

# HOUSE BILL 550

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0lr1832  
CF 0lr3431

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By: **Delegates Mosby, Moon, Acevero, Bartlett, Charkoudian, Charles, D.M. Davis, Ivey, Palakovich Carr, Shetty, Smith, Turner, ~~and Wilkins~~ Wilkins, and Crutchfield**

Introduced and read first time: January 27, 2020  
Assigned to: Judiciary

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 7, 2020

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## 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; ~~providing that a person may not be charged~~  
6 ~~with a certain crime based solely on the possession of a certain amount of marijuana~~  
7 creating a presumption that a person in possession of less than a certain amount of  
8 marijuana is not in violation of a certain provision of law with regard to marijuana,  
9 in the absence of certain evidence; making conforming changes; and generally  
10 relating to crimes involving marijuana.

11 BY repealing and reenacting, without amendments,  
12 Article – Courts and Judicial Proceedings  
13 Section 3–8A–01(a)  
14 Annotated Code of Maryland  
15 (2013 Replacement Volume and 2019 Supplement)

16 BY repealing and reenacting, with amendments,  
17 Article – Courts and Judicial Proceedings  
18 Section 3–8A–01(dd) and 3–8A–33(a)  
19 Annotated Code of Maryland  
20 (2013 Replacement Volume and 2019 Supplement)

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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 BY repealing and reenacting, with amendments,  
2 Article – Criminal Law  
3 Section 5–601, 5–601.1, and 5–602  
4 Annotated Code of Maryland  
5 (2012 Replacement Volume and 2019 Supplement)

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

8 **Article – Courts and Judicial Proceedings**

9 3–8A–01.

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

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

13 (1) § 5–601 of the Criminal Law Article involving the use or possession of  
14 less than [10 grams] **1 OUNCE** of marijuana;

15 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

16 (3) § 10–108 of the Criminal Law Article;

17 (4) § 10–132 of the Criminal Law Article;

18 (5) § 10–136 of the Criminal Law Article; or

19 (6) § 26–103 of the Education Article.

20 3–8A–33.

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

23 (1) § 5–601 of the Criminal Law Article involving the use or possession of  
24 less than [10 grams] **1 OUNCE** of marijuana;

25 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;

26 (3) § 10–108 of the Criminal Law Article;

27 (4) § 10–132 of the Criminal Law Article;

28 (5) § 10–136 of the Criminal Law Article; or

1 (6) § 26–103 of the Education Article.

2 **Article – Criminal Law**

3 5–601.

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

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

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

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

11 (ii) the counterfeiting or alteration of a prescription or a written  
12 order;

13 (iii) the concealment of a material fact;

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

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

17 (vi) making, issuing, or presenting a false or counterfeit prescription  
18 or written order.

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

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

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

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

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



- B. is at least 21 years old;
- C. is an immediate family member, a spouse, or a domestic partner of the patient;
- D. has not been convicted of a crime of violence as defined in § 14–101 of this article;
- E. has not been convicted of a violation of a State or federal controlled dangerous substances law;
- F. has not been convicted of a crime of moral turpitude;
- G. has been designated as caregiver by the patient in writing that has been placed in the patient’s medical record prior to arrest;
- H. is the only individual designated by the patient to serve as caregiver; and
- I. is not serving as caregiver for any other patient.

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

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

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

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

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

4 A. the defendant has a debilitating medical condition that  
5 has been diagnosed by a physician with whom the defendant has a bona fide  
6 physician–patient relationship;

7 B. the debilitating medical condition is severe and resistant  
8 to conventional medicine; and

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

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

15 B. A defendant may not assert the affirmative defense under  
16 this subsubparagraph unless the defendant notifies the State’s Attorney of the defendant’s  
17 intention to assert the affirmative defense and provides the State’s Attorney with all  
18 documentation in support of the affirmative defense in accordance with the rules of  
19 discovery provided in Maryland Rules 4–262 and 4–263.

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

22 A. using marijuana in a public place or assisting the  
23 individual for whom the defendant is a caregiver in using the marijuana in a public place;  
24 or

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

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

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

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

32 (2) seizure and forfeiture.

33 (e) (1) (i) Before imposing a sentence under subsection (c) of this section,  
34 the court may order the Maryland Department of Health or a certified and licensed

1 designee to conduct an assessment of the defendant for substance use disorder and  
2 determine whether the defendant is in need of and may benefit from drug treatment.

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

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

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

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

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

21 5-601.1.

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

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

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

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

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

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

- 1 (i) the name, address, and date of birth of the person charged;
- 2 (ii) the date and time that the violation occurred;
- 3 (iii) the location at which the violation occurred;
- 4 (iv) the fine that may be imposed;
- 5 (v) a notice stating that prepayment of the fine is allowed, except as  
6 provided in paragraph (2) of this subsection; and

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

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

9 2. request a trial date at the date, time, and place established

10 by the District Court by writ or trial notice.

11 (2) (i) If a citation for a violation of § 5–601 of this part involving the  
12 use or possession of less than [10 grams] **1 OUNCE** of marijuana is issued to a person under  
13 the age of 21 years, the court shall summon the person for trial.

14 (ii) If the court finds that a person at least 21 years old who has been  
15 issued a citation under this section has at least twice previously been found guilty under §  
16 5–601 of this part involving the use or possession of less than [10 grams] **1 OUNCE** of  
17 marijuana, the court shall summon the person for trial.

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

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

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

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

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

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



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

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

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

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

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

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

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

17 (4) the defendant is entitled to cross-examine all witnesses who appear  
18 against the defendant, to produce evidence or witnesses on behalf of the defendant, and to  
19 testify on the defendant's own behalf, if the defendant chooses to do so;

20 (5) the defendant is entitled to be represented by counsel of the defendant's  
21 choice and at the expense of the defendant; and

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

24 (i) guilty of a Code violation;

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

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

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

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

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

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

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

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

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

15 (m) A citation for a violation of § 5-601 of this part involving the use or possession  
16 of less than [10 grams] **1 OUNCE** of marijuana and the official record of a court regarding  
17 the citation are not subject to public inspection and may not be included on the public Web  
18 site maintained by the Maryland Judiciary if:

19 (1) the defendant has prepaid the fine;

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

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

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

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

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

28 (7) the charge has been dismissed.

29 5-602.

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

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

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

4 (B) ~~A PERSON MAY NOT BE CHARGED WITH A VIOLATION OF SUBSECTION~~  
5 ~~(A)(2) OF THIS SECTION BASED SOLELY ON THE POSSESSION OF LESS THAN 1 OUNCE~~  
6 ~~OF MARIJUANA~~ THERE IS A PRESUMPTION THAT A PERSON IN POSSESSION OF LESS  
7 THAN 1 OUNCE OF MARIJUANA IS NOT IN VIOLATION OF SUBSECTION (A) OF THIS  
8 SECTION WITH REGARD TO MARIJUANA, IN THE ABSENCE OF ANY OTHER EVIDENCE  
9 OF A VIOLATION OF SUBSECTION (A) OF THIS SECTION.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
11 October 1, 2020.

Approved:

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Governor.

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Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.