

SENATE BILL 784

E1
HB 488/21 – JUD

2lr1984
CF 2lr2926

By: **Senator Carter**

Introduced and read first time: February 7, 2022

Assigned to: Judicial Proceedings

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; altering a certain provision of law to require a court to
7 order a person who commits a certain violation, regardless of the age of the person,
8 to attend a certain drug education program, refer the person to an assessment for
9 substance use disorder or a mental health assessment, and refer the person to
10 substance use treatment or mental health treatment under certain circumstances;
11 requiring that a certain case proceed in drug court under certain circumstances; and
12 generally relating to use or possession of a controlled dangerous substance.

13 BY repealing and reenacting, with amendments,
14 Article – Criminal Law
15 Section 5–601 and 5–601.1
16 Annotated Code of Maryland
17 (2021 Replacement Volume and 2021 Supplement)

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

20 **Article – Criminal Law**

21 5–601.

22 (a) IN THIS SECTION, “DE MINIMIS QUANTITY OF A CONTROLLED
23 DANGEROUS SUBSTANCE” MEANS LESS THAN:

24 **(1) 10 GRAMS OF MARIJUANA;**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2) 2 GRAMS OF COCAINE;

(3) 1.5 GRAMS OF COCAINE BASE, COMMONLY KNOWN AS “CRACK”;

(4) 1 GRAM OF HEROIN;

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

(6) 40 USER UNITS OF LYSERGIC ACID DIETHYLAMIDE (LSD);

(7) 40 USER UNITS OF METHADONE;

(8) 2 GRAMS OF METHAMPHETAMINE; OR

(9) 40 TABLETS OF OXYCODONE.

(B) 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.

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

[(c)] (D) (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:

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

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

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

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

A. is a resident of the State;

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;

1 C. severe nausea;

2 D. seizures;

3 E. severe and persistent muscle spasms; or

4 F. any other condition that is severe and resistant to
5 conventional medicine.

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

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

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

15 A. the defendant has a debilitating medical condition that
16 has been diagnosed by a physician with whom the defendant has a bona fide
17 physician–patient relationship;

18 B. the debilitating medical condition is severe and resistant
19 to conventional medicine; and

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

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

26 B. A defendant may not assert the affirmative defense under
27 this subsubparagraph unless the defendant notifies the State’s Attorney of the defendant’s
28 intention to assert the affirmative defense and provides the State’s Attorney with all
29 documentation in support of the affirmative defense in accordance with the rules of
30 discovery provided in Maryland Rules 4–262 and 4–263.

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

33 A. using marijuana in a public place or assisting the

individual for whom the defendant is a caregiver in using the marijuana in a public place;
or

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

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

[(d)] (E) The provisions of subsection **[(c)(2)(ii)] (D)(2)(II)** of this section making the possession of **[marijuana] A DE MINIMIS QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE** a civil offense 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (iv) the fine that may be imposed;

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

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

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

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

30 (2) (i) If a citation for a violation of § 5–601 of this part involving the

1 use or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**
2 **CONTROLLED DANGEROUS SUBSTANCE** is issued to a person under the age of 21 years,
3 the court shall summon the person for trial.

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

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

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

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

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

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

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

25 **[(g)] (H)** (1) The issuing jurisdiction shall forward a copy of the citation and
26 a request for trial to the District Court in the district having venue.

27 (2) **THE CASE SHALL PROCEED IN DRUG COURT, IF THE**
28 **DISTRICT COURT IN THE DISTRICT HAVING VENUE HAS A DRUG COURT.**

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, 2022.