

SENATE BILL 297

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By: ~~Senator Zirkin~~ **Senators Zirkin and Kittleman**

Introduced and read first time: January 23, 2013

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 13, 2013

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of altering the penalty for the use or possession of less than a certain
4 quantity of marijuana; making the use or possession of less than a certain
5 quantity of marijuana a civil offense; making conforming changes; and generally
6 relating to penalties for possession of marijuana.

7 BY repealing and reenacting, with amendments,
8 Article – Criminal Law
9 Section 5–601
10 Annotated Code of Maryland
11 (2012 Replacement Volume and 2012 Supplement)

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

14 **Article – Criminal Law**

15 5–601.

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

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

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

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

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

7 (iii) the concealment of a material fact;

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

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

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

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

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

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

22 (ii) ~~≠~~ A [person convicted of] **VIOLATION OF THIS**
23 **SECTION INVOLVING** the use or possession of less than 10 grams of marijuana is
24 [subject to imprisonment not exceeding 90 days or] **A CIVIL OFFENSE PUNISHABLE**
25 **BY** a fine not exceeding [~~\$500 or both~~] **\$100**.

26 [2. Unless specifically charged by the State, the use or
27 possession of less than 10 grams of marijuana under subparagraph 1 of this
28 subparagraph may not be considered a lesser included crime of any other crime.

29 3. If a person is convicted under this subparagraph, the
30 court shall stay any sentence imposed that includes an unserved, nonsuspended period
31 of imprisonment without requiring an appeal bond:

32 A. until the time for filing an appeal has expired; and

1 B. if an appeal is filed, during the pendency of the
2 appeal.]

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

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

8 3. “Debilitating medical condition” means a chronic or
9 debilitating disease or medical condition or the treatment of a chronic or debilitating
10 disease or medical condition that produces one or more of the following, as documented
11 by a physician with whom the patient has a bona fide physician–patient relationship:

12 A. cachexia or wasting syndrome;

13 B. severe or chronic pain;

14 C. severe nausea;

15 D. seizures;

16 E. severe and persistent muscle spasms; or

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

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

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

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

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

32 B. the debilitating medical condition is severe and
33 resistant to conventional medicine; and

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

3 2. The affirmative defense may not be used if the
4 defendant was:

5 A. using marijuana in a public place; or

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.