

SENATE BILL 456

E1

5lr2024

By: **Senators Zirkin and Raskin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: March 16, 2015

CHAPTER _____

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:

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

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

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

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

(iii) the concealment of a material fact;

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

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

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

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

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

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

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

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

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

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

B. In addition to a fine, a court shall order a person at least 21 years old who commits a violation punishable under subparagraph 3 of this subparagraph to attend a drug education program approved by the Department of Health and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

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

2. “Bona fide physician–patient relationship” means a relationship in which the physician has ongoing responsibility for the assessment, care, and 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.

1 4. “Debilitating 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 for the use or possession of marijuana, the
13 defendant may introduce and the court shall consider as a mitigating factor any evidence
14 of medical necessity.

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

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

1 B. A defendant may not assert the affirmative defense under
2 this subsubparagraph 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) The provisions of subsection (c)(2)(ii) of this section making the possession of
13 marijuana a civil offense may not be construed to affect the laws relating to:

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

16 (2) seizure and forfeiture.

17 5-619.

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) expert testimony concerning use of the object.

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

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

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

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

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

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

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

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

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

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

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

7 A. is a resident of the State;

8 B. is at least 21 years old;

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

11 D. has not been convicted of a crime of violence as defined in
12 § 14–101 of this article;

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

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

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

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

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

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

25 A. cachexia or wasting syndrome;

26 B. severe or chronic pain;

27 C. severe nausea;

28 D. seizures;

29 E. severe and persistent muscle spasms; or

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

(ii) 1. In a prosecution under this subsection involving drug paraphernalia related to 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 drug paraphernalia related to marijuana because of medical necessity, [on conviction of a violation of this subsection, 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 under this subsection involving drug paraphernalia related to marijuana, it is an affirmative defense that the defendant used or possessed drug paraphernalia related to 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 under this subsection involving drug paraphernalia related to marijuana, it is an affirmative defense that the defendant possessed drug paraphernalia related to marijuana because the drug paraphernalia related to 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; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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