

HOUSE BILL 488

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11r2107
CF 11r2096

By: **Delegate Moon**

Introduced and read first time: January 15, 2021

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Use or Possession of a Controlled Dangerous Substance – De**
3 **Minimis Quantity**

4 FOR the purpose of making certain violations relating to the use or possession of certain
5 de minimis quantities of certain controlled dangerous substances a civil offense
6 rather than a misdemeanor; applying penalties for a first or second finding of guilt
7 involving the use or possession of less than 10 grams of marijuana to a first or second
8 finding of guilt involving the use or possession of a de minimis quantity of certain
9 controlled dangerous substances; applying certain procedural provisions relating to
10 issuance of a citation for use or possession of less than 10 grams of marijuana to a
11 first or second finding of guilt involving the use or possession of a de minimis
12 quantity of certain controlled dangerous substances; altering a certain provision of
13 law to require a court to order a person who commits a certain violation, regardless
14 of the age of the person, to attend a certain drug education program, refer the person
15 to an assessment for substance use disorder, and refer the person to substance use
16 treatment under certain circumstances; defining a certain term; making conforming
17 changes; making technical changes; and generally relating to use or possession of a
18 controlled dangerous substance.

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 5–601 and 5–601.1
22 Annotated Code of Maryland
23 (2012 Replacement Volume and 2020 Supplement)

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

26 **Article – Criminal Law**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 5-601.

2 (a) IN THIS SECTION, "DE MINIMIS QUANTITY OF A CONTROLLED
3 DANGEROUS SUBSTANCE" MEANS LESS THAN:

4 (1) 10 GRAMS OF MARIJUANA;

5 (2) 2 GRAMS OF COCAINE;

6 (3) 1 GRAM OF HEROIN;

7 (4) 1 GRAM OR 5 TABLETS OF 3,
8 4-METHYLENEDIOXYMETHAMPHETAMINE (MDMA);

9 (5) 40 USER UNITS OF LYSERGIC ACID DIETHYLAMIDE (LSD);

10 (6) 40 USER UNITS OF METHADONE;

11 (7) 2 GRAMS OF METHAMPHETAMINE; OR

12 (8) 40 TABLETS OF OXYCODONE.

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

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

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

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

20 (ii) the counterfeiting or alteration of a prescription or a written
21 order;

22 (iii) the concealment of a material fact;

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

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

26 (vi) making, issuing, or presenting a false or counterfeit prescription
27 or written order.

1 **[(b)] (C)** Information that is communicated to a physician in an effort to obtain
2 a controlled dangerous substance in violation of this section is not a privileged
3 communication.

4 **[(c)] (D)** (1) Except as provided in paragraphs (2), (3), and (4) of this
5 subsection, a person who violates this section is guilty of a misdemeanor and on conviction
6 is subject to:

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

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

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

13 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
14 person whose violation of this section involves the use or possession of marijuana is guilty
15 of the misdemeanor of possession of marijuana and is subject to imprisonment not
16 exceeding 6 months or a fine not exceeding \$1,000 or both.

17 (ii) 1. A first finding of guilt under this section involving the use
18 or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**
19 **CONTROLLED DANGEROUS SUBSTANCE** is a civil offense punishable by a fine not
20 exceeding \$100.

21 2. A second finding of guilt under this section involving the
22 use or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**
23 **CONTROLLED DANGEROUS SUBSTANCE** is a civil offense punishable by a fine not
24 exceeding \$250.

25 3. A third or subsequent finding of guilt under this section
26 involving the use or possession of less than 10 grams of marijuana is a civil offense
27 punishable by a fine not exceeding \$500.

28 4. A. In addition to a fine, a court shall order a person
29 [under the age of 21 years] who commits a violation punishable under subparagraph 1,
30 2, or 3 of this subparagraph to attend a drug education program approved by the Maryland
31 Department of Health, refer the person to an assessment for substance [abuse] **USE**
32 disorder, and refer the person to substance [abuse] **USE** treatment, if necessary.

33 B. [In addition to a fine, a court shall order a person at least
34 21 years old who commits a violation punishable under subparagraph 3 of this
35 subparagraph to attend a drug education program approved by the Maryland Department

1 of Health, refer the person to an assessment for substance abuse disorder, and refer the
2 person to substance abuse treatment, if necessary.

3 C.] A court that orders a person to a drug education program
4 or substance [abuse] USE assessment or treatment under this subsubparagraph may hold
5 the case sub curia pending receipt of proof of completion of the program, assessment, or
6 treatment.

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

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

12 3. “Caregiver” means an individual designated by a patient
13 with a debilitating medical condition to provide physical or medical assistance to the
14 patient, including assisting with the medical use of marijuana, who:

15 A. is a resident of the State;

16 B. is at least 21 years old;

17 C. is an immediate family member, a spouse, or a domestic
18 partner of the patient;

19 D. has not been convicted of a crime of violence as defined in
20 § 14–101 of this article;

21 E. has not been convicted of a violation of a State or federal
22 controlled dangerous substances law;

23 F. has not been convicted of a crime of moral turpitude;

24 G. has been designated as caregiver by the patient in writing
25 that has been placed in the patient’s medical record prior to arrest;

26 H. is the only individual designated by the patient to serve as
27 caregiver; and

28 I. is not serving as caregiver for any other patient.

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

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

8 (ii) 1. In a prosecution for the use or possession of marijuana, the

9 defendant may introduce and the court shall consider as a mitigating factor any evidence

10 of medical necessity.

11 2. Notwithstanding paragraph (2) of this subsection, if the

12 court finds that the person used or possessed marijuana because of medical necessity, the

13 court shall dismiss the charge.

14 (iii) 1. In a prosecution for the use or possession of marijuana

15 under this section, it is an affirmative defense that the defendant used or possessed

16 marijuana because:

17 A. the defendant has a debilitating medical condition that

18 has been diagnosed by a physician with whom the defendant has a bona fide

19 physician–patient relationship;

20 B. the debilitating medical condition is severe and resistant

21 to conventional medicine; and

22 C. marijuana is likely to provide the defendant with

23 therapeutic or palliative relief from the debilitating medical condition.

24 2. A. In a prosecution for the possession of marijuana

25 under this section, it is an affirmative defense that the defendant possessed marijuana

26 because the marijuana was intended for medical use by an individual with a debilitating

27 medical condition for whom the defendant is a caregiver.

28 B. A defendant may not assert the affirmative defense under

29 this subparagraph unless the defendant notifies the State’s Attorney of the defendant’s

30 intention to assert the affirmative defense and provides the State’s Attorney with all

31 documentation in support of the affirmative defense in accordance with the rules of

32 discovery provided in Maryland Rules 4–262 and 4–263.

33 3. An affirmative defense under this subparagraph may not

1 be used if the defendant was:

2 A. using marijuana in a public place or assisting the
3 individual for whom the defendant is a caregiver in using the marijuana in a public place;
4 or

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

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

8 [(d)] (E) The provisions of subsection [(c)(2)(ii)] (D)(2)(II) of this section making
9 the possession of [marijuana] **A DE MINIMIS QUANTITY OF A CONTROLLED DANGEROUS**
10 **SUBSTANCE** a civil offense may not be construed to affect the laws relating to:

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

13 (2) seizure and forfeiture.

14 [(e)] (F) (1) (i) Before imposing a sentence under subsection [(c)] (D) of
15 this section, the court may order the Maryland Department of Health or a certified and
16 licensed designee to conduct an assessment of the defendant for substance use disorder and
17 determine whether the defendant is in need of and may benefit from drug treatment.

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

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

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

27 (i) except as provided in subparagraph (ii) of this paragraph, the
28 court shall suspend the execution of the sentence and order probation and, if the
29 assessment shows that the defendant is in need of substance [abuse] **USE** treatment,
30 require the Maryland Department of Health or the designee to provide the medically
31 appropriate level of treatment as identified in the assessment; or

32 (ii) the court may impose a term of imprisonment under subsection
33 [(c)] (D) of this section and order the Division of Correction or local correctional facility to
34 facilitate the medically appropriate level of treatment for the defendant as identified in the

1 assessment.

2 5–601.1.

3 (a) IN THIS SECTION, “DE MINIMIS QUANTITY OF A CONTROLLED
4 DANGEROUS SUBSTANCE” HAS THE MEANING STATED IN § 5–601 OF THIS SUBTITLE.

5 (B) A police officer shall issue a citation to a person who the police officer has
6 probable cause to believe has committed a violation of § 5–601 of this part involving the use
7 or possession of [less than 10 grams of marijuana] A DE MINIMIS QUANTITY OF A
8 CONTROLLED DANGEROUS SUBSTANCE.

9 [(b)] (C) (1) A violation of § 5–601 of this part involving the use or possession
10 of [less than 10 grams of marijuana] A DE MINIMIS QUANTITY OF A CONTROLLED
11 DANGEROUS SUBSTANCE is a civil offense.

12 (2) Adjudication of a violation under § 5–601 of this part involving the use
13 or possession of [less than 10 grams of marijuana] A DE MINIMIS QUANTITY OF A
14 CONTROLLED DANGEROUS SUBSTANCE:

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

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

18 [(c)] (D) (1) A citation issued for a violation of § 5–601 of this part involving
19 the use or possession of [less than 10 grams of marijuana] A DE MINIMIS QUANTITY OF A
20 CONTROLLED DANGEROUS SUBSTANCE shall be signed by the police officer who issues
21 the citation and shall contain:

22 (i) the name, address, and date of birth of the person charged;

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

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

25 (iv) the fine that may be imposed;

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

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

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

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

1 by the District Court by writ or trial notice.

2 (2) (i) If a citation for a violation of § 5–601 of this part involving the
3 use or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**
4 **CONTROLLED DANGEROUS SUBSTANCE** is issued to a person under the age of 21 years,
5 the court shall summon the person for trial.

6 (ii) If the court finds that a person at least 21 years old who has been
7 issued a citation under this section has at least twice previously been found guilty under §
8 5–601 of this part involving the use or possession of [less than 10 grams of marijuana] **A**
9 **DE MINIMIS QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE**, the court shall
10 summon the person for trial.

11 [(d)] **(E)** The form of the citation shall be uniform throughout the State and shall
12 be prescribed by the District Court.

13 [(e)] **(F)** (1) The Chief Judge of the District Court shall establish a schedule
14 for the prepayment of the fine.

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

17 (3) A person described in subsection [(c)(2)] **(D)(2)** of this section may not
18 prepay the fine.

19 [(f)] **(G)** (1) A person may request a trial by sending a request for trial to the
20 District Court in the jurisdiction where the citation was issued within 30 days of the
21 issuance of the citation.

22 (2) If a person other than a person described in subsection [(c)(2)] **(D)(2)**
23 of this section does not request a trial or prepay the fine within 30 days of the issuance of
24 the citation, the court may impose the maximum fine and costs against the person and find
25 the person is guilty of a Code violation for purposes of subsection [(c)(2)(ii)] **(D)(2)(II)** of
26 this section.

27 [(g)] **(H)** The issuing jurisdiction shall forward a copy of the citation and a
28 request for trial to the District Court in the district having venue.

29 [(h)] **(I)** (1) The failure of a defendant to respond to a summons described in
30 subsection [(c)(2)] **(D)(2)** of this section shall be governed by § 5–212 of the Criminal
31 Procedure Article.

32 (2) If a person at least 21 years old fails to appear after having requested
33 a trial, the court may impose the maximum fine and costs against the person and find the
34 person is guilty of a Code violation for purposes of subsection [(c)(2)(ii)] **(D)(2)(II)** of this
35 section.

1 **[(i)] (J)** In any proceeding for a Code violation under § 5–601 of this part
2 involving the use or possession of [less than 10 grams of marijuana] **A DE MINIMIS**
3 **QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE:**

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

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

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

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

13 (5) the defendant is entitled to be represented by counsel of the defendant’s
14 choice and at the expense of the defendant; and

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

17 (i) guilty of a Code violation;

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

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

21 **[(j)] (K)** (1) The defendant is liable for the costs of the proceedings in the
22 District Court.

23 (2) The court costs in a Code violation case under § 5–601 of this part
24 involving the use or possession of [less than 10 grams of marijuana] **A DE MINIMIS**
25 **QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE** in which costs are imposed are
26 \$5.

27 **[(k)] (L)** (1) The State’s Attorney for any county may prosecute a Code
28 violation under § 5–601 of this part involving the use or possession of [less than 10 grams
29 of marijuana] **A DE MINIMIS QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE**
30 in the same manner as prosecution of a violation of the criminal laws of the State.

31 (2) In a Code violation case under § 5–601 of this part involving the use or
32 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**

1 **CONTROLLED DANGEROUS SUBSTANCE**, the State's Attorney may:

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

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

6 **[(l)] (M)** A person issued a citation for a violation of § 5–601 of this part involving
7 the use or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**
8 **CONTROLLED DANGEROUS SUBSTANCE** who is under the age of 18 years shall be subject
9 to the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts Article.

10 **[(m)] (N)** A citation for a violation of § 5–601 of this part involving the use or
11 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**
12 **CONTROLLED DANGEROUS SUBSTANCE** and the official record of a court regarding the
13 citation are not subject to public inspection and may not be included on the public website
14 maintained by the Maryland Judiciary if:

15 (1) the defendant has prepaid the fine;

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

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

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

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

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

24 (7) the charge has been dismissed.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2021.