

HOUSE BILL 606

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By: **Delegates Anderson, Alston, Branch, Braveboy, Carr, Conaway, Dumais, Glenn, Gutierrez, Kaiser, McIntosh, Mitchell, Nathan-Pulliam, Niemann, Oaks, Rosenberg, Ross, Smigiel, V. Turner, Waldstreicher, and Washington**

Introduced and read first time: February 9, 2011

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Marijuana – Use or Possession of Small Amount**

3 FOR the purpose of limiting the application of certain criminal penalties for the use or
4 possession of marijuana to a violation involving not less than a certain quantity
5 of marijuana; establishing that the use or possession of a certain quantity of
6 marijuana is a civil offense; establishing that a person who violates the
7 prohibition against the use or possession of a certain quantity of marijuana
8 shall be issued a certain citation; authorizing certain individuals to issue
9 certain citations under certain circumstances; requiring the District Court to
10 prescribe a certain form of citation; requiring a certain citation to contain
11 certain information; requiring the jurisdiction that issues a certain citation to
12 forward a copy of the citation and a request for trial to the District Court having
13 a certain venue; requiring the District Court to schedule a certain trial and
14 summon a certain defendant to appear; providing that a person may comply
15 with a certain summons to appear in a certain manner; providing that a willful
16 failure to respond to a certain summons is contempt of court; establishing that a
17 violation of a certain provision of this Act is a Code violation and a civil offense;
18 providing that a minor is subject to certain procedures and dispositions;
19 providing that an individual who is at least 18 years old is subject to certain
20 provisions of this Act; establishing that an adjudication of a certain Code
21 violation is not a criminal conviction for any purpose and does not impose
22 certain disabilities; establishing certain procedures for a certain Code violation
23 proceeding; establishing certain penalties for a certain violation of this Act;
24 requiring the Chief Judge of the District Court to establish a certain schedule
25 for the prepayment of fines; authorizing a court to direct the payment of a
26 certain fine be suspended or deferred; establishing that the willful failure to pay
27 a certain fine is criminal contempt of court; providing that a certain defendant
28 is liable for certain costs; establishing that a certain defendant has certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 rights to appeal or file certain motions; authorizing the State's Attorney to
2 prosecute a certain violation in a certain manner; establishing that a violation
3 of a certain provision of this Act is a violation for certain purposes; authorizing
4 a certain law enforcement officer to issue a citation to a child for a violation of a
5 certain provision of this Act under certain circumstances; and generally relating
6 to the use and possession of marijuana.

7 BY repealing and reenacting, with amendments,
8 Article – Criminal Law
9 Section 5–601
10 Annotated Code of Maryland
11 (2002 Volume and 2010 Supplement)

12 BY adding to
13 Article – Criminal Law
14 Section 5–601.1
15 Annotated Code of Maryland
16 (2002 Volume and 2010 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article – Courts and Judicial Proceedings
19 Section 3–8A–01(dd) and 3–8A–33(a)
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2010 Supplement)

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

24 **Article – Criminal Law**

25 5–601.

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

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

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

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

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

36 (iii) the concealment of a material fact;

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

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

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

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

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

12 (2) (I) A person whose violation of this section involves the use or
13 possession of **NOT LESS THAN 28.5 GRAMS OF** marijuana is **GUILTY OF A**
14 **MISDEMEANOR AND ON CONVICTION IS** subject to imprisonment not exceeding 1
15 year or a fine not exceeding \$1,000 or both.

16 (II) **THE VIOLATION OF THIS SECTION INVOLVING THE USE**
17 **OR POSSESSION OF LESS THAN 28.5 GRAMS OF MARIJUANA IS A CIVIL OFFENSE.**

18 (3) (i) In a prosecution for the use or possession of marijuana, the
19 defendant may introduce and the court shall consider as a mitigating factor any
20 evidence of medical necessity.

21 (ii) Notwithstanding paragraph (2) of this subsection, if the
22 court finds that the person used or possessed marijuana because of medical necessity,
23 on conviction of a violation of this section, the maximum penalty that the court may
24 impose on the person is a fine not exceeding \$100.

25 **5-601.1.**

26 (A) **A PERSON WHO VIOLATES § 5-601 OF THIS SUBTITLE INVOLVING**
27 **THE USE OR POSSESSION OF LESS THAN 28.5 GRAMS OF MARIJUANA SHALL BE**
28 **ISSUED A CITATION UNDER THIS SECTION.**

29 (B) **A CITATION FOR A VIOLATION OF § 5-601 OF THIS SUBTITLE**
30 **INVOLVING THE USE OR POSSESSION OF LESS THAN 28.5 GRAMS OF MARIJUANA**
31 **MAY BE ISSUED BY:**

32 (1) **A POLICE OFFICER AUTHORIZED TO MAKE ARRESTS; AND**

1 **(2) IN STATE FORESTRY RESERVATIONS, STATE PARKS,**
2 **RECREATION AREAS, AND AT HISTORIC MONUMENTS, A FOREST OR PARK**
3 **WARDEN UNDER § 5-206(A) OF THE NATURAL RESOURCES ARTICLE.**

4 **(C) A PERSON AUTHORIZED UNDER THIS SECTION TO ISSUE A CITATION**
5 **SHALL ISSUE THE CITATION IF THE PERSON HAS PROBABLE CAUSE TO BELIEVE**
6 **THAT THE PERSON CHARGED IS COMMITTING OR HAS COMMITTED A VIOLATION**
7 **OF § 5-601 OF THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS**
8 **THAN 28.5 GRAMS OF MARIJUANA.**

9 **(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE FORM**
10 **OF CITATION ISSUED TO AN ADULT FOR A VIOLATION OF § 5-601 OF THIS**
11 **SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 28.5 GRAMS OF**
12 **MARIJUANA SHALL BE AS PRESCRIBED BY THE DISTRICT COURT AND SHALL BE**
13 **UNIFORM THROUGHOUT THE STATE.**

14 **(2) THE CITATION ISSUED TO AN ADULT SHALL CONTAIN:**

15 **(I) THE NAME AND ADDRESS OF THE PERSON CHARGED;**

16 **(II) THE STATUTE ALLEGEDLY VIOLATED;**

17 **(III) THE LOCATION, DATE, AND TIME THAT THE VIOLATION**
18 **OCCURRED;**

19 **(IV) THE FINE THAT MAY BE IMPOSED;**

20 **(V) A NOTICE THAT THE DISTRICT COURT SHALL**
21 **PROMPTLY SEND TO THE PERSON CHARGED A SUMMONS TO APPEAR FOR TRIAL;**

22 **(VI) A NOTICE STATING THAT THE PERSON CHARGED MAY**
23 **COMPLY WITH THE SUMMONS TO APPEAR BY PREPAYMENT OF THE FINE;**

24 **(VII) THE SIGNATURE OF THE PERSON ISSUING THE**
25 **CITATION; AND**

26 **(VIII) A SPACE FOR THE PERSON CHARGED TO SIGN THE**
27 **CITATION.**

28 **(3) THE FORM OF CITATION ISSUED TO A MINOR SHALL:**

29 **(I) BE PRESCRIBED BY THE STATE COURT**
30 **ADMINISTRATOR;**

1 (II) BE UNIFORM THROUGHOUT THE STATE; AND

2 (III) CONTAIN THE INFORMATION LISTED IN § 3-8A-33(B) OF
3 THE COURTS ARTICLE.

4 (E) (1) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE
5 CITATION AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE
6 DISTRICT HAVING VENUE.

7 (2) THE DISTRICT COURT SHALL PROMPTLY SCHEDULE THE
8 CASE FOR TRIAL AND SUMMON THE DEFENDANT TO APPEAR.

9 (I) A PERSON MAY COMPLY WITH THE SUMMONS TO
10 APPEAR BY:

11 1. APPEARANCE IN PERSON;

12 2. APPEARANCE BY COUNSEL; OR

13 3. PAYMENT OF THE FINE FOR THE OFFENSE.

14 (II) WILLFUL FAILURE OF THE DEFENDANT TO RESPOND TO
15 A SUMMONS IS CONTEMPT OF COURT.

16 (F) (1) FOR PURPOSES OF THIS SECTION, A VIOLATION OF § 5-601 OF
17 THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 28.5 GRAMS
18 OF MARIJUANA IS A CODE VIOLATION AND IS A CIVIL OFFENSE.

19 (2) A PERSON CHARGED WHO IS UNDER THE AGE OF 18 YEARS
20 SHALL BE SUBJECT TO THE PROCEDURES AND DISPOSITIONS PROVIDED IN
21 TITLE 3, SUBTITLE 8A OF THE COURTS ARTICLE.

22 (3) A PERSON CHARGED WHO IS AT LEAST 18 YEARS OLD SHALL
23 BE SUBJECT TO THE PROVISIONS OF THIS SECTION.

24 (4) ADJUDICATION OF A CODE VIOLATION UNDER § 5-601 OF
25 THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 28.5 GRAMS
26 OF MARIJUANA IS NOT A CRIMINAL CONVICTION FOR ANY PURPOSE AND DOES
27 NOT IMPOSE ANY OF THE CIVIL DISABILITIES ORDINARILY IMPOSED BY A
28 CRIMINAL CONVICTION.

29 (G) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER § 5-601 OF
30 THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 28.5 GRAMS
31 OF MARIJUANA:

1 **(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE**
2 **DEFENDANT TO THE SAME EXTENT AS IS REQUIRED BY LAW IN THE TRIAL OF**
3 **CRIMINAL CASES;**

4 **(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS**
5 **PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF CRIMINAL CASES;**

6 **(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS**
7 **RECEIVED A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE**
8 **DEFENDANT UNDERSTANDS THOSE CHARGES;**

9 **(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL**
10 **WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PROCURE EVIDENCE OR**
11 **WITNESSES ON BEHALF OF THE DEFENDANT, OR TO TESTIFY ON THE**
12 **DEFENDANT'S OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;**

13 **(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY**
14 **COUNSEL OF THE DEFENDANT'S CHOICE AND AT THE EXPENSE OF THE**
15 **DEFENDANT; AND**

16 **(6) THE DEFENDANT MAY ENTER A PLEA OF GUILTY OR NOT**
17 **GUILTY, AND THE VERDICT OF THE COURT IN THE CASE SHALL BE:**

18 **(I) GUILTY OF A CODE VIOLATION;**

19 **(II) NOT GUILTY OF A CODE VIOLATION; OR**

20 **(III) PROBATION BEFORE JUDGMENT, IMPOSED BY THE**
21 **COURT IN THE SAME MANNER AND TO THE SAME EXTENT AS IS ALLOWED BY LAW**
22 **IN THE TRIAL OF A CRIMINAL CASE.**

23 **(H) (1) IF THE DISTRICT COURT FINDS THAT A PERSON HAS**
24 **COMMITTED A CODE VIOLATION, THE COURT SHALL REQUIRE THE PERSON TO**
25 **PAY A FINE NOT EXCEEDING \$100.**

26 **(2) THE CHIEF JUDGE OF THE DISTRICT COURT SHALL**
27 **ESTABLISH A SCHEDULE FOR THE PREPAYMENT OF FINES FOR A VIOLATION OF**
28 **§ 5-601 OF THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN**
29 **28.5 GRAMS OF MARIJUANA.**

30 **(I) WHEN A DEFENDANT HAS BEEN FOUND GUILTY OF A CODE**
31 **VIOLATION AND A FINE HAS BEEN IMPOSED BY THE COURT:**

1 **(1) THE COURT MAY DIRECT THAT THE PAYMENT OF THE FINE BE**
2 **SUSPENDED OR DEFERRED UNDER CONDITIONS THAT THE COURT MAY**
3 **ESTABLISH; AND**

4 **(2) IF THE DEFENDANT WILLFULLY FAILS TO PAY THE FINE**
5 **IMPOSED BY THE COURT, THAT WILLFUL FAILURE MAY BE TREATED AS A**
6 **CRIMINAL CONTEMPT OF COURT, FOR WHICH THE DEFENDANT MAY BE**
7 **PUNISHED BY THE COURT AS PROVIDED BY LAW.**

8 **(J) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE**
9 **PROCEEDINGS IN THE DISTRICT COURT AND FOR PAYMENT TO THE CRIMINAL**
10 **INJURIES COMPENSATION FUND.**

11 **(2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER**
12 **§ 5-601 OF THIS SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN**
13 **28.5 GRAMS OF MARIJUANA IN WHICH COSTS ARE IMPOSED ARE \$5.**

14 **(K) (1) A DEFENDANT WHO HAS BEEN FOUND GUILTY OF A CODE**
15 **VIOLATION UNDER § 5-601 OF THIS SUBTITLE INVOLVING THE USE OR**
16 **POSSESSION OF LESS THAN 28.5 GRAMS OF MARIJUANA HAS THE RIGHT TO**
17 **APPEAL OR TO FILE A MOTION FOR A NEW TRIAL OR A MOTION FOR A REVISION**
18 **OF A JUDGMENT PROVIDED BY LAW IN THE TRIAL OF A CRIMINAL CASE.**

19 **(2) A MOTION SHALL BE MADE IN THE SAME MANNER AS**
20 **PROVIDED IN THE TRIAL OF CRIMINAL CASES, AND THE COURT, IN RULING ON**
21 **THE MOTION, HAS THE SAME AUTHORITY PROVIDED IN THE TRIAL OF CRIMINAL**
22 **CASES.**

23 **(L) (1) THE STATE'S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A**
24 **CODE VIOLATION UNDER § 5-601 OF THIS SUBTITLE INVOLVING THE USE OR**
25 **POSSESSION OF LESS THAN 28.5 GRAMS OF MARIJUANA IN THE SAME MANNER**
26 **AS PROSECUTION OF A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

27 **(2) IN A CODE VIOLATION CASE UNDER § 5-601 OF THIS**
28 **SUBTITLE INVOLVING THE USE OR POSSESSION OF LESS THAN 28.5 GRAMS OF**
29 **MARIJUANA, THE STATE'S ATTORNEY MAY:**

30 **(I) ENTER A NOLLE PROSEQUI IN OR PLACE THE CASE ON**
31 **THE STET DOCKET; AND**

32 **(II) EXERCISE AUTHORITY IN THE SAME MANNER AS**
33 **PRESCRIBED BY LAW FOR VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

34 **Article – Courts and Judicial Proceedings**

1 3-8A-01.

2 (dd) "Violation" means a violation for which a citation is issued under:

3 (1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law
4 Article;

5 (2) § 10-108 of the Criminal Law Article;

6 (3) § 10-132 of the Criminal Law Article; [or]

7 (4) **§ 5-601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE**
8 **OR POSSESSION OF LESS THAN 28.5 GRAMS OF MARIJUANA; OR**

9 **[(4) (5) § 26-103 of the Education Article.**

10 3-8A-33.

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

13 (1) § 10-113, § 10-114, § 10-115, or § 10-116 of the Criminal Law
14 Article;

15 (2) § 10-108 of the Criminal Law Article;

16 (3) § 10-132 of the Criminal Law Article; [or]

17 (4) **§ 5-601 OF THE CRIMINAL LAW ARTICLE INVOLVING THE USE**
18 **OR POSSESSION OF LESS THAN 28.5 GRAMS OF MARIJUANA; OR**

19 **[(4) (5) § 26-103 of the Education Article.**

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2011.