

SENATE BILL 517

E1, E2, R5

5lr1843

By: **Senator Zirkin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 18, 2015

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Use and Possession of Marijuana and Drug Paraphernalia**

3 FOR the purpose of ~~repealing a certain criminal prohibition on the use or possession of~~
4 ~~marijuana; establishing that certain civil penalties apply to the use or possession of~~
5 ~~any quantity of marijuana; establishing a civil penalty for the smoking of marijuana~~
6 ~~in a public place; requiring a court to dismiss a certain use or possession of marijuana~~
7 ~~charge if the court finds that the person used or possessed marijuana because of a~~
8 ~~certain medical necessity; providing that the provisions of this Act may not be~~
9 ~~construed to authorize certain activities; establishing that certain procedures~~
10 ~~regarding the issuance of a citation for the use or possession of marijuana apply to~~
11 ~~all amounts and not just certain amounts of marijuana; establishing that a certain~~
12 ~~criminal prohibition on the use or possession of drug paraphernalia does not apply~~
13 ~~to the use or possession of drug paraphernalia involving the use or possession of~~
14 ~~marijuana; repealing a certain affirmative defense regarding a certain medical~~
15 ~~necessity as it relates to a certain offense prohibiting the use and possession of drug~~
16 ~~paraphernalia; prohibiting the use of marijuana in a vehicle while on a highway;~~
17 ~~providing for certain penalties for a violation of this Act; providing for the application~~
18 ~~of certain provisions of this Act; and generally relating to the use and possession of~~
19 ~~marijuana and drug paraphernalia.~~

20 BY repealing and reenacting, with amendments,
21 Article – Criminal Law
22 Section ~~5-601, 5-601.1, 5-601(c)(1)~~ and 5-619
23 Annotated Code of Maryland
24 (2012 Replacement Volume and 2014 Supplement)

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.



1 ~~BY adding to~~

2 ~~Article – Transportation~~

3 ~~Section 21-903.1 and 27-116~~

4 ~~Annotated Code of Maryland~~

5 ~~(2012 Replacement Volume and 2014 Supplement)~~

6 BY adding to

7 Article – Criminal Law

8 Section 5-601(c)(4)

9 Annotated Code of Maryland

10 (2012 Replacement Volume and 2014 Supplement)

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

13 **Article – Criminal Law**

14 5-601.

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

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

19 ~~(2) obtain or attempt to obtain a controlled dangerous substance, or~~
20 ~~procure or attempt to procure the administration of a controlled dangerous substance by:~~

21 ~~(i) fraud, deceit, misrepresentation, or subterfuge;~~

22 ~~(ii) the counterfeiting or alteration of a prescription or a written~~
23 ~~order;~~

24 ~~(iii) the concealment of a material fact;~~

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

26 ~~(v) falsely assuming the title of or representing to be a~~
27 ~~manufacturer, distributor, or authorized provider; or~~

28 ~~(vi) making, issuing, or presenting a false or counterfeit prescription~~
29 ~~or written order.~~

30 ~~(b) Information that is communicated to a physician in an effort to obtain a~~
31 ~~controlled dangerous substance in violation of this section is not a privileged~~
32 ~~communication.~~

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

4 ~~(2) (i) Except as provided in subparagraph [(ii)] (III) of this paragraph,~~
 5 ~~a [person whose] violation of this section [involves] INVOLVING the use or possession of~~
 6 ~~marijuana is A CIVIL OFFENSE subject to [imprisonment not exceeding 1 year or a fine not~~
 7 ~~exceeding \$1,000 or both.];~~

8 ~~[(ii)] 1. [A] FOR A first violation, [of this section involving the use~~
 9 ~~or possession of less than 10 grams of marijuana is a civil offense punishable by] a fine not~~
 10 ~~exceeding \$100[.];~~

11 ~~2. [A] FOR A second violation, [of this section involving the~~
 12 ~~use or possession of less than 10 grams of marijuana is a civil offense punishable by] a fine~~
 13 ~~not exceeding \$250[.]; AND~~

14 ~~3. [A] FOR A third or subsequent violation, [of this section~~
 15 ~~involving the use or possession of less than 10 grams of marijuana is a civil offense~~
 16 ~~punishable by] a fine not exceeding \$500.~~

17 ~~[4. A.] (II) 1. In addition to a fine, a court shall order~~
 18 ~~a person under the age of 21 years who commits a violation punishable under~~
 19 ~~[subsubparagraph 1, 2, or 3 of this] subparagraph (I) OF THIS PARAGRAPH to attend a~~
 20 ~~drug education program approved by the Department of Health and Mental Hygiene, refer~~
 21 ~~the person to an assessment for substance abuse disorder, and refer the person to substance~~
 22 ~~abuse treatment, if necessary.~~

23 ~~[B.] 2. In addition to a fine, a court shall order a person at~~
 24 ~~least 21 years old who commits a violation punishable under [subsubparagraph 3 of this]~~
 25 ~~subparagraph (I) 3 OF THIS PARAGRAPH to attend a drug education program approved by~~
 26 ~~the Department of Health and Mental Hygiene, refer the person to an assessment for~~
 27 ~~substance abuse disorder, and refer the person to substance abuse treatment, if necessary.~~

28 ~~(III) (4) A VIOLATION OF THIS SECTION INVOLVING THE~~
 29 ~~SMOKING OF MARIJUANA IN A PUBLIC PLACE IS A CIVIL OFFENSE PUNISHABLE BY A~~
 30 ~~FINE NOT EXCEEDING \$1,000 \$500.~~

31 ~~(3) (i) 1. In this paragraph the following words have the meanings~~
 32 ~~indicated.~~

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

~~3. “Caregiver” means an individual designated by a patient with a debilitating medical condition to provide physical or medical assistance to the 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 partner of the patient;~~

~~D. has not been convicted of a crime of violence as defined in § 14-101 of this article;~~

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

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

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

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

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

~~4. “Debilitating medical condition” means a chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces one or more of the following, as documented by a physician with whom 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 conventional medicine.~~

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

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

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

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

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

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

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

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

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

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

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

~~(d) The provisions of subsection [(c)(2)(ii)] (C)(2)(I) of this section making the possession of marijuana a civil offense may not be construed to:~~

~~(1) affect the laws relating to:~~

~~[(1)] (I) operating a vehicle or vessel while under the influence of or while impaired by a controlled dangerous substance; or~~

~~[(2)] (II) SEARCH, seizure and forfeiture OF A VEHICLE, VESSEL, OR REAL PROPERTY; OR~~

~~(2) AUTHORIZE A PERSON TO ENGAGE IN:~~

~~(I) SMOKING MARIJUANA IN ANY PUBLIC PLACE;~~

~~(II) SMOKING MARIJUANA IN A MOTOR VEHICLE; OR~~

~~(III) UNDERTAKING ANY TASK UNDER THE INFLUENCE OF MARIJUANA, WHEN DOING SO WOULD CONSTITUTE NEGLIGENCE OR PROFESSIONAL MALPRACTICE.~~

~~5-601.1.~~

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

~~(b) (1) A violation of § 5-601 of this part involving the use or possession of [less than 10 grams of] marijuana is a civil offense.~~

~~(2) Adjudication of a violation under § 5-601 of this part involving the use or possession of [less than 10 grams of] marijuana:~~

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

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

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

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

~~(ii) the date and time that the violation occurred;~~

~~(iii) the location at which the violation occurred;~~

~~(iv) the fine that may be imposed;~~

1 ~~(v) a notice stating that prepayment of the fine is allowed, except as~~
2 ~~provided in paragraph (2) of this subsection; and~~

3 ~~(vi) a notice in boldface type that states that the person shall:~~

4 ~~1. pay the full amount of the preset fine; or~~

5 ~~2. request a trial date at the date, time, and place established~~
6 ~~by the District Court by writ or trial notice.~~

7 ~~(2) (i) If a citation for a violation of § 5-601 of this part involving the~~
8 ~~use or possession of [less than 10 grams of] marijuana is issued to a person under the age~~
9 ~~of 21 years, the court shall summon the person for trial.~~

10 ~~(ii) If the court finds that a person at least 21 years old has~~
11 ~~committed a third or subsequent violation of § 5-601 of this part involving the use or~~
12 ~~possession of [less than 10 grams of] marijuana, the court shall summon the person for~~
13 ~~trial.~~

14 ~~(d) The form of the citation shall be uniform throughout the State and shall be~~
15 ~~prescribed by the District Court.~~

16 ~~(e) The Chief Judge of the District Court shall establish a schedule for the~~
17 ~~prepayment of the fine.~~

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

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

26 5-619.

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

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

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

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

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

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

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

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

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

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

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

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

18 (12) the existence and scope of legitimate uses for the object in the
19 community; and

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

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

24 (c) (1) **THIS SUBSECTION DOES NOT APPLY TO THE USE OR POSSESSION**
25 **OF DRUG PARAPHERNALIA INVOLVING THE USE OR POSSESSION OF MARIJUANA.**

26 (2) Unless authorized under this title, a person may not use or possess with
27 intent to use drug paraphernalia to:

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

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

1 **[(2)] (3)** A person who violates this subsection is guilty of a misdemeanor
2 and on conviction is subject to:

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

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

6 **[(3)] (4)** A person who is convicted of violating this subsection for the first
7 time and who previously has been convicted of violating subsection (d)(4) of this section is
8 subject to the penalty specified under paragraph **[(2)(ii)] (3)(II)** of this subsection.

9 **[(4) (i) 1.** In this paragraph the following words have the meanings
10 indicated.

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

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

17 A. is a resident of the State;

18 B. is at least 21 years old;

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

21 D. has not been convicted of a crime of violence as defined in
22 § 14–101 of this article;

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

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

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

28 H. is the only individual designated by the patient to serve as
29 caregiver; and

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

1 4. “Debilating medical condition” means a chronic or
2 debilitating disease or medical condition or the treatment of a chronic or debilitating
3 disease or medical condition that produces one or more of the following, as documented by
4 a physician with whom the patient has a bona fide physician–patient relationship:

5 A. cachexia or wasting syndrome;

6 B. severe or chronic pain;

7 C. severe nausea;

8 D. seizures;

9 E. severe and persistent muscle spasms; or

10 F. any other condition that is severe and resistant to
11 conventional medicine.

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

15 2. Notwithstanding paragraph (2) of this subsection, if the
16 court finds that the person used or possessed drug paraphernalia related to marijuana
17 because of medical necessity, on conviction of a violation of this subsection, the maximum
18 penalty that the court may impose on the person is a fine not exceeding \$100.

19 (iii) 1. In a prosecution under this subsection involving drug
20 paraphernalia related to marijuana, it is an affirmative defense that the defendant used or
21 possessed drug paraphernalia related to 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 under this subsection involving
30 drug paraphernalia related to marijuana, it is an affirmative defense that the defendant
31 possessed drug paraphernalia related to marijuana because the drug paraphernalia related
32 to marijuana was intended for medical use by an individual with a debilitating medical
33 condition for whom the defendant is a caregiver.

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

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

8 A. using marijuana in a public place or assisting the
9 individual for whom the defendant is a caregiver in using the marijuana in a public place;
10 or

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

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

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

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

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

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

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

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

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

33 (e) (1) A person may not advertise in a newspaper, magazine, handbill, poster,
34 sign, mailing, or other writing or publication, or by sound truck, knowing, or under

1 circumstances where one reasonably should know, that the purpose of the advertisement,
2 wholly or partly, is to promote the sale or delivery of drug paraphernalia.

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 ~~Article — Transportation~~

9 ~~21-903.1.~~

10 (A) ~~THIS SECTION APPLIES TO A MOTOR VEHICLE THAT IS DRIVEN,~~
11 ~~STOPPED, STANDING, OR OTHERWISE LOCATED ON A HIGHWAY.~~

12 (B) ~~A PERSON MAY NOT USE MARIJUANA IN A MOTOR VEHICLE ON A~~
13 ~~HIGHWAY.~~

14 (C) ~~NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE PROHIBITION~~
15 ~~CONTAINED IN THIS SECTION APPLIES THROUGHOUT THE STATE.~~

16 ~~27-116.~~

17 ~~ANY PERSON CONVICTED OF A VIOLATION OF § 21-903.1 OF THIS ARTICLE IS~~
18 ~~SUBJECT TO A CIVIL FINE OF NOT MORE THAN \$1,000.~~

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.