

1 5-601.

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

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

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

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

9 (ii) the counterfeiting or alteration of a prescription or a written
10 order;

11 (iii) the concealment of a material fact;

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

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

15 (vi) making, issuing, or presenting a false or counterfeit prescription
16 or written order.

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

20 (c) [(1)] Except as provided in [paragraphs (2), (3), and (4) of this subsection]
21 **SUBSECTION (D) OF THIS SECTION**, a person who violates this section is guilty of a
22 misdemeanor and on conviction is subject to [imprisonment not exceeding 4 years or a fine
23 not exceeding \$25,000 or both]:

24 **(1) FOR A FIRST CONVICTION, IMPRISONMENT NOT EXCEEDING 1**
25 **YEAR OR A FINE NOT EXCEEDING ~~\$25,000~~ \$5,000 OR BOTH;**

26 **(2) FOR A SECOND OR THIRD CONVICTION, IMPRISONMENT NOT**
27 **EXCEEDING 18 MONTHS OR A FINE NOT EXCEEDING ~~\$25,000~~ \$5,000 OR BOTH; AND**

28 **(3) FOR A FOURTH OR SUBSEQUENT CONVICTION, IMPRISONMENT**
29 **NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING ~~\$25,000~~ \$5,000 OR BOTH.**

1 [(2) (i)] (D) Except as provided in [subparagraph (ii) of this
2 paragraph] § 5-601.1 OF THIS ARTICLE, a person whose violation of this section involves
3 the use or possession of marijuana IS GUILTY OF A MISDEMEANOR AND is subject to
4 ~~imprisonment not exceeding 1 year~~ 6 MONTHS or a fine not exceeding \$1,000 or both. ~~‡~~

5 ~~(1) FOR A FIRST CONVICTION, IMPRISONMENT NOT EXCEEDING 6~~
6 ~~MONTHS OR A FINE NOT EXCEEDING \$1,000 OR BOTH; AND~~

7 ~~(2) FOR A SECOND OR SUBSEQUENT CONVICTION, IMPRISONMENT~~
8 ~~NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000 OR BOTH.~~

9 [(ii) 1. A first violation of this section involving the use or
10 possession of less than 10 grams of marijuana is a civil offense punishable by a fine not
11 exceeding \$100.

12 2. A second violation of this section involving the use or
13 possession of less than 10 grams of marijuana is a civil offense punishable by a fine not
14 exceeding \$250.

15 3. A third or subsequent violation of this section involving
16 the use or possession of less than 10 grams of marijuana is a civil offense punishable by a
17 fine not exceeding \$500.

18 4. A. In addition to a fine, a court shall order a person
19 under the age of 21 years who commits a violation punishable under subparagraph 1,
20 2, or 3 of this subparagraph to attend a drug education program approved by the
21 Department of Health and Mental Hygiene, refer the person to an assessment for substance
22 abuse disorder, and refer the person to substance abuse treatment, if necessary.

23 B. In addition to a fine, a court shall order a person at least
24 21 years old who commits a violation punishable under subparagraph 3 of this
25 subparagraph to attend a drug education program approved by the Department of Health
26 and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and
27 refer the person to substance abuse treatment, if necessary.]

28 [(3) (i) 1.] (E) (1) (I) In this [paragraph] SUBSECTION the
29 following words have the meanings indicated.

30 [2.] (II) “Bona fide physician–patient relationship” means a
31 relationship in which the physician has ongoing responsibility for the assessment, care, and
32 treatment of a patient’s medical condition.

33 [3.] (III) “Caregiver” means an individual designated by a
34 patient with a debilitating medical condition to provide physical or medical assistance to
35 the patient, including assisting with the medical use of marijuana, who:

1 [A.] 1. is a resident of the State;

2 [B.] 2. is at least 21 years old;

3 [C.] 3. is an immediate family member, a spouse, or a
4 domestic partner of the patient;

5 [D.] 4. has not been convicted of a crime of violence as
6 defined in § 14–101 of this article;

7 [E.] 5. has not been convicted of a violation of a State or
8 federal controlled dangerous substances law;

9 [F.] 6. has not been convicted of a crime of moral turpitude;

10 [G.] 7. has been designated as caregiver by the patient in
11 writing that has been placed in the patient’s medical record prior to arrest;

12 [H.] 8. is the only individual designated by the patient to
13 serve as caregiver; and

14 [I.] 9. is not serving as caregiver for any other patient.

15 [4.] (IV) “Debilitating medical condition” means a chronic or
16 debilitating disease or medical condition or the treatment of a chronic or debilitating
17 disease or medical condition that produces one or more of the following, as documented by
18 a physician with whom the patient has a bona fide physician–patient relationship:

19 [A.] 1. cachexia or wasting syndrome;

20 [B.] 2. severe or chronic pain;

21 [C.] 3. severe nausea;

22 [D.] 4. seizures;

23 [E.] 5. severe and persistent muscle spasms; or

24 [F.] 6. any other condition that is severe and resistant to
25 conventional medicine.

26 [(ii) 1.] (2) (I) In a prosecution for the use or possession of
27 marijuana, the defendant may introduce and the court shall consider as a mitigating factor
28 any evidence of medical necessity.

1 [2.] (II) Notwithstanding [paragraph (2) of this subsection]
2 **SUBSECTION (C) OF THIS SECTION**, if the court finds that the person used or possessed
3 marijuana because of medical necessity, the court shall dismiss the charge.

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

7 [A.] 1. the defendant has a debilitating medical condition
8 that has been diagnosed by a physician with whom the defendant has a bona fide
9 physician–patient relationship;

10 [B.] 2. the debilitating medical condition is severe and
11 resistant to conventional medicine; and

12 [C.] 3. marijuana is likely to provide the defendant with
13 therapeutic or palliative relief from the debilitating medical condition.

14 [2. A.] (II) 1. In a prosecution for the possession of
15 marijuana under this section, it is an affirmative defense that the defendant possessed
16 marijuana because the marijuana was intended for medical use by an individual with a
17 debilitating medical condition for whom the defendant is a caregiver.

18 [B.] 2. A defendant may not assert the affirmative defense
19 under this [subsubparagraph] **SUBPARAGRAPH** unless the defendant notifies the State’s
20 Attorney of the defendant’s intention to assert the affirmative defense and provides the
21 State’s Attorney with all documentation in support of the affirmative defense in accordance
22 with the rules of discovery provided in Maryland Rules 4–262 and 4–263.

23 [3.] (III) An affirmative defense under this [subparagraph]
24 **PARAGRAPH** may not be used if the defendant was:

25 [A.] 1. using marijuana in a public place or assisting the
26 individual for whom the defendant is a caregiver in using the marijuana in a public place;
27 or

28 [B.] 2. in possession of more than 1 ounce of marijuana.

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

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

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

1 (2) seizure and forfeiture.]

2 (F) (1) BEFORE IMPOSING A SENTENCE UNDER SUBSECTION (C) OR (D)
3 OF THIS SECTION, THE COURT ~~SHALL~~ MAY ORDER THE DEPARTMENT OF ~~PUBLIC~~
4 ~~SAFETY AND CORRECTIONAL SERVICES TO EVALUATE THE DEFENDANT FOR DRUG~~
5 ~~DEPENDENCE AND PROVIDE AN ASSESSMENT TO DETERMINE WHETHER THE~~
6 ~~DEFENDANT IS IN NEED OF AND MAY BENEFIT FROM DRUG TREATMENT~~ HEALTH
7 AND MENTAL HYGIENE OR A CERTIFIED AND LICENSED DESIGNEE TO CONDUCT AN
8 ASSESSMENT OF THE DEFENDANT FOR SUBSTANCE USE DISORDER AND DETERMINE
9 WHETHER THE DEFENDANT IS IN NEED OF AND MAY BENEFIT FROM DRUG
10 TREATMENT.

11 (2) ~~THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL~~
12 ~~SERVICES SHALL CONDUCT AN EVALUATION OF THE DEFENDANT AND PROVIDE AN~~
13 ~~ASSESSMENT~~ ON RECEIVING AN ORDER UNDER PARAGRAPH (1) OF THIS
14 SUBSECTION, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE, OR THE
15 DESIGNEE, SHALL CONDUCT AN ASSESSMENT OF THE DEFENDANT FOR SUBSTANCE
16 USE DISORDER AND PROVIDE THE RESULTS TO THE COURT, THE DEFENDANT OR
17 THE DEFENDANT'S ATTORNEY, AND THE STATE IDENTIFYING THE DEFENDANT'S
18 DRUG TREATMENT NEEDS.

19 (3) THE COURT SHALL CONSIDER ~~AND INCORPORATE~~ THE RESULTS
20 OF ~~THE AN~~ AN ASSESSMENT PERFORMED IN PARAGRAPH (2) OF THIS SUBSECTION ~~INTO~~
21 WHEN IMPOSING THE DEFENDANT'S SENTENCE AND:

22 (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
23 PARAGRAPH IF THE COURT FINDS THAT THE DEFENDANT IS NOT AN A IMMINENT
24 RISK TO PUBLIC SAFETY, THE COURT SHALL SUSPEND THE EXECUTION OF THE
25 SENTENCE AND ORDER PROBATION AND, IF THE ASSESSMENT SHOWS THAT THE
26 DEFENDANT IS IN NEED OF SUBSTANCE ABUSE TREATMENT, REQUIRE THE
27 DIVISION OF PAROLE AND PROBATION TO PROVIDE APPROPRIATE TREATMENT IN THE
28 COMMUNITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE TO PROVIDE THE
29 MEDICALLY APPROPRIATE LEVEL OF TREATMENT AS IDENTIFIED IN THE
30 ASSESSMENT; OR

31 (II) IF THE COURT FINDS THAT THE DEFENDANT POSES ~~AN A~~ A
32 IMMINENT RISK TO PUBLIC SAFETY OR OTHERWISE FOR GOOD CAUSE, THE COURT
33 MAY IMPOSE A TERM OF IMPRISONMENT UNDER SUBSECTION (C) OR (D) OF THIS
34 SECTION AND ORDER THE DIVISION OF CORRECTION OR LOCAL CORRECTIONAL
35 FACILITY TO ~~PROVIDE~~ FACILITATE THE MEDICALLY APPROPRIATE LEVEL OF
36 TREATMENT FOR THE DEFENDANT AS IDENTIFIED IN THE ASSESSMENT.