

HOUSE BILL 565

E1, E2
HB 495/15 – JUD

6lr0453

By: **Delegates Dumais and Vallario**

Introduced and read first time: February 3, 2016

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: March 12, 2016

CHAPTER _____

1 AN ACT concerning

2 **Criminal Law – Possession of Less Than 10 Grams of Marijuana – Code Violation**

3 FOR the purpose of specifying that a person who violates a certain provision of law
4 involving the use or possession of marijuana in the amount of 10 grams or more is
5 guilty of the misdemeanor of possession of marijuana; altering a certain provision of
6 law so as to provide that a finding of guilt, rather than a violation, of a certain
7 provision of law is a civil offense punishable by a certain fine; requiring that a certain
8 citation contain the date of birth of the person charged; providing that prepayment
9 of a certain fine shall be considered a plea of guilty to a Code violation; prohibiting a
10 certain person from prepaying a certain fine; authorizing a certain person to request
11 a certain trial in a certain manner at a certain time; authorizing the court to impose
12 a certain fine and costs against a certain person and find the person is guilty of a
13 Code violation for a certain purpose under certain circumstances; establishing
14 certain procedures for a certain Code violation proceeding; providing that a certain
15 defendant is liable for certain costs; authorizing the State's Attorney to prosecute a
16 certain violation in a certain manner; establishing that a certain provision of law
17 providing that a certain citation and a certain record of a court are not subject to
18 public inspection and may not be included on a certain Web site only applies under
19 certain circumstances; and generally relating to possession of marijuana.

20 BY repealing and reenacting, without amendments,
21 Article – Criminal Law
22 Section 5–601(a) and (c)(1)
23 Annotated Code of Maryland
24 (2012 Replacement Volume and 2015 Supplement)

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.



(As enacted by Chapter 4 of the Acts of the General Assembly of 2016)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 5–601(c)(2) and 5–601.1
Annotated Code of Maryland
(2012 Replacement Volume and 2015 Supplement)

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

Article – Criminal Law

5–601.

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

(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.

(c) (1) Except as provided in paragraphs (2), (3), and (4) 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 **IN THE AMOUNT OF 10 GRAMS OR MORE IS GUILTY OF THE MISDEMEANOR OF POSSESSION**

1 **OF MARIJUANA AND** is subject to imprisonment not exceeding 1 year or a fine not
2 exceeding \$1,000 or both.

3 (ii) 1. A first [violation of] **FINDING OF GUILT UNDER** this
4 section involving the use or possession of less than 10 grams of marijuana is a civil offense
5 punishable by a fine not exceeding \$100.

6 2. A second [violation of] **FINDING OF GUILT UNDER** this
7 section involving the use or possession of less than 10 grams of marijuana is a civil offense
8 punishable by a fine not exceeding \$250.

9 3. A third or subsequent [violation of] **FINDING OF GUILT**
10 **UNDER** this section involving the use or possession of less than 10 grams of marijuana is a
11 civil offense punishable by a fine not exceeding \$500.

12 4. A. In addition to a fine, a court shall order a person
13 under the age of 21 years who commits a violation punishable under subparagraph 1,
14 2, or 3 of this subparagraph to attend a drug education program approved by the
15 Department of Health and Mental Hygiene, refer the person to an assessment for substance
16 abuse disorder, and refer the person to substance abuse treatment, if necessary.

17 B. In addition to a fine, a court shall order a person at least
18 21 years old who commits a violation punishable under subparagraph 3 of this
19 subparagraph to attend a drug education program approved by the Department of Health
20 and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and
21 refer the person to substance abuse treatment, if necessary.

22 **C. A COURT THAT ORDERS A PERSON TO A DRUG**
23 **EDUCATION PROGRAM OR SUBSTANCE ABUSE ASSESSMENT OR TREATMENT UNDER**
24 **THIS SUBSUBPARAGRAPH MAY HOLD THE CASE SUB CURIA PENDING RECEIPT OF**
25 **PROOF OF COMPLETION OF THE PROGRAM, ASSESSMENT, OR TREATMENT.**

26 5–601.1.

27 (a) A police officer shall issue a citation to a person who the police officer has
28 probable cause to believe has committed a violation of § 5–601 of this part involving the use
29 or possession of less than 10 grams of marijuana.

30 (b) (1) A violation of § 5–601 of this part involving the use or possession of less
31 than 10 grams of marijuana is a civil offense.

32 (2) Adjudication of a violation under § 5–601 of this part involving the use
33 or possession of less than 10 grams of marijuana:

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

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

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

6 (i) the [name and address] **NAME, ADDRESS, AND DATE OF BIRTH**
7 of the person charged;

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

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

10 (iv) the fine that may be imposed;

11 (v) a notice stating that prepayment of the fine is allowed, except as
12 provided in paragraph (2) of this subsection; and

13 (vi) a notice in boldface type that states that the person shall:

14 1. pay the full amount of the preset fine; or

15 2. request a trial date at the date, time, and place established
16 by the District Court by writ or trial notice.

17 (2) (i) If a citation for a violation of § 5–601 of this part involving the
18 use or possession of less than 10 grams of marijuana is issued to a person under the age of
19 21 years, the court shall summon the person for trial.

20 (ii) If the court finds that a person at least 21 years old **WHO HAS**
21 **BEEN ISSUED A CITATION UNDER THIS SECTION** has [committed a third or subsequent
22 violation of] **AT LEAST TWICE PREVIOUSLY BEEN FOUND GUILTY UNDER § 5–601** of this
23 part involving the use or possession of less than 10 grams of marijuana, the court shall
24 summon the person for trial.

25 (d) The form of the citation shall be uniform throughout the State and shall be
26 prescribed by the District Court.

27 (e) (1) The Chief Judge of the District Court shall establish a schedule for the
28 prepayment of the fine.

29 (2) **PREPAYMENT OF A FINE SHALL BE CONSIDERED A PLEA OF**
30 **GUILTY TO A CODE VIOLATION.**

1 **(3) A PERSON DESCRIBED IN SUBSECTION (C)(2) OF THIS SECTION**
2 **MAY NOT PREPAY THE FINE.**

3 **(F) (1) A PERSON MAY REQUEST A TRIAL BY SENDING A REQUEST FOR**
4 **TRIAL TO THE DISTRICT COURT IN THE JURISDICTION WHERE THE CITATION WAS**
5 **ISSUED WITHIN 30 DAYS OF THE ISSUANCE OF THE CITATION.**

6 **(2) IF A PERSON OTHER THAN A PERSON DESCRIBED IN SUBSECTION**
7 **(C)(2) OF THIS SECTION DOES NOT REQUEST A TRIAL OR PREPAY THE FINE WITHIN**
8 **30 DAYS OF THE ISSUANCE OF THE CITATION, THE COURT MAY IMPOSE THE**
9 **MAXIMUM FINE AND COSTS AGAINST THE PERSON AND FIND THE PERSON IS GUILTY**
10 **OF A CODE VIOLATION FOR PURPOSES OF SUBSECTION (C)(2)(II) OF THIS SECTION.**

11 **(G) THE ISSUING JURISDICTION SHALL FORWARD A COPY OF THE CITATION**
12 **AND A REQUEST FOR TRIAL TO THE DISTRICT COURT IN THE DISTRICT HAVING**
13 **VENUE.**

14 **(H) (1) THE FAILURE OF A DEFENDANT TO RESPOND TO A SUMMONS**
15 **DESCRIBED IN SUBSECTION (C)(2) OF THIS SECTION SHALL BE GOVERNED BY §**
16 **5-212 OF THE CRIMINAL PROCEDURE ARTICLE.**

17 **(2) IF A PERSON AT LEAST 21 YEARS OLD FAILS TO APPEAR AFTER**
18 **HAVING REQUESTED A TRIAL, THE COURT MAY IMPOSE THE MAXIMUM FINE AND**
19 **COSTS AGAINST THE PERSON AND FIND THE PERSON IS GUILTY OF A CODE**
20 **VIOLATION FOR PURPOSES OF SUBSECTION (C)(2)(II) OF THIS SECTION.**

21 **(I) IN ANY PROCEEDING FOR A CODE VIOLATION UNDER § 5-601 OF THIS**
22 **PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA:**

23 **(1) THE STATE HAS THE BURDEN TO PROVE THE GUILT OF THE**
24 **DEFENDANT BY A PREPONDERANCE OF THE EVIDENCE;**

25 **(2) THE COURT SHALL APPLY THE EVIDENTIARY STANDARDS AS**
26 **PRESCRIBED BY LAW OR RULE FOR THE TRIAL OF A CRIMINAL CASE;**

27 **(3) THE COURT SHALL ENSURE THAT THE DEFENDANT HAS RECEIVED**
28 **A COPY OF THE CHARGES AGAINST THE DEFENDANT AND THAT THE DEFENDANT**
29 **UNDERSTANDS THOSE CHARGES;**

30 **(4) THE DEFENDANT IS ENTITLED TO CROSS-EXAMINE ALL**
31 **WITNESSES WHO APPEAR AGAINST THE DEFENDANT, TO PRODUCE EVIDENCE OR**
32 **WITNESSES ON BEHALF OF THE DEFENDANT, AND TO TESTIFY ON THE DEFENDANT'S**
33 **OWN BEHALF, IF THE DEFENDANT CHOOSES TO DO SO;**

1 **(5) THE DEFENDANT IS ENTITLED TO BE REPRESENTED BY COUNSEL**
2 **OF THE DEFENDANT’S CHOICE AND AT THE EXPENSE OF THE DEFENDANT; AND**

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

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

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

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

10 **(J) (1) THE DEFENDANT IS LIABLE FOR THE COSTS OF THE**
11 **PROCEEDINGS IN THE DISTRICT COURT.**

12 **(2) THE COURT COSTS IN A CODE VIOLATION CASE UNDER § 5–601 OF**
13 **THIS PART INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF**
14 **MARIJUANA IN WHICH COSTS ARE IMPOSED ARE \$5.**

15 **(K) (1) THE STATE’S ATTORNEY FOR ANY COUNTY MAY PROSECUTE A**
16 **CODE VIOLATION UNDER § 5–601 OF THIS PART INVOLVING THE USE OR POSSESSION**
17 **OF LESS THAN 10 GRAMS OF MARIJUANA IN THE SAME MANNER AS PROSECUTION OF**
18 **A VIOLATION OF THE CRIMINAL LAWS OF THE STATE.**

19 **(2) IN A CODE VIOLATION CASE UNDER § 5–601 OF THIS PART**
20 **INVOLVING THE USE OR POSSESSION OF LESS THAN 10 GRAMS OF MARIJUANA, THE**
21 **STATE’S ATTORNEY MAY:**

22 **(I) ENTER A NOLLE PROSEQUI OR MOVE TO PLACE THE CASE ON**
23 **THE STET DOCKET; AND**

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

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

30 **[(g)] (M) A citation for a violation of § 5–601 of this part involving the use or**
31 **possession of less than 10 grams of marijuana and the official record of a court regarding**

1 the citation are not subject to public inspection and may not be included on the public Web
2 site maintained by the Maryland Judiciary IF:

3 (1) THE DEFENDANT HAS PREPAID THE FINE;

4 (2) THE DEFENDANT HAS PLED GUILTY TO OR BEEN FOUND GUILTY
5 OF THE CODE VIOLATION AND HAS FULLY PAID THE FINE AND COSTS IMPOSED FOR
6 THE VIOLATION;

7 (3) THE DEFENDANT HAS RECEIVED A PROBATION BEFORE
8 JUDGMENT AND HAS FULLY PAID THE FINE AND COMPLETED ANY TERMS IMPOSED
9 BY THE COURT;

10 (4) THE CASE HAS BEEN REMOVED FROM THE STET DOCKET AFTER
11 THE DEFENDANT FULLY PAID THE FINE AND COMPLETED ANY TERMS IMPOSED BY
12 THE COURT;

13 (5) THE STATE HAS ENTERED A NOLLE PROSEQUI;

14 (6) THE DEFENDANT HAS BEEN FOUND NOT GUILTY OF THE CHARGE;
15 OR

16 (7) THE CHARGE HAS BEEN DISMISSED.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2016.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.