

# SENATE BILL 902

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CF 6lr1425

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By: **Senator Young**

Introduced and read first time: February 5, 2016

Assigned to: Judicial Proceedings

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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,  
29 Article – Criminal Law  
30 Section 5–601(c)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2012 Replacement Volume and 2015 Supplement)  
3 (As enacted by Chapter 4 of the Acts of the General Assembly of 2016)

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

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

12 **Article – Criminal Law**

13 5–601.

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

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

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

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

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

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

34 B. In addition to a fine, a court shall order a person at least  
35 21 years old who commits a violation punishable under subparagraph 3 of this  
36 subparagraph to attend a drug education program approved by the Department of Health

1 and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and  
2 refer the person to substance abuse treatment, if necessary.

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

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

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

11 A. is a resident of the State;

12 B. is at least 21 years old;

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

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

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

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

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

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

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

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

29 A. cachexia or wasting syndrome;

30 B. severe or chronic pain;

31 C. severe nausea;

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

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

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

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

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

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

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

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

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

25 **B.** the debilitating medical condition is severe and resistant  
26 to conventional medicine; and

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

29 2. **A.** In a prosecution for the possession of marijuana  
30 under this section, it is an affirmative defense that the defendant possessed marijuana

1 because the marijuana was intended for medical use by an individual with a debilitating  
2 medical condition for whom the defendant is a caregiver.

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

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

11 [3.] 4. An affirmative defense under this subparagraph may not  
12 be used if the defendant was:

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

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

17 [(4)] (5) A violation of this section involving the smoking of marijuana in  
18 a public place is a civil offense punishable by a fine not exceeding \$500.

19 **Article – Health – General**

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

21 **24-1701.**

22 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
23 INDICATED.

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

26 (C) “DEBILITATING MEDICAL CONDITION” HAS THE MEANING STATED IN §  
27 5-601 OF THE CRIMINAL LAW ARTICLE.

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

30 (E) (1) “MEDICAL USE” MEANS THE ACQUISITION, POSSESSION,  
31 PREPARATION, USE, DELIVERY, TRANSFER, OR TRANSPORTATION OF MARIJUANA

1 OR PARAPHERNALIA RELATING TO THE ADMINISTRATION OF MARIJUANA TO TREAT  
2 OR ALLEVIATE A QUALIFIED VETERAN PATIENT'S MEDICAL CONDITION.

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

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

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

9 (1) A VETERAN; AND

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

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

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

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

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

20 (III) IS VALID FOR 1 YEAR; AND

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

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

28 24-1702.

29 (A) A QUALIFIED VETERAN PATIENT IS NOT SUBJECT TO ARREST, CITATION,  
30 PROSECUTION, OR CIVIL OR ADMINISTRATIVE PENALTY, INCLUDING DISCIPLINARY

1 ACTION, BY A PROFESSIONAL LICENSING BOARD, AND MAY NOT BE DENIED A RIGHT  
2 OR PRIVILEGE, FOR THE MEDICAL USE OF MARIJUANA.

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

5 (1) BE DENIED THE RIGHT SOLELY FOR CONDUCT ALLOWED UNDER  
6 THIS SUBTITLE; OR

7 (2) BE PRESUMED GUILTY OF NEGLIGENCE OR CHILD ENDANGERMENT.

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

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

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

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

32 (F) AN INDIVIDUAL IS NOT SUBJECT TO ARREST OR PROSECUTION FOR  
33 CONSTRUCTIVE POSSESSION, CONSPIRACY, OR OTHER OFFENSE SOLELY FOR BEING  
34 IN THE PRESENCE OR VICINITY OF THE MEDICAL USE OF MARIJUANA BY A  
35 QUALIFIED VETERAN PATIENT AS ALLOWED UNDER THIS SUBTITLE.





1 24-1705.

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

4 "WRITTEN CERTIFICATION OF QUALIFIED VETERAN PATIENT

5 PHYSICIAN'S NAME: \_\_\_\_\_ MARYLAND BOARD OF  
6 \_\_\_\_\_ PHYSICIANS NUMBER:  
7 \_\_\_\_\_

8 PHYSICIAN'S ADDRESS

9 (STREET): \_\_\_\_\_

10 (CITY, STATE, ZIP CODE): \_\_\_\_\_ TELEPHONE: \_\_\_\_\_  
11 \_\_\_\_\_

12 PATIENT INFORMATION:

13 PATIENT'S NAME: \_\_\_\_\_ PATIENT'S DATE OF BIRTH: \_\_\_\_\_  
14 \_\_\_\_\_

15 PATIENT'S ADDRESS IN PHYSICIAN'S RECORDS:  
16 \_\_\_\_\_

17 EXPIRATION DATE OF CERTIFICATION (12 MONTHS FROM DATE OF  
18 PHYSICIAN'S SIGNATURE):  
19 \_\_\_\_\_

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

26 BY SIGNING THIS FORM, I FURTHER CERTIFY THAT I AM THE PHYSICIAN OF RECORD  
27 FOR THE ABOVE-NAMED PATIENT, AND THAT EVIDENCE OF MY ASSESSMENT,  
28 DIAGNOSIS, AND TREATMENT OF THE CONDITION FOR WHICH I AM PROVIDING THIS  
29 CERTIFICATION CAN BE FOUND IN THE PATIENT'S MEDICAL RECORDS WHICH I  
30 MAINTAIN. I FURTHER CERTIFY THAT I HAVE A BONA FIDE PHYSICIAN-PATIENT  
31 RELATIONSHIP WITH THIS PATIENT, AS DEFINED IN §

1 **24-1701 OF THE HEALTH – GENERAL ARTICLE OF THE ANNOTATED CODE OF**  
2 **MARYLAND.**

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

6 **PRINTED NAME:** \_\_\_\_\_

7 **SIGNATURE:** \_\_\_\_\_ **DATE:**\_\_\_\_\_

8 **KEY DEFINITIONS**

9 **A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP IS DEFINED IN § 24-1701 OF THE**  
10 **HEALTH – GENERAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS**  
11 **FOLLOWS:**

12 **“BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP” MEANS A RELATIONSHIP IN**  
13 **WHICH THE PHYSICIAN HAS ONGOING RESPONSIBILITY FOR THE ASSESSMENT,**  
14 **CARE, AND TREATMENT OF A PATIENT’S DEBILITATING MEDICAL CONDITION.**

15 **A DEBILITATING MEDICAL CONDITION IS DEFINED IN § 24-1701 OF THE**  
16 **HEALTH – GENERAL ARTICLE OF THE ANNOTATED CODE OF MARYLAND AS**  
17 **FOLLOWS:**

18 **“DEBILITATING MEDICAL CONDITION” MEANS A CHRONIC OR DEBILITATING**  
19 **DISEASE OR MEDICAL CONDITION OR THE TREATMENT OF A CHRONIC OR**  
20 **DEBILITATING DISEASE OR MEDICAL CONDITION THAT PRODUCES ONE OR MORE OF**  
21 **THE FOLLOWING, AS DOCUMENTED BY A PHYSICIAN WITH WHOM THE PATIENT HAS**  
22 **A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP:**

- 23           **(1) CACHEXIA OR WASTING SYNDROME;**
- 24           **(2) SEVERE OR CHRONIC PAIN;**
- 25           **(3) SEVERE NAUSEA;**
- 26           **(4) SEIZURES;**
- 27           **(5) SEVERE AND PERSISTENT MUSCLE SPASMS;**
- 28           **(6) POSTTRAUMATIC STRESS DISORDER; OR**

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

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

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

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