

SENATE BILL 73

E1

(PRE-FILED)

3lr1002
CF 3lr1004

By: **Senator Carter**

Requested: November 20, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Cannabis-Related Offenses – Civil Penalties**

3 FOR the purpose of substituting civil penalties in place of criminal penalties for certain
4 offenses relating to possessing, possessing with the intent to distribute, and
5 cultivating cannabis and manufacturing cannabis products; and generally relating
6 to cannabis-related offenses.

7 BY repealing and reenacting, without amendments,
8 Article – Criminal Law
9 Section 5–101(a) and (u) and 5–601(a)
10 Annotated Code of Maryland
11 (2021 Replacement Volume and 2022 Supplement)
12 (As enacted by Chapter 26 of the Acts of the General Assembly of 2022)

13 BY repealing
14 Article – Criminal Law
15 Section 5–101(e–2)
16 Annotated Code of Maryland
17 (2021 Replacement Volume and 2022 Supplement)
18 (As enacted by Chapter 26 of the Acts of the General Assembly of 2022)

19 BY repealing and reenacting, with amendments,
20 Article – Criminal Law
21 Section 5–601(c)(2) and (d), 5–601.2, and 5–602
22 Annotated Code of Maryland
23 (2021 Replacement Volume and 2022 Supplement)
24 (As enacted by Chapter 26 of the Acts of the General Assembly of 2022)

25 BY repealing and reenacting, with amendments,
26 Article – Criminal Law

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 5–601.1 and 5–607
Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 5–603
Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

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

Article – Criminal Law

5–101.

(a) In this title the following words have the meanings indicated.

[(e–2) “Civil use amount” means:

(1) an amount of usable cannabis that exceeds 1.5 ounces but does not
exceed 2.5 ounces;

(2) an amount of concentrated cannabis that exceeds 12 grams but does not
exceed 20 grams; or

(3) an amount of cannabis products containing
delta–9–tetrahydrocannabinol that exceeds 750 milligrams but does not exceed 1,250
milligrams.]

(u) “Personal use amount” means:

(1) an amount of usable cannabis that does not exceed 1.5 ounces;

(2) an amount of concentrated cannabis that does not exceed 12 grams;

(3) an amount of cannabis products containing
delta–9–tetrahydrocannabinol that does not exceed 750 milligrams; or

(4) two or fewer cannabis plants.

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:

(i) obtained directly or by prescription or order from an authorized provider acting in the course of professional practice; or

(ii) the controlled dangerous substance is cannabis, the individual is at least 21 years old, and the amount possessed is the personal use amount; 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) (2) (i) [Except as provided in subparagraph (ii) of this paragraph, a person whose violation of this section involves the use or possession of cannabis is guilty of a misdemeanor of possession of cannabis and is subject to imprisonment not exceeding 6 months or a fine not exceeding \$1,000 or both.]

1. EXCEPT AS OTHERWISE PROVIDED IN THIS TITLE, A FINDING OF GUILT UNDER THIS SECTION INVOLVING THE USE OR POSSESSION OF AN AMOUNT OF CANNABIS EXCEEDING THE PERSONAL USE AMOUNT IS A CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$250.

2. A PERSON WHO IS FOUND GUILTY OF A CIVIL OFFENSE INVOLVING THE USE OR POSSESSION OF AN AMOUNT OF CANNABIS EXCEEDING THE PERSONAL USE AMOUNT MAY REQUEST, AND SHALL BE GRANTED, A PENALTY OF UP TO 75 HOURS OF COMMUNITY SERVICE IN LIEU OF A FINE.

(ii) 1. A finding of guilt under this section involving the use or possession of the personal use amount of cannabis by a person under the age of 21 years is a civil offense punishable by a fine not exceeding \$100.

2. [A finding of guilt under this section involving the use or possession of the civil use amount of cannabis is a civil offense punishable by a fine not exceeding \$250.

3.] A. In addition to a fine, a court may order a person under the age of 21 years who [commits a violation punishable under subsubparagraph 1 or 2 of this subparagraph] **IS FOUND GUILTY OF POSSESSION OF CANNABIS** to attend a drug education program approved by the Maryland Department of Health, refer the person to an assessment for substance abuse disorder, and refer the person to substance abuse treatment, if necessary.

B. A court that orders a person to a drug education program or substance abuse assessment or treatment under this subsubparagraph may hold the case sub curia pending receipt of proof of completion of the program, assessment, or treatment.

(d) The provisions of subsection [(c)(2)(ii)] **(C)(2)** of this section may not be construed to affect the laws relating to:

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

(2) seizure and forfeiture.

5–601.1.

(a) **IN THIS SECTION, “CIVIL CANNABIS VIOLATION” MEANS A VIOLATION OF:**

(1) **§ 5–601 OF THIS PART INVOLVING THE USE OR POSSESSION OF CANNABIS;**

(2) **§ 5–601.2 OF THIS PART;**

(3) **§ 5–602(B)(1) OF THIS PART; OR**

(4) **§ 5–603(B) OF THIS PART.**

(B) A police officer shall issue a citation to a person who the police officer has probable cause to believe has committed a **CIVIL CANNABIS** violation [of § 5–601 of this part involving the use or possession of the civil use amount of cannabis or the personal use amount of cannabis].

1 **[(b)] (C)** (1) A **CIVIL CANNABIS** violation [of § 5–601 of this part involving
2 the use or possession of the civil use amount of cannabis or the personal use amount of
3 cannabis] is a civil offense.

4 (2) Adjudication of a **CIVIL CANNABIS** violation [under § 5–601 of this part
5 involving the use or possession of the civil use amount of cannabis or the personal use
6 amount of cannabis]:

- 7 (i) is not a criminal conviction for any purpose; and
- 8 (ii) does not impose any of the civil disabilities that may result from
9 a criminal conviction.

10 **[(c)] (D)** (1) A citation issued for a **CIVIL CANNABIS** violation [of § 5–601 of
11 this part involving the use or possession of the civil use amount of cannabis or the personal
12 use amount of cannabis] shall be signed by the police officer who issues the citation and
13 shall contain:

- 14 (i) the name, address, and date of birth of the person charged;
- 15 (ii) the date and time that the violation occurred;
- 16 (iii) the location at which the violation occurred;
- 17 (iv) the fine that may be imposed, **AND, IF APPLICABLE, THAT**
18 **COMMUNITY SERVICE MAY BE REQUESTED IN LIEU OF A FINE;**
- 19 (v) a notice stating that prepayment of the fine is allowed, except as
20 provided in paragraph (2) of this subsection; and
- 21 (vi) a notice in boldface type that states that the person shall:
- 22 1. pay the full amount of the preset fine; or
- 23 2. request a trial date at the date, time, and place established
24 by the District Court by writ or trial notice.

25 (2) If a citation for a **CIVIL CANNABIS** violation [of § 5–601 of this part
26 involving the use or possession of the civil use amount of cannabis or the personal use
27 amount of cannabis] is issued to a person under the age of 21 years, the court shall summon
28 the person for trial.

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

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

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

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

7 [(f)] (G) (1) A person may request **COMMUNITY SERVICE, IF APPLICABLE,**
8 **OR** a trial by sending a request for trial to the District Court in the jurisdiction where the
9 citation was issued within 30 days of the issuance of the citation.

10 (2) If a person other than a person described in subsection [(c)(2)] (D)(2)
11 of this section does not request **COMMUNITY SERVICE OR** a trial or prepay the fine within
12 30 days of the issuance of the citation, the court may impose the maximum fine and costs
13 against the person and find the person is guilty of a Code violation.

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

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

19 (2) If a person [at least 21 years old] **OTHER THAN A PERSON DESCRIBED**
20 **IN SUBSECTION (D)(2) OF THIS SECTION** fails to appear after having requested
21 **COMMUNITY SERVICE OR** a trial, the court may impose the maximum fine and costs
22 against the person and find the person is guilty of a Code violation.

23 [(i)] (J) In any proceeding for a Code violation [under § 5–601 of this part
24 involving the use or possession of the civil use amount of cannabis or the personal use
25 amount of cannabis] **FOR A CIVIL CANNABIS VIOLATION:**

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

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

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

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

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

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

(i) guilty of a Code violation;

(ii) not guilty of a Code violation; or

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

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

(2) The court costs in a Code violation case [under § 5–601 of this part involving the use or possession of the civil use amount of cannabis or the personal use amount of cannabis] **FOR A CIVIL CANNABIS VIOLATION** in which costs are imposed are \$5.

~~[(k)]~~ **(L)** (1) The State's Attorney for any county may prosecute a Code violation [under § 5–601 of this part involving the use or possession of the civil use amount of cannabis or the personal use amount of cannabis] **FOR A CIVIL CANNABIS VIOLATION** in the same manner as prosecution of a violation of the criminal laws of the State.

(2) In a Code violation case [under § 5–601 of this part involving the use or possession of the civil use amount of cannabis or the personal use amount of cannabis] **FOR A CIVIL CANNABIS VIOLATION**, the State's Attorney may:

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

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

~~[(l)]~~ **(M)** A person issued a citation for a **CIVIL CANNABIS** violation [of § 5–601 of this part involving the use or possession of the civil use amount of cannabis or the personal use amount of cannabis] who is under the age of 18 years shall be subject to the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts Article.

~~[(m)]~~ **(N)** A citation for a **CIVIL CANNABIS** violation [of § 5–601 of this part involving the use or possession of the civil use amount of cannabis or the personal use amount of cannabis] and the official record of a court regarding the citation are not subject

to public inspection and may not be included on the public website maintained by the Maryland Judiciary if:

(1) the defendant has prepaid the fine;

(2) the defendant has pled guilty to or been found guilty of the Code violation and has fully paid the fine and costs imposed **OR COMPLETED THE COMMUNITY SERVICE IMPOSED** for the violation;

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

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

(5) the State has entered a nolle prosequi;

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

(7) the charge has been dismissed.

5–601.2.

(a) A person may not cultivate cannabis plants in a manner that is contrary to this section.

(b) Cannabis plants may not be cultivated in a location where the plants are subject to public view, including a view from another private property, without the use of binoculars, aircraft, or other optical aids.

(c) (1) In this subsection, “reasonable precautions” includes cultivating cannabis in an enclosed locked space to which persons under the age of 21 years do not possess a key.

(2) A person who cultivates cannabis shall take reasonable precautions to ensure the plants are secure from unauthorized access and access by a person under the age of 21 years.

(d) Cannabis cultivation may occur only on property lawfully in possession of the cultivator or with the consent of the person in lawful possession of the property.

(e) A person under the age of 21 years may not cultivate cannabis plants.

(f) (1) A person may not cultivate more than two cannabis plants.

(2) If two or more persons at least 21 years old reside at the same residence, no more than two cannabis plants may be cultivated at that residence.

(g) A person who violates this section is guilty of a [misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both] **CIVIL OFFENSE PUNISHABLE BY A FINE NOT EXCEEDING \$5,000.**

5–602.

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

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

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

(b) (1) Except as otherwise provided in this title, a person may not possess cannabis in sufficient quantity reasonably to indicate under all circumstances an intent to distribute or dispense cannabis.

(2) Possession of [the civil use amount of cannabis or] the personal use amount of cannabis without other evidence of an intent to distribute or dispense does not constitute a violation of paragraph (1) of this subsection.

(c) (1) (i) In this subsection, “adult sharing” means transferring cannabis between persons who are 21 years of age or older without remuneration.

(ii) “Adult sharing” does not include instances in which:

1. cannabis is given away contemporaneously with another reciprocal transaction between the same parties;

2. a gift of cannabis is offered or advertised in conjunction with an offer for the sale of goods or services; or

3. a gift of cannabis is contingent on a separate reciprocal transaction for goods or services.

(2) This section does not prohibit, and no civil or criminal penalty may be imposed for, adult sharing of the personal use amount of cannabis.

5–603.

(a) Except as otherwise provided in this title, a person may not manufacture a controlled dangerous substance other than cannabis, or manufacture, distribute, or possess a machine, equipment, instrument, implement, device, or a combination of them that is adapted to produce a controlled dangerous substance other than cannabis under

1 circumstances that reasonably indicate an intent to use it to produce, sell, or dispense a
2 controlled dangerous substance other than cannabis in violation of this title.

3 (b) Except as otherwise provided in this title, a person may not cultivate or grow
4 cannabis or manufacture a cannabis product, or manufacture, distribute, or possess a
5 machine, equipment, an instrument, an implement, a device, or a combination of them that
6 is adapted to produce cannabis or a cannabis product under circumstances that reasonably
7 indicate an intent to use it to produce, sell, or dispense cannabis or a cannabis product in
8 violation of this title.

9 5–607.

10 (a) (1) Except as provided in paragraph (2) of this subsection and §§ 5–608 and
11 5–609 of this subtitle, a person who violates a provision of §§ 5–602 through 5–606 of this
12 subtitle is guilty of a felony and on conviction is subject to imprisonment not exceeding 5
13 years or a fine not exceeding \$15,000 or both.

14 (2) (I) A person who violates § 5–602(b)(1) or § 5–603(b) of this subtitle
15 is guilty of a [misdemeanor and on conviction is subject to imprisonment not exceeding 3
16 years or a fine not exceeding \$5,000 or both] **CIVIL OFFENSE PUNISHABLE BY A FINE**
17 **NOT EXCEEDING \$5,000.**

18 (II) **A PERSON WHO IS FOUND GUILTY OF A CIVIL OFFENSE**
19 **UNDER THIS SECTION MAY REQUEST, AND SHALL BE GRANTED, A PENALTY OF UP TO**
20 **500 HOURS OF COMMUNITY SERVICE IN LIEU OF A FINE.**

21 (b) A person convicted under this section is not prohibited from participating in a
22 drug treatment program under § 8–507 of the Health – General Article because of the
23 length of the sentence.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2023, contingent on the taking effect of Section 4 of Chapter 26 of the Acts of the
26 General Assembly of 2022, and if Section 4 of Chapter 26 does not become effective, this
27 Act, with no further action required by the General Assembly, shall be null and void.