

HOUSE BILL 324

E1
HB 550/20 – JUD

(PRE-FILED)

11r0368
CF SB 143

By: **Delegate Moon**

Requested: June 16, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: February 11, 2021

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Marijuana – Possession and Possession With Intent to**
3 **Distribute**

4 FOR the purpose of altering the amount of marijuana below which possession is a civil
5 offense, rather than a criminal offense; creating a presumption that a person in
6 possession of less than a certain amount of marijuana is not in violation of a certain
7 provision of law with regard to marijuana in the absence of certain evidence; making
8 conforming changes; and generally relating to crimes involving marijuana.

9 BY repealing and reenacting, without amendments,
10 Article – Courts and Judicial Proceedings
11 Section 3–8A–01(a)
12 Annotated Code of Maryland
13 (2020 Replacement Volume)

14 BY repealing and reenacting, with amendments,
15 Article – Courts and Judicial Proceedings
16 Section 3–8A–01(dd) and 3–8A–33(a)
17 Annotated Code of Maryland
18 (2020 Replacement Volume)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 5–601, 5–601.1, and 5–602

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 Annotated Code of Maryland
2 (2012 Replacement Volume and 2020 Supplement)

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

5 **Article – Courts and Judicial Proceedings**

6 3–8A–01.

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

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

10 (1) § 5–601 of the Criminal Law Article involving the use or possession of
11 less than [10 grams] **1 OUNCE** of marijuana;

12 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

13 (3) § 10–132 of the Criminal Law Article;

14 (4) § 10–136 of the Criminal Law Article; or

15 (5) § 26–103 of the Education Article.

16 3–8A–33.

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

19 (1) § 5–601 of the Criminal Law Article involving the use or possession of
20 less than [10 grams] **1 OUNCE** of marijuana;

21 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

22 (3) § 10–132 of the Criminal Law Article;

23 (4) § 10–136 of the Criminal Law Article; or

24 (5) § 26–103 of the Education Article.

25 **Article – Criminal Law**

26 5–601.

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

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

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

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

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

9 (iii) the concealment of a material fact;

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

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

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

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

18 (c) (1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a
19 person who violates this section is guilty of a misdemeanor and on conviction is subject to:

20 (i) for a first conviction, imprisonment not exceeding 1 year or a fine
21 not exceeding \$5,000 or both;

22 (ii) for a second or third conviction, imprisonment not exceeding 18
23 months or a fine not exceeding \$5,000 or both; or

24 (iii) for a fourth or subsequent conviction, imprisonment not
25 exceeding 2 years or a fine not exceeding \$5,000 or both.

26 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
27 person whose violation of this section involves the use or possession of marijuana is guilty
28 of a misdemeanor of possession of marijuana and is subject to imprisonment not exceeding
29 6 months or a fine not exceeding \$1,000 or both.

30 (ii) 1. A first finding of guilt under this section involving the use
31 or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense punishable
32 by a fine not exceeding \$100.

1 2. A second finding of guilt under this section involving the
2 use or possession of less than [10 grams] 1 OUNCE of marijuana is a civil offense punishable
3 by a fine not exceeding \$250.

4 3. A third or subsequent finding of guilt under this section
5 involving the use or possession of less than [10 grams] 1 OUNCE of marijuana is a civil
6 offense punishable by a fine not exceeding \$500.

7 4. A. In addition to a fine, a court shall order a person
8 under the age of 21 years who commits a violation punishable under subparagraph 1,
9 2, or 3 of this subparagraph to attend a drug education program approved by the Maryland
10 Department of Health, refer the person to an assessment for substance abuse disorder, and
11 refer the person to substance abuse treatment, if necessary.

12 B. In addition to a fine, a court shall order a person at least
13 21 years old who commits a violation punishable under subparagraph 3 of this
14 subparagraph to attend a drug education program approved by the Maryland Department
15 of Health, refer the person to an assessment for substance abuse disorder, and refer the
16 person to substance abuse treatment, if necessary.

17 C. A court that orders a person to a drug education program
18 or substance abuse assessment or treatment under this subparagraph may hold the
19 case sub curia pending receipt of proof of completion of the program, assessment, or
20 treatment.

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

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

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

29 A. is a resident of the State;

30 B. is at least 21 years old;

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

33 D. has not been convicted of a crime of violence as defined in
34 § 14–101 of this article;

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

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

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

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

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

9 4. "Debilitating medical condition" means a chronic or
10 debilitating disease or medical condition or the treatment of a chronic or debilitating
11 disease or medical condition that produces one or more of the following, as documented by
12 a physician with whom the patient has a bona fide physician-patient relationship:

13 A. cachexia or wasting syndrome;

14 B. severe or chronic pain;

15 C. severe nausea;

16 D. seizures;

17 E. severe and persistent muscle spasms; or

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

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

23 2. Notwithstanding paragraph (2) of this subsection, if the
24 court finds that the person used or possessed marijuana because of medical necessity, the
25 court shall dismiss the charge.

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

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

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

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

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

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

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

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

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

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

22 (d) The provisions of subsection (c)(2)(ii) of this section making the possession of
23 marijuana a civil offense may not be construed to affect the laws relating to:

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

26 (2) seizure and forfeiture.

27 (e) (1) (i) Before imposing a sentence under subsection (c) of this section,
28 the court may order the Maryland Department of Health or a certified and licensed
29 designee to conduct an assessment of the defendant for substance use disorder and
30 determine whether the defendant is in need of and may benefit from drug treatment.

31 (ii) If an assessment for substance use disorder is requested by the
32 defendant and the court denies the request, the court shall state on the record the basis for
33 the denial.

1 (2) On receiving an order under paragraph (1) of this subsection, the
2 Maryland Department of Health, or the designee, shall conduct an assessment of the
3 defendant for substance use disorder and provide the results to the court, the defendant or
4 the defendant's attorney, and the State identifying the defendant's drug treatment needs.

5 (3) The court shall consider the results of an assessment performed under
6 paragraph (2) of this subsection when imposing the defendant's sentence and:

7 (i) except as provided in subparagraph (ii) of this paragraph, the
8 court shall suspend the execution of the sentence and order probation and, if the
9 assessment shows that the defendant is in need of substance abuse treatment, require the
10 Maryland Department of Health or the designee to provide the medically appropriate level
11 of treatment as identified in the assessment; or

12 (ii) the court may impose a term of imprisonment under subsection
13 (c) of this section and order the Division of Correction or local correctional facility to
14 facilitate the medically appropriate level of treatment for the defendant as identified in the
15 assessment.

16 5–601.1.

17 (a) A police officer shall issue a citation to a person who the police officer has
18 probable cause to believe has committed a violation of § 5–601 of this part involving the use
19 or possession of less than [10 grams] **1 OUNCE** of marijuana.

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

22 (2) Adjudication of a violation under § 5–601 of this part involving the use
23 or possession of less than [10 grams] **1 OUNCE** of marijuana:

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

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

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

30 (i) the name, address, and date of birth of the person charged;

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

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

33 (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] **1 OUNCE** of marijuana is issued to a person under
9 the age 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 who has been
11 issued a citation under this section has at least twice previously been found guilty under §
12 5–601 of this part involving the use or possession of less than [10 grams] **1 OUNCE** of
13 marijuana, the court shall summon the person for 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) (1) The Chief Judge of the District Court shall establish a schedule for the
17 prepayment of the fine.

18 (2) Prepayment of a fine shall be considered a plea of guilty to a Code
19 violation.

20 (3) A person described in subsection (c)(2) of this section may not prepay
21 the fine.

22 (f) (1) A person may request a trial by sending a request for trial to the District
23 Court in the jurisdiction where the citation was issued within 30 days of the issuance of the
24 citation.

25 (2) If a person other than a person described in subsection (c)(2) of this
26 section does not request a trial or prepay the fine within 30 days of the issuance of the
27 citation, the court may impose the maximum fine and costs against the person and find the
28 person is guilty of a Code violation for purposes of subsection (c)(2)(ii) of this section.

29 (g) The issuing jurisdiction shall forward a copy of the citation and a request for
30 trial to the District Court in the district having venue.

31 (h) (1) The failure of a defendant to respond to a summons described in
32 subsection (c)(2) of this section shall be governed by § 5–212 of the Criminal Procedure
33 Article.

1 (2) If a person at least 21 years old fails to appear after having requested
2 a trial, the court may impose the maximum fine and costs against the person and find the
3 person is guilty of a Code violation for purposes of subsection (c)(2)(ii) of this section.

4 (i) In any proceeding for a Code violation under § 5–601 of this part involving the
5 use or possession of less than [10 grams] **1 OUNCE** of marijuana:

6 (1) the State has the burden to prove the guilt of the defendant by a
7 preponderance of the evidence;

8 (2) the court shall apply the evidentiary standards as prescribed by law or
9 rule for the trial of a criminal case;

10 (3) the court shall ensure that the defendant has received a copy of the
11 charges against the defendant and that the defendant understands those charges;

12 (4) the defendant is entitled to cross–examine all witnesses who appear
13 against the defendant, to produce evidence or witnesses on behalf of the defendant, and to
14 testify on the defendant’s own behalf, if the defendant chooses to do so;

15 (5) the defendant is entitled to be represented by counsel of the defendant’s
16 choice and at the expense of the defendant; and

17 (6) the defendant may enter a plea of guilty or not guilty, and the verdict
18 of the court in the case shall be:

19 (i) guilty of a Code violation;

20 (ii) not guilty of a Code violation; or

21 (iii) probation before judgment, imposed by the court in the same
22 manner and to the same extent as is allowed by law in the trial of a criminal case.

23 (j) (1) The defendant is liable for the costs of the proceedings in the District
24 Court.

25 (2) The court costs in a Code violation case under § 5–601 of this part
26 involving the use or possession of less than [10 grams] **1 OUNCE** of marijuana in which
27 costs are imposed are \$5.

28 (k) (1) The State’s Attorney for any county may prosecute a Code violation
29 under § 5–601 of this part involving the use or possession of less than [10 grams] **1 OUNCE**
30 of marijuana in the same manner as prosecution of a violation of the criminal laws of the
31 State.

1 (2) In a Code violation case under § 5–601 of this part involving the use or
2 possession of less than [10 grams] **1 OUNCE** of marijuana, the State’s Attorney may:

3 (i) enter a nolle prosequi or move to place the case on the stet docket;
4 and

5 (ii) exercise authority in the same manner as prescribed by law for
6 violation of the criminal laws of the State.

7 (l) A person issued a citation for a violation of § 5–601 of this part involving the
8 use or possession of less than [10 grams] **1 OUNCE** of marijuana who is under the age of 18
9 years shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of
10 the Courts Article.

11 (m) A citation for a violation of § 5–601 of this part involving the use or possession
12 of less than [10 grams] **1 OUNCE** of marijuana and the official record of a court regarding
13 the citation are not subject to public inspection and may not be included on the public
14 website maintained by the Maryland Judiciary if:

15 (1) the defendant has prepaid the fine;

16 (2) the defendant has pled guilty to or been found guilty of the Code
17 violation and has fully paid the fine and costs imposed for the violation;

18 (3) the defendant has received a probation before judgment and has fully
19 paid the fine and completed any terms imposed by the court;

20 (4) the case has been removed from the stet docket after the defendant fully
21 paid the fine and completed any terms imposed by the court;

22 (5) the State has entered a nolle prosequi;

23 (6) the defendant has been found not guilty of the charge; or

24 (7) the charge has been dismissed.

25 5–602.

26 (A) Except as otherwise provided in this title, a person may not:

27 (1) distribute or dispense a controlled dangerous substance; or

28 (2) possess a controlled dangerous substance in sufficient quantity
29 reasonably to indicate under all circumstances an intent to distribute or dispense a
30 controlled dangerous substance.

1 **(B) THERE IS A PRESUMPTION THAT A PERSON IN POSSESSION OF LESS**
2 **THAN 1 OUNCE OF MARIJUANA IS NOT IN VIOLATION OF SUBSECTION (A) OF THIS**
3 **SECTION WITH REGARD TO MARIJUANA IN THE ABSENCE OF ANY OTHER EVIDENCE**
4 **OF A VIOLATION OF SUBSECTION (A) OF THIS SECTION.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2021.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.