

SENATE BILL 214

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2lr1540
CF 2lr0457

By: **Senator Raskin**

Introduced and read first time: January 20, 2012

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Possession of Marijuana – De Minimus Quantity**

3 FOR the purpose of establishing a reduced penalty for a person convicted of the use or
4 possession of less than a certain quantity of marijuana; providing that, with a
5 certain exception, the use or possession of less than a certain quantity of
6 marijuana may not be considered a lesser included crime of any other crime;
7 and generally relating to penalties for possession of marijuana.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Law
10 Section 5–601
11 Annotated Code of Maryland
12 (2002 Volume and 2011 Supplement)

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

15 **Article – Criminal Law**

16 5–601.

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

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) fraud, deceit, misrepresentation, or subterfuge;
- 2 (ii) the counterfeiting or alteration of a prescription or a written
3 order;
- 4 (iii) the concealment of a material fact;
- 5 (iv) the use of a false name or address;
- 6 (v) falsely assuming the title of or representing to be a
7 manufacturer, distributor, or authorized provider; or
- 8 (vi) making, issuing, or presenting a false or counterfeit
9 prescription or written order.

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

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

16 (2) (I) A person whose violation of this section involves the use or
17 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not
18 exceeding \$1,000 or both.

19 (II) 1. A PERSON CONVICTED OF THE USE OR
20 POSSESSION OF LESS THAN 14 GRAMS OF MARIJUANA IS SUBJECT TO
21 IMPRISONMENT NOT EXCEEDING 90 DAYS.

22 2. UNLESS SPECIFICALLY CHARGED BY THE STATE,
23 THE USE OR POSSESSION OF LESS THAN 14 GRAMS OF MARIJUANA UNDER
24 SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A
25 LESSER INCLUDED CRIME OF ANY OTHER CRIME.

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

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

31 3. "Debilitating medical condition" means a chronic or
32 debilitating disease or medical condition or the treatment of a chronic or debilitating

1 disease or medical condition that produces one or more of the following, as documented
2 by a physician with whom the patient has a bona fide physician–patient relationship:

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

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

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

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

20 A. the defendant has a debilitating medical condition
21 that has been diagnosed by a physician with whom the defendant has a bona fide
22 physician–patient relationship;

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

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

27 2. The affirmative defense may not be used if the
28 defendant was:

29 A. using marijuana in a public place; or

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2012.