- 22 E. severe and persistent muscle spasms; or
- 23 F. any other condition that is severe and resistant to
24 conventional medicine.

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

28 2. Notwithstanding paragraph (2) of this subsection, if the
29 court finds that the person used or possessed drug paraphernalia related to marijuana
30 because of medical necessity, [on conviction of a violation of this subsection, the maximum

1 penalty that the court may impose on the person is a fine not exceeding \$100] **THE COURT**
2 **SHALL DISMISS THE CHARGE.**

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

6 A. the defendant has a debilitating medical condition that
7 has been diagnosed by a physician with whom the defendant has a bona fide
8 physician–patient relationship;

9 B. the debilitating medical condition is severe and resistant
10 to conventional medicine; and

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

13 2. A. In a prosecution under this subsection involving
14 drug paraphernalia related to marijuana, it is an affirmative defense that the defendant
15 possessed drug paraphernalia related to marijuana because the drug paraphernalia related
16 to marijuana was intended for medical use by an individual with a debilitating medical
17 condition for whom the defendant is a caregiver.

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

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

25 A. using marijuana in a public place or assisting the
26 individual for whom the defendant is a caregiver in using the marijuana in a public place;
27 or

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

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

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

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

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

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

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

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

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

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

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

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

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

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