

HOUSE BILL 105

E1

5lr0643

By: **Delegates Anderson, Barron, Branch, Carr, Carter, Conaway, Cullison, Fennell, Fraser-Hidalgo, Gilchrist, Glenn, Gutierrez, Hayes, Hixson, Jackson, Kelly, Lierman, Luedtke, McCray, McIntosh, Moon, Morales, Oaks, Platt, Reznik, B. Robinson, Rosenberg, Smith, Turner, Valderrama, Vaughn, and M. Washington**

Introduced and read first time: January 23, 2015

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Drug Paraphernalia Possession With Marijuana – Civil Offense**

3 FOR the purpose of altering the penalty for the possession or use of certain drug
4 paraphernalia involving the use or possession of less than a certain quantity of
5 marijuana; making the use or possession of certain drug paraphernalia under certain
6 circumstances a civil offense; establishing that a person who violates this Act may
7 be issued a certain citation; requiring the court to summon a certain person to appear
8 in court under certain circumstances; requiring a court to order certain persons to
9 attend a certain program, refer the person to a certain assessment, and refer the
10 person to a certain treatment, if necessary; authorizing a police officer to issue a
11 certain citation under certain circumstances; establishing that a certain violation of
12 this Act is not a criminal conviction and does not impose any of the civil disabilities
13 that may result from a criminal conviction; establishing certain requirements for a
14 citation issued under this Act; providing that persons who receive a certain citation
15 may pay the civil penalty or may elect to stand trial in the District Court; requiring
16 a civil penalty collected under this Act to be remitted to the Department of Health
17 and Mental Hygiene; requiring the Department to use certain money for certain
18 purposes; providing that a minor who violates certain provisions of this Act is subject
19 to certain procedures and dispositions; prohibiting a certain citation for a violation
20 of certain provisions of this Act from being subject to public inspection or included
21 on a certain public Web site; authorizing a certain law enforcement officer to issue a
22 citation to a child for a violation of a certain provision of this Act under certain
23 circumstances; making conforming changes; and generally relating to penalties for
24 possession of drug paraphernalia with marijuana.

25 BY repealing and reenacting, without amendments,
26 Article – Courts and Judicial Proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 3–8A–01(a)
2 Annotated Code of Maryland
3 (2013 Replacement Volume and 2014 Supplement)

4 BY repealing and reenacting, with amendments,
5 Article – Courts and Judicial Proceedings
6 Section 3–8A–01(dd), 3–8A–33(a), and 7–302(g)
7 Annotated Code of Maryland
8 (2013 Replacement Volume and 2014 Supplement)

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Law
11 Section 5–601.1, 5–619, and 5–620
12 Annotated Code of Maryland
13 (2012 Replacement Volume and 2014 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Criminal Procedure
16 Section 5–212
17 Annotated Code of Maryland
18 (2008 Replacement Volume and 2014 Supplement)

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

21 **Article – Courts and Judicial Proceedings**

22 3–8A–01.

23 (a) In this subtitle the following words have the meanings indicated, unless the
24 context of their use indicates otherwise.

25 (dd) “Violation” means a violation for which a citation is issued under:

26 (1) § 5–601, **§ 5–619, OR § 5–620** of the Criminal Law Article involving
27 the use or possession of less than 10 grams of marijuana;

28 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

29 (3) § 10–108 of the Criminal Law Article;

30 (4) § 10–132 of the Criminal Law Article;

31 (5) § 10–136 of the Criminal Law Article; or

32 (6) § 26–103 of the Education Article.

1 3–8A–33.

2 (a) A law enforcement officer authorized to make arrests shall issue a citation to
3 a child if the officer has probable cause to believe that the child is violating:

4 (1) § 5–601, **§ 5–619, OR § 5–620** of the Criminal Law Article involving
5 the use or possession of less than 10 grams of marijuana;

6 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

7 (3) § 10–108 of the Criminal Law Article;

8 (4) § 10–132 of the Criminal Law Article;

9 (5) § 10–136 of the Criminal Law Article; or

10 (6) § 26–103 of the Education Article.

11 7–302.

12 (g) (1) A civil penalty collected by the District Court resulting from citations
13 issued under § 5–601(c)(2)(ii), **§ 5–619(C)(2)(II), OR § 5–620(D)(2)(II)** of the Criminal
14 Law Article shall be remitted to the Department of Health and Mental Hygiene.

15 (2) The Department of Health and Mental Hygiene may use money
16 received under this subsection only for the purpose of funding drug treatment and
17 education programs.

18 Article – Criminal Law

19 5–601.1.

20 (a) A police officer shall issue a citation to a person who the police officer has
21 probable cause to believe has committed a violation of § 5–601 of this part, **OR § 5–619 OR**
22 **§ 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
23 marijuana.

24 (b) (1) A violation of § 5–601 of this part, **OR § 5–619 OR § 5–620 OF THIS**
25 **SUBTITLE** involving the use or possession of less than 10 grams of marijuana is a civil
26 offense.

27 (2) Adjudication of a violation under § 5–601 of this part, **OR § 5–619 OR**
28 **§ 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
29 marijuana:

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

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

3 (c) (1) A citation issued for a violation of § 5–601 of this part, **OR § 5–619 OR**
4 **§ 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
5 marijuana shall be signed by the police officer who issues the citation and shall contain:

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

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

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

9 (iv) the fine that may be imposed;

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

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

13 1. pay the full amount of the preset fine; or

14 2. request a trial date at the date, time, and place established
15 by the District Court by writ or trial notice.

16 (2) (i) If a citation for a violation of § 5–601 of this part involving the
17 use or possession of less than 10 grams of marijuana is issued to a person under the age of
18 21 years, the court shall summon the person for trial.

19 (ii) If the court finds that a person at least 21 years old has
20 committed a third or subsequent violation of § 5–601 of this part, **OR § 5–619 OR § 5–620**
21 **OF THIS SUBTITLE** involving the use or possession of less than 10 grams of marijuana, the
22 court shall summon the person for trial.

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

25 (e) The Chief Judge of the District Court shall establish a schedule for the
26 prepayment of the fine.

27 (f) A person issued a citation for a violation of § 5–601 of this part, **OR § 5–619**
28 **OR § 5–620 OF THIS SUBTITLE** involving the use or possession of less than 10 grams of
29 marijuana who is under the age of 18 years shall be subject to the procedures and
30 dispositions provided in Title 3, Subtitle 8A of the Courts Article.

1 (g) A citation for a violation of § 5–601 of this part, **OR § 5–619 OR § 5–620 OF**
2 **THIS SUBTITLE** involving the use or possession of less than 10 grams of marijuana and the
3 official record of a court regarding the citation are not subject to public inspection and may
4 not be included on the public Web site maintained by the Maryland Judiciary.

5 5–619.

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

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

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

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

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

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

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

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

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

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

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

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

29 (12) the existence and scope of legitimate uses for the object in the
30 community; and

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

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

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

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

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

11 (2) (I) **[A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
12 **PARAGRAPH, A person who violates this subsection is guilty of a misdemeanor and on**
13 **conviction is subject to:**

14 **[(i)] 1. for a first violation, a fine not exceeding \$500; and**

15 **[(ii)] 2. for each subsequent violation, imprisonment not**
16 **exceeding 2 years or a fine not exceeding \$2,000 or both.**

17 **(II) 1. A FIRST VIOLATION OF THIS SECTION INVOLVING THE**
18 **USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE**
19 **PUNISHABLE BY A FINE NOT EXCEEDING \$100.**

20 **2. A SECOND VIOLATION OF THIS SECTION INVOLVING**
21 **THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL**
22 **OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$250.**

23 **3. A THIRD OR SUBSEQUENT VIOLATION OF THIS**
24 **SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF**
25 **MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$500.**

26 **4. A. IN ADDITION TO A FINE, A COURT SHALL ORDER**
27 **A PERSON UNDER THE AGE OF 21 YEARS WHO COMMITS A VIOLATION PUNISHABLE**
28 **UNDER SUBSUBPARAGRAPH 1, 2, OR 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG**
29 **EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL**
30 **HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE**
31 **DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF**
32 **NECESSARY.**

33 **B. IN ADDITION TO A FINE, A COURT SHALL ORDER A**
34 **PERSON AT LEAST 21 YEARS OLD WHO COMMITS A VIOLATION PUNISHABLE UNDER**

1 **SUBSUBPARAGRAPH 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION**
2 **PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE,**
3 **REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND**
4 **REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.**

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

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

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

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

16 A. is a resident of the State;

17 B. is at least 21 years old;

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

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

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

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

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

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

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

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

- 1 A. cachexia or wasting syndrome;
- 2 B. severe or chronic pain;
- 3 C. severe nausea;
- 4 D. seizures;
- 5 E. severe and persistent muscle spasms; or
- 6 F. any other condition that is severe and resistant to
7 conventional medicine.

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

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

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

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

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

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

25 2. A. In a prosecution under this subsection involving
26 drug paraphernalia related to marijuana, it is an affirmative defense that the defendant
27 possessed drug paraphernalia related to marijuana because the drug paraphernalia related
28 to marijuana was intended for medical use by an individual with a debilitating medical
29 condition for whom the defendant is a caregiver.

30 B. A defendant may not assert the affirmative defense under
31 this subsubparagraph unless the defendant notifies the State's Attorney of the defendant's
32 intention to assert the affirmative defense and provides the State's Attorney with all

1 documentation in support of the affirmative defense in accordance with the rules of
2 discovery provided in Maryland Rules 4-262 and 4-263.

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

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

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

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

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

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

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

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

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

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

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

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

1 (2) A person who violates this subsection is guilty of a misdemeanor and
2 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 5–620.

7 (a) Unless authorized under this title, a person may not:

8 (1) obtain or attempt to obtain controlled paraphernalia by:

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

10 (ii) counterfeiting a prescription or a written order;

11 (iii) concealing a material fact or the use of a false name or address;

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

14 (v) making or issuing a false or counterfeit prescription or written
15 order; or

16 (2) possess or distribute controlled paraphernalia under circumstances
17 which reasonably indicate an intention to use the controlled paraphernalia for purposes of
18 illegally administering a controlled dangerous substance.

19 (b) Evidence of circumstances that reasonably indicate an intent to use controlled
20 paraphernalia to manufacture, administer, distribute, or dispense a controlled dangerous
21 substance unlawfully include the close proximity of the controlled paraphernalia to an
22 adulterant, diluent, or equipment commonly used to illegally manufacture, administer,
23 distribute, or dispense controlled dangerous substances, including:

24 (1) a scale;

25 (2) a sieve;

26 (3) a strainer;

27 (4) a measuring spoon;

28 (5) staples;

29 (6) a stapler;

- 1 (7) a glassine envelope;
- 2 (8) a gelatin capsule;
- 3 (9) procaine hydrochloride;
- 4 (10) mannitol;
- 5 (11) lactose;
- 6 (12) quinine; and
- 7 (13) a controlled dangerous substance.

8 (c) Information that is communicated to a physician to obtain controlled
9 paraphernalia from the physician in violation of this subtitle is not a privileged
10 communication.

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

14 (2) (I) [A] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
15 PARAGRAPH, A person who violates this section involving the use or possession of
16 marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000
17 or both.

18 (II) 1. A FIRST VIOLATION OF THIS SECTION INVOLVING THE
19 USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL OFFENSE
20 PUNISHABLE BY A FINE NOT EXCEEDING \$100.

21 2. A SECOND VIOLATION OF THIS SECTION INVOLVING
22 THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA IS A CIVIL
23 OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$250.

24 3. A THIRD OR SUBSEQUENT VIOLATION OF THIS
25 SECTION INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF
26 MARIJUANA IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$500.

27 4. A. IN ADDITION TO A FINE, A COURT SHALL ORDER
28 A PERSON UNDER THE AGE OF 21 YEARS WHO COMMITS A VIOLATION PUNISHABLE
29 UNDER SUBSUBPARAGRAPH 1, 2, OR 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG
30 EDUCATION PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL
31 HYGIENE, REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE

1 DISORDER, AND REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF
2 NECESSARY.

3 **B. IN ADDITION TO A FINE, A COURT SHALL ORDER A**
4 **PERSON AT LEAST 21 YEARS OLD WHO COMMITS A VIOLATION PUNISHABLE UNDER**
5 **SUBSUBPARAGRAPH 3 OF THIS SUBPARAGRAPH TO ATTEND A DRUG EDUCATION**
6 **PROGRAM APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE,**
7 **REFER THE PERSON TO AN ASSESSMENT FOR SUBSTANCE ABUSE DISORDER, AND**
8 **REFER THE PERSON TO SUBSTANCE ABUSE TREATMENT, IF NECESSARY.**

9 **Article – Criminal Procedure**

10 5–212.

11 (a) This section does not apply to a citation:

12 (1) for a violation of a parking ordinance or regulation adopted under Title
13 26, Subtitle 3 of the Transportation Article;

14 (2) adopted by the Chief Judge of the District Court under § 1–605(d) of the
15 Courts Article, for use in traffic offenses; or

16 (3) issued by a Natural Resources police officer under § 1–205 of the
17 Natural Resources Article.

18 (b) A bench warrant may be issued for the arrest of a defendant who fails to
19 appear in court in response to a citation.

20 (c) A person who fails to appear in court in response to a citation is guilty of a
21 misdemeanor and on conviction is subject to a fine not exceeding \$500 or imprisonment not
22 exceeding 90 days or both.

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