

# HOUSE BILL 1452

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CF SB 902

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By: **Delegates Vogt, Anderson, Angel, Arentz, Aumann, Brooks, Carter, Ghrist, Glass, Jalisi, Kittleman, Reilly, Shoemaker, Smith, Sophocleus, Turner, A. Washington, C. Wilson, K. Young, and P. Young**

Introduced and read first time: February 12, 2016

Assigned to: Health and Government Operations and Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Veterans – Medical Marijuana**

3 FOR the purpose of adding posttraumatic stress disorder under a definition of “debilitating  
4 medical condition” for the purposes of certain affirmative defenses to a charge of use  
5 or possession of marijuana; establishing a certain affirmative defense for a charge of  
6 use or possession of marijuana for a certain qualified veteran patient; establishing  
7 that a certain qualified veteran patient who has been issued and possesses a certain  
8 written certification is not subject to arrest, citation, prosecution, or civil or  
9 administrative penalty by a professional licensing board and may not be denied a  
10 right or privilege for the medical use of marijuana, under certain circumstances;  
11 establishing that a qualified veteran patient may not be denied certain rights  
12 relating to child custody or visitation or may not be presumed guilty of certain  
13 charges based solely on certain conduct; establishing that a qualified veteran patient  
14 is not disqualified from certain medical care for certain conduct; providing that a  
15 certain physician is not subject to arrest, prosecution, or civil or administrative  
16 penalty for providing a certain written certification or making certain statements;  
17 establishing that this Act does not prevent certain sanctions from being imposed on  
18 a physician; providing that marijuana and certain other property may not be seized  
19 or forfeited under certain circumstances; establishing that a certain individual is not  
20 subject to arrest or prosecution for a certain offense solely for being in a certain  
21 location; providing that possession of a certain written certification may not be the  
22 basis for a certain finding of probable cause; establishing that this Act does not  
23 authorize certain conduct or prohibit the imposition of certain penalties; providing  
24 that this Act does not require a public or private health care insurer to make a  
25 certain reimbursement; providing a statutory form for a written certification of a  
26 qualified veteran patient; defining certain terms; and generally relating to veterans  
27 and medical marijuana.

28 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law  
2 Section 5–601(c)  
3 Annotated Code of Maryland  
4 (2012 Replacement Volume and 2015 Supplement)  
5 (As enacted by Chapter 4 of the Acts of the General Assembly of 2016)

6 BY adding to  
7 Article – Health – General  
8 Section 24–1701 through 24–1705 to be under the new subtitle “Subtitle 17. Medical  
9 Marijuana for Veterans”  
10 Annotated Code of Maryland  
11 (2015 Replacement Volume)

12 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
13 That the laws of Maryland read as follows:

14 **Article – Criminal Law**

15 5–601.

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

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

22 (ii) 1. A first 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 \$100.

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

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

31 4. A. In addition to a fine, a court shall order a person  
32 under the age of 21 years who commits a violation punishable under subparagraph 1,  
33 2, or 3 of this subparagraph to attend a drug education program approved by the  
34 Department of Health and Mental Hygiene, refer the person to an assessment for substance  
35 abuse disorder, and refer the person to substance abuse treatment, if necessary.



- 1 B. severe or chronic pain;
- 2 C. severe nausea;
- 3 D. seizures;
- 4 E. severe and persistent muscle spasms;
- 5 **F. POSTTRAUMATIC STRESS DISORDER; or**
- 6 **[F.] G.** any other condition that is severe and resistant to  
7 conventional medicine.

8 **5. “QUALIFIED VETERAN PATIENT” MEANS A VETERAN**  
9 **WHO HAS BEEN ISSUED A WRITTEN CERTIFICATION OF QUALIFIED VETERAN**  
10 **PATIENT UNDER § 24–1705 OF THE HEALTH – GENERAL ARTICLE.**

11 **6. “VETERAN” HAS THE MEANING STATED IN § 9–901 OF**  
12 **THE STATE GOVERNMENT ARTICLE.**

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

16 2. Notwithstanding paragraph (2) of this subsection, **THE**  
17 **COURT SHALL DISMISS THE CHARGE** if the court finds that the person:

18 **A.** used or possessed marijuana because of medical  
19 necessity[, the court shall dismiss the charge]; **OR**

20 **B. IS A QUALIFIED VETERAN PATIENT.**

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

24 **A.** the defendant has a debilitating medical condition that  
25 has been diagnosed by a physician with whom the defendant has a bona fide  
26 physician–patient relationship;

27 **B.** the debilitating medical condition is severe and resistant  
28 to conventional medicine; and

29 **C.** marijuana is likely to provide the defendant with  
30 therapeutic or palliative relief from the debilitating medical condition.

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

5                   B.     A defendant may not assert the affirmative defense under  
6 this subparagraph unless the defendant notifies the State's Attorney of the defendant's  
7 intention to assert the affirmative defense and provides the State's Attorney with all  
8 documentation in support of the affirmative defense in accordance with the rules of  
9 discovery provided in Maryland Rules 4-262 and 4-263.

10                   **3.     IN A PROSECUTION FOR THE USE OR POSSESSION OF**  
11 **MARIJUANA UNDER THIS SECTION, IT IS AN AFFIRMATIVE DEFENSE THAT THE**  
12 **DEFENDANT IS A QUALIFIED VETERAN PATIENT.**

13                   [3.] 4. An affirmative defense under this subparagraph may not  
14 be used if the defendant was:

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

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

19                   [(4)] (5)     A violation of this section involving the smoking of marijuana in  
20 a public place is a civil offense punishable by a fine not exceeding \$500.

21                   **Article – Health – General**

22                   **SUBTITLE 17. MEDICAL MARIJUANA FOR VETERANS.**

23     **24-1701.**

24                   **(A)    IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**  
25 **INDICATED.**

26                   **(B)    “BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP” HAS THE MEANING**  
27 **STATED IN § 5-601 OF THE CRIMINAL LAW ARTICLE.**

28                   **(C)    “DEBILITATING MEDICAL CONDITION” HAS THE MEANING STATED IN §**  
29 **5-601 OF THE CRIMINAL LAW ARTICLE.**

30                   **(D)    “MARIJUANA” HAS THE MEANING STATED IN § 5-101 OF THE CRIMINAL**  
31 **LAW ARTICLE.**

1 (E) (1) "MEDICAL USE" MEANS THE ACQUISITION, POSSESSION,  
2 PREPARATION, USE, DELIVERY, TRANSFER, OR TRANSPORTATION OF MARIJUANA  
3 OR PARAPHERNALIA RELATING TO THE ADMINISTRATION OF MARIJUANA TO TREAT  
4 OR ALLEVIATE A QUALIFIED VETERAN PATIENT'S MEDICAL CONDITION.

5 (2) "MEDICAL USE" DOES NOT INCLUDE THE USE OF MARIJUANA BY  
6 A DESIGNATED CAREGIVER WHO IS NOT A QUALIFIED VETERAN PATIENT.

7 (F) "PHYSICIAN" MEANS AN INDIVIDUAL LICENSED BY THE STATE BOARD  
8 OF PHYSICIANS UNDER TITLE 14 OF THE HEALTH OCCUPATIONS ARTICLE TO  
9 PRACTICE MEDICINE.

10 (G) "QUALIFIED VETERAN PATIENT" MEANS A PERSON WHO IS:

11 (1) A VETERAN; AND

12 (2) A RESIDENT OF THE STATE WHO SUFFERS FROM A DEBILITATING  
13 MEDICAL CONDITION AND POSSESSES A WRITTEN CERTIFICATION ISSUED TO THE  
14 PATIENT BY A PHYSICIAN WITH WHOM THE PATIENT HAS A BONA FIDE  
15 PHYSICIAN-PATIENT RELATIONSHIP.

16 (H) "VETERAN" HAS THE MEANING STATED IN § 9-901 OF THE STATE  
17 GOVERNMENT ARTICLE.

18 (I) (1) "WRITTEN CERTIFICATION" MEANS A DOCUMENT THAT:

19 (I) IS IN THE FORM OR SUBSTANTIALLY IN THE FORM  
20 PROVIDED IN § 24-1705 OF THIS SUBTITLE;

21 (II) IS SIGNED AND DATED BY A PHYSICIAN;

22 (III) IS VALID FOR 1 YEAR; AND

23 (IV) STATES THAT IN THE PHYSICIAN'S PROFESSIONAL OPINION  
24 A PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE  
25 USE OF MARIJUANA TO TREAT OR ALLEVIATE THE PATIENT'S MEDICAL CONDITION.

26 (2) "WRITTEN CERTIFICATION" DOES NOT INCLUDE A DOCUMENT  
27 THAT IS NOT PROVIDED IN THE COURSE OF A BONA FIDE PHYSICIAN-PATIENT  
28 RELATIONSHIP AFTER THE PHYSICIAN HAS COMPLETED A FULL ASSESSMENT OF  
29 THE QUALIFIED VETERAN PATIENT'S MEDICAL HISTORY.

30 24-1702.

1           **(A) A QUALIFIED VETERAN PATIENT IS NOT SUBJECT TO ARREST, CITATION,**  
2 **PROSECUTION, OR CIVIL OR ADMINISTRATIVE PENALTY, INCLUDING DISCIPLINARY**  
3 **ACTION, BY A PROFESSIONAL LICENSING BOARD, AND MAY NOT BE DENIED A RIGHT**  
4 **OR PRIVILEGE, FOR THE MEDICAL USE OF MARIJUANA.**

5           **(B) A PERSON OTHERWISE ENTITLED TO CUSTODY OF, OR VISITATION OR**  
6 **PARENTING TIME WITH, A MINOR MAY NOT:**

7                   **(1) BE DENIED THE RIGHT SOLELY FOR CONDUCT ALLOWED UNDER**  
8 **THIS SUBTITLE; OR**

9                   **(2) BE PRESUMED GUILTY OF NEGLECT OR CHILD ENDANGERMENT.**

10           **(C) FOR THE PURPOSES OF MEDICAL CARE, INCLUDING ORGAN**  
11 **TRANSPLANTS, A QUALIFIED VETERAN PATIENT'S AUTHORIZED USE OF MARIJUANA**  
12 **IN ACCORDANCE WITH THIS SUBTITLE IS THE EQUIVALENT OF THE AUTHORIZED USE**  
13 **OF ANY OTHER MEDICATION USED AT THE DIRECTION OF A PHYSICIAN, AND DOES**  
14 **NOT CONSTITUTE THE USE OF AN ILLICIT SUBSTANCE OR OTHERWISE DISQUALIFY A**  
15 **QUALIFIED VETERAN PATIENT FROM NEEDED MEDICAL CARE.**

16           **(D) (1) A PHYSICIAN IS NOT SUBJECT TO ARREST, PROSECUTION, OR**  
17 **CIVIL OR ADMINISTRATIVE PENALTY, INCLUDING DISCIPLINARY ACTION, BY THE**  
18 **MARYLAND BOARD OF PHYSICIANS OR ANY OTHER OCCUPATIONAL OR**  
19 **PROFESSIONAL LICENSING BOARD OR BUREAU AND MAY NOT BE DENIED A RIGHT**  
20 **OR PRIVILEGE SOLELY FOR PROVIDING WRITTEN CERTIFICATIONS OR FOR**  
21 **OTHERWISE STATING THAT, IN THE PHYSICIAN'S PROFESSIONAL OPINION, A**  
22 **PATIENT IS LIKELY TO RECEIVE THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE**  
23 **MEDICAL USE OF MARIJUANA TO TREAT OR ALLEVIATE THE PATIENT'S**  
24 **DEBILITATING MEDICAL CONDITION.**

25                   **(2) NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO PREVENT A**  
26 **PROFESSIONAL LICENSING BOARD FROM SANCTIONING A PHYSICIAN FOR FAILING**  
27 **TO PROPERLY EVALUATE A PATIENT'S MEDICAL CONDITION.**

28           **(E) MARIJUANA, PROPERTY, OR INTEREST IN PROPERTY THAT IS**  
29 **POSSESSED, OWNED, OR USED IN CONNECTION WITH THE MEDICAL USE OF**  
30 **MARIJUANA BY A QUALIFIED VETERAN PATIENT AS ALLOWED UNDER THIS**  
31 **SUBTITLE, OR ACTS INCIDENTAL TO THE POSSESSION, OWNERSHIP, OR USE, MAY**  
32 **NOT BE SEIZED OR FORFEITED ON THE BASIS OF THE USE OR POSSESSION OF**  
33 **MARIJUANA.**

34           **(F) AN INDIVIDUAL IS NOT SUBJECT TO ARREST OR PROSECUTION FOR**  
35 **CONSTRUCTIVE POSSESSION, CONSPIRACY, OR OTHER OFFENSE SOLELY FOR BEING**

1 IN THE PRESENCE OR VICINITY OF THE MEDICAL USE OF MARIJUANA BY A  
2 QUALIFIED VETERAN PATIENT AS ALLOWED UNDER THIS SUBTITLE.

3 (G) THE POSSESSION OF A WRITTEN CERTIFICATION MAY NOT BE THE BASIS  
4 FOR A FINDING OF PROBABLE CAUSE TO SEARCH AN INDIVIDUAL OR THE PROPERTY  
5 OF AN INDIVIDUAL OR TO OTHERWISE SUBJECT THE INDIVIDUAL OR THE PROPERTY  
6 OF THE INDIVIDUAL TO INSPECTION BY A GOVERNMENTAL UNIT.

7 24-1703.

8 THIS SUBTITLE DOES NOT AUTHORIZE AN INDIVIDUAL TO ENGAGE IN OR  
9 PREVENT THE IMPOSITION OF CIVIL, CRIMINAL, OR OTHER PENALTIES FOR:

10 (1) PERFORMING A TASK UNDER THE INFLUENCE OF MARIJUANA  
11 WHEN DOING SO WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL  
12 MALPRACTICE;

13 (2) OPERATING, NAVIGATING, OR BEING IN ACTUAL PHYSICAL  
14 CONTROL OF A MOTOR VEHICLE, AIRCRAFT, OR BOAT WHILE UNDER THE INFLUENCE  
15 OF MARIJUANA;

16 (3) SMOKING MARIJUANA IN A PUBLIC PLACE;

17 (4) SMOKING MARIJUANA IN A MOTOR VEHICLE; OR

18 (5) SMOKING MARIJUANA ON PRIVATE PROPERTY THAT:

19 (I) 1. IS RENTED FROM A LANDLORD; AND

20 2. IS SUBJECT TO A POLICY THAT PROHIBITS THE  
21 SMOKING OF MARIJUANA ON THE PROPERTY; OR

22 (II) IS SUBJECT TO A POLICY THAT PROHIBITS THE SMOKING OF  
23 MARIJUANA ON THE PROPERTY OF AN ATTACHED DWELLING ADOPTED BY:

24 1. THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT  
25 OWNERS OF A CONDOMINIUM REGIME; OR

26 2. THE GOVERNING BODY OF A HOMEOWNERS  
27 ASSOCIATION.

28 24-1704.

1 THIS SUBTITLE DOES NOT REQUIRE A PUBLIC OR PRIVATE HEALTH INSURER  
2 TO REIMBURSE AN INDIVIDUAL FOR THE COSTS ASSOCIATED WITH THE MEDICAL  
3 USE OF MARIJUANA.

4 24-1705.

5 THE FOLLOWING FORM SHALL BE USED TO PROVIDE WRITTEN CERTIFICATION  
6 OF THE STATUS OF A QUALIFIED VETERAN PATIENT UNDER THIS SUBTITLE:

7 "WRITTEN CERTIFICATION OF QUALIFIED VETERAN PATIENT

8 PHYSICIAN'S NAME:

MARYLAND BOARD OF  
9 PHYSICIANS NUMBER:  
10

11 PHYSICIAN'S ADDRESS

12 (STREET): \_\_\_\_\_

13 (CITY, STATE, ZIP CODE):

14 TELEPHONE: \_\_\_\_\_

15 PATIENT INFORMATION:

16 PATIENT'S NAME:

17 PATIENT'S DATE OF BIRTH: \_\_\_\_\_

18 PATIENT'S ADDRESS IN PHYSICIAN'S RECORDS:  
19 \_\_\_\_\_

20 EXPIRATION DATE OF CERTIFICATION (12 MONTHS FROM DATE OF  
21 PHYSICIAN'S SIGNATURE):  
22 \_\_\_\_\_

23 BY SIGNING THIS FORM, I HEREBY CERTIFY THAT THE ABOVE-NAMED PATIENT IN  
24 POSSESSION OF THIS WRITTEN CERTIFICATION HAS PRESENTED A DD-214 FORM (A  
25 COPY OF WHICH IS ATTACHED) AND HAS BEEN DIAGNOSED WITH A DEBILITATING  
26 MEDICAL CONDITION, AS DEFINED IN § 24-1701 OF THE HEALTH - GENERAL  
27 ARTICLE OF THE ANNOTATED CODE OF MARYLAND THAT IS SEVERE AND  
28 RESISTANT TO CONVENTIONAL MEDICINE.

29 BY SIGNING THIS FORM, I FURTHER CERTIFY THAT I AM THE PHYSICIAN OF RECORD  
30 FOR THE ABOVE-NAMED PATIENT, AND THAT EVIDENCE OF MY ASSESSMENT,  
31 DIAGNOSIS, AND TREATMENT OF THE CONDITION FOR WHICH I AM PROVIDING THIS

1 CERTIFICATION CAN BE FOUND IN THE PATIENT'S MEDICAL RECORDS WHICH I  
2 MAINTAIN. I FURTHER CERTIFY THAT I HAVE A BONA FIDE PHYSICIAN-PATIENT  
3 RELATIONSHIP WITH THIS PATIENT, AS DEFINED IN §  
4 24-1701 OF THE HEALTH - GENERAL ARTICLE OF THE ANNOTATED CODE OF  
5 MARYLAND.

6 BASED ON MY ASSESSMENT, DIAGNOSIS, AND TREATMENT OF THIS PATIENT, IT IS MY  
7 CONCLUSION THAT THE ABOVE-NAMED PATIENT MAY BENEFIT FROM THE MEDICAL  
8 USE OF MARIJUANA AND HAS A QUALIFIED MEDICAL CONDITION.

9 PRINTED NAME: \_\_\_\_\_

10 SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

### 11 KEY DEFINITIONS

12 A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP IS DEFINED IN § 24-1701 OF THE  
13 HEALTH - GENERAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS  
14 FOLLOWS:

15 "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP" MEANS A RELATIONSHIP IN  
16 WHICH THE PHYSICIAN HAS ONGOING RESPONSIBILITY FOR THE ASSESSMENT,  
17 CARE, AND TREATMENT OF A PATIENT'S DEBILITATING MEDICAL CONDITION.

18 A DEBILITATING MEDICAL CONDITION IS DEFINED IN § 24-1701 OF THE  
19 HEALTH - GENERAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS  
20 FOLLOWS:

21 "DEBILITATING MEDICAL CONDITION" MEANS A CHRONIC OR DEBILITATING  
22 DISEASE OR MEDICAL CONDITION OR THE TREATMENT OF A CHRONIC OR  
23 DEBILITATING DISEASE OR MEDICAL CONDITION THAT PRODUCES ONE OR MORE OF  
24 THE FOLLOWING, AS DOCUMENTED BY A PHYSICIAN WITH WHOM THE PATIENT HAS  
25 A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP:

- 26 (1) CACHEXIA OR WASTING SYNDROME;
- 27 (2) SEVERE OR CHRONIC PAIN;
- 28 (3) SEVERE NAUSEA;
- 29 (4) SEIZURES;
- 30 (5) SEVERE AND PERSISTENT MUSCLE SPASMS;

1           **(6) POSTTRAUMATIC STRESS DISORDER; OR**

2           **(7) ANY OTHER CONDITION THAT IS SEVERE AND RESISTANT TO**  
3 **CONVENTIONAL MEDICINE.**

4 **A WRITTEN CERTIFICATION IS DEFINED IN § 24-1701 OF THE HEALTH – GENERAL**  
5 **ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS FOLLOWS:**

6 **“WRITTEN CERTIFICATION” MEANS A DOCUMENT IN THE FORM OR SUBSTANTIALLY**  
7 **IN THE FORM PROVIDED IN § 24-1705 OF THE HEALTH – GENERAL ARTICLE, SIGNED**  
8 **AND DATED BY A PHYSICIAN, THAT IS VALID FOR 1 YEAR AND THAT STATES THAT IN**  
9 **THE PHYSICIAN’S PROFESSIONAL OPINION A PATIENT IS LIKELY TO RECEIVE**  
10 **THERAPEUTIC OR PALLIATIVE BENEFIT FROM THE MEDICAL USE OF MARIJUANA TO**  
11 **TREAT OR ALLEVIATE THE PATIENT’S DEBILITATING MEDICAL CONDITION OR**  
12 **SYMPTOMS ASSOCIATED WITH THE DEBILITATING MEDICAL CONDITION. A WRITTEN**  
13 **CERTIFICATION MAY BE MADE ONLY IN THE COURSE OF A BONA FIDE**  
14 **PHYSICIAN-PATIENT RELATIONSHIP AFTER THE PHYSICIAN HAS COMPLETED A**  
15 **FULL ASSESSMENT OF THE QUALIFIED VETERAN PATIENT’S MEDICAL HISTORY.”**

16           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
17 October 1, 2016.