

# SENATE BILL 143

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(PRE-FILED)

1lr1079  
CF HB 324

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By: **Senators Waldstreicher and Carter**

Requested: October 22, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

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; creating a presumption that a person in  
6 possession of less than a certain amount of marijuana is not in violation of a certain  
7 provision of law with regard to marijuana in the absence of certain evidence; making  
8 conforming changes; and generally relating to crimes involving marijuana.

9 BY repealing and reenacting, without amendments,  
10 Article – Courts and Judicial Proceedings  
11 Section 3–8A–01(a)  
12 Annotated Code of Maryland  
13 (2020 Replacement Volume)

14 BY repealing and reenacting, with amendments,  
15 Article – Courts and Judicial Proceedings  
16 Section 3–8A–01(dd) and 3–8A–33(a)  
17 Annotated Code of Maryland  
18 (2020 Replacement Volume)

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Law  
21 Section 5–601, 5–601.1, and 5–602  
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:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Courts and Judicial Proceedings**

3–8A–01.

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

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

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

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

(3) § 10–132 of the Criminal Law Article;

(4) § 10–136 of the Criminal Law Article; or

(5) § 26–103 of the Education Article.

3–8A–33.

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

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

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

(3) § 10–132 of the Criminal Law Article;

(4) § 10–136 of the Criminal Law Article; or

(5) § 26–103 of the Education Article.

**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

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 by:

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

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

6                   (iii) the concealment of a material fact;

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

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

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

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

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

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

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

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

23           (2) (i) Except as provided in subparagraph (ii) of this paragraph, a  
24 person whose violation of this section involves the use or possession of marijuana is guilty  
25 of a misdemeanor of possession of marijuana and is subject to imprisonment not exceeding  
26 6 months or a fine not exceeding \$1,000 or both.

27                   (ii) 1. A first finding of guilt under this section involving the use  
28 or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense punishable  
29 by a fine not exceeding \$100.

30                               2. A second finding of guilt under this section involving the  
31 use or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense punishable  
32 by a fine not exceeding \$250.

1                   3.     A third or subsequent finding of guilt under this section  
2 involving the use or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil  
3 offense punishable by a fine not exceeding \$500.

4                   4.     A.     In addition to a fine, a court shall order a person  
5 under the age of 21 years who commits a violation punishable under subparagraph 1,  
6 2, or 3 of this subparagraph to attend a drug education program approved by the Maryland  
7 Department of Health, refer the person to an assessment for substance abuse disorder, and  
8 refer the person to substance abuse treatment, if necessary.

9                   B.     In addition to a fine, a court shall order a person at least  
10 21 years old who commits a violation punishable under subparagraph 3 of this  
11 subparagraph to attend a drug education program approved by the Maryland Department  
12 of Health, refer the person to an assessment for substance abuse disorder, and refer the  
13 person to substance abuse treatment, if necessary.

14                  C.     A court that orders a person to a drug education program  
15 or substance abuse assessment or treatment under this subparagraph may hold the  
16 case sub curia pending receipt of proof of completion of the program, assessment, or  
17 treatment.

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

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

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

26                               A.     is a resident of the State;

27                               B.     is at least 21 years old;

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

30                               D.     has not been convicted of a crime of violence as defined in  
31 § 14–101 of this article;

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

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

1 G. has been designated as caregiver by the patient in writing  
2 that has been placed in the patient's medical record prior to arrest;

3 H. is the only individual designated by the patient to serve as  
4 caregiver; and

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

6 4. "Debilitating medical condition" means a chronic or  
7 debilitating disease or medical condition or the treatment of a chronic or debilitating  
8 disease or medical condition that produces one or more of the following, as documented by  
9 a physician with whom the patient has a bona fide physician-patient relationship:

10 A. cachexia or wasting syndrome;

11 B. severe or chronic pain;

12 C. severe nausea;

13 D. seizures;

14 E. severe and persistent muscle spasms; or

15 F. any other condition that is severe and resistant to  
16 conventional medicine.

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

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

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

26 A. the defendant has a debilitating medical condition that  
27 has been diagnosed by a physician with whom the defendant has a bona fide  
28 physician-patient relationship;

29 B. the debilitating medical condition is severe and resistant  
30 to conventional medicine; and

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

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

5                   B.     A defendant may not assert the affirmative defense under  
6 this subparagraph unless the defendant notifies the State's Attorney of the defendant's  
7 intention to assert the affirmative defense and provides the State's Attorney with all  
8 documentation in support of the affirmative defense in accordance with the rules of  
9 discovery provided in Maryland Rules 4-262 and 4-263.

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

12                   A.     using marijuana in a public place or assisting the  
13 individual for whom the defendant is a caregiver in using the marijuana in a public place;  
14 or

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

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

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

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

22                   (2)    seizure and forfeiture.

23                  (e)    (1)    (i)    Before imposing a sentence under subsection (c) of this section,  
24 the court may order the Maryland Department of Health or a certified and licensed  
25 designee to conduct an assessment of the defendant for substance use disorder and  
26 determine whether the defendant is in need of and may benefit from drug treatment.

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

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

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

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

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

12 5–601.1.

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

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

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

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

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

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

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

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

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

29                           (iv)   the fine that may be imposed;

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

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

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

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

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

7                   (ii)    If the court finds that a person at least 21 years old who has been  
8 issued a citation under this section has at least twice previously been found guilty under §  
9 5–601 of this part involving the use or possession of less than [10 grams] **1 OUNCE** of  
10 marijuana, the court shall summon the person for trial.

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

13                  (e)    (1)     The Chief Judge of the District Court shall establish a schedule for the  
14 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) of this section may not prepay  
18 the fine.

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

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

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

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

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



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

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

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

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

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

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

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

16 (i) guilty of a Code violation;

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

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

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

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

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

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

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

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

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

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

11 (1) the defendant has prepaid the fine;

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

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

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

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

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

20 (7) the charge has been dismissed.

21 5–602.

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

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

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

27 (B) **THERE IS A PRESUMPTION THAT A PERSON IN POSSESSION OF LESS**  
28 **THAN 1 OUNCE OF MARIJUANA IS NOT IN VIOLATION OF SUBSECTION (A) OF THIS**  
29 **SECTION WITH REGARD TO MARIJUANA IN THE ABSENCE OF ANY OTHER EVIDENCE**  
30 **OF A VIOLATION OF SUBSECTION (A) OF THIS SECTION.**

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