

## Chapter 194

(House Bill 350)

AN ACT concerning

### **Criminal Law – Possession of Marijuana – De ~~Minimus~~ Minimis Quantity**

FOR the purpose of establishing a reduced penalty for a person convicted of the use or possession of less than a certain quantity of marijuana; providing that, with a certain exception, the use or possession of less than a certain quantity of marijuana may not be considered a lesser included crime of any other crime; providing that a *certain* sentence imposed under this Act shall be stayed under certain circumstances without requiring an appeal bond; and generally relating to penalties for possession of marijuana.

BY repealing and reenacting, with amendments,

Article – Criminal Law

Section 5–601

Annotated Code of Maryland

(2002 Volume and 2011 Supplement)

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

#### **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

(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) 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) (1) Except as provided in paragraphs (2) and (3) of this subsection, a person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding \$25,000 or both.

(2) (I) A person whose violation of this section involves the use or possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

**(II) 1. A PERSON CONVICTED OF THE USE OR POSSESSION OF LESS THAN ~~14~~ 7 10 GRAMS OF MARIJUANA IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 90 DAYS OR A FINE NOT EXCEEDING \$500 OR BOTH.**

**2. UNLESS SPECIFICALLY CHARGED BY THE STATE, THE USE OR POSSESSION OF LESS THAN ~~14~~ 7 10 GRAMS OF MARIJUANA UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT BE CONSIDERED A LESSER INCLUDED CRIME OF ANY OTHER CRIME.**

**3. IF A PERSON IS CONVICTED UNDER THIS SUBPARAGRAPH AND FILES AN APPEAL, THE COURT SHALL STAY ANY SENTENCE IMPOSED THAT INCLUDES A PERIOD OF IMPRISONMENT DURING THE PENDENCY OF THE APPEAL WITHOUT REQUIRING AN APPEAL BOND, THE COURT SHALL STAY ANY SENTENCE IMPOSED THAT INCLUDES AN UNSERVED, NONSUSPENDED PERIOD OF IMPRISONMENT WITHOUT REQUIRING AN APPEAL BOND:**

**A. UNTIL THE TIME FOR FILING AN APPEAL HAS EXPIRED; AND**

**B. IF AN APPEAL IS FILED, DURING THE PENDENCY OF THE APPEAL.**

(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. “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;
- C. severe nausea;
- D. seizures;
- E. severe and persistent muscle spasms; or
- F. any other condition that is severe and resistant to conventional medicine.

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

2. Notwithstanding paragraph (2) of this subsection, if the court finds that the person used or possessed marijuana because of medical necessity, on conviction of a violation of this section, the maximum penalty that the court may impose on the person is a fine not exceeding \$100.

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

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

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

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

2. The affirmative defense may not be used if the defendant was:

A. using marijuana in a public place; or

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2012.

**Approved by the Governor, May 2, 2012.**