## **HOUSE BILL 324**

E1 1lr0368 HB 550/20 – JUD (PRE–FILED) CF SB 143

By: Delegate Moon

Requested: June 16, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judiciary

## A BILL ENTITLED

1 AN ACT concerning

Criminal Law – Marijuana – Possession and Possession With Intent to
Distribute

- FOR the purpose of altering the amount of marijuana below which possession is a civil offense, rather than a criminal offense; creating a presumption that a person in possession of less than a certain amount of marijuana is not in violation of a certain provision of law with regard to marijuana in the absence of certain evidence; making 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:

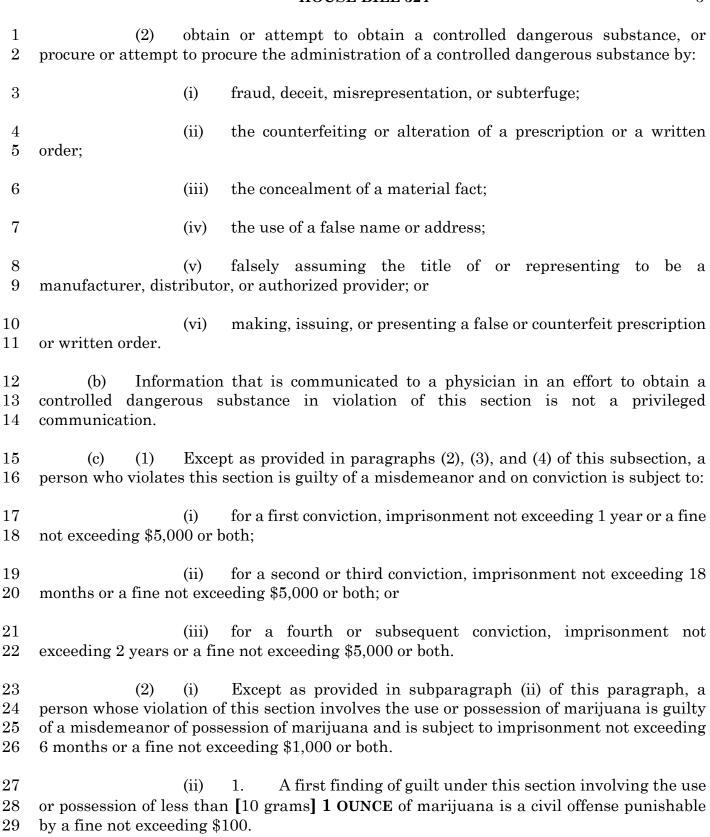
EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## 1 Article – Courts and Judicial Proceedings

- 2 3-8A-01.
- 3 (a) In this subtitle the following words have the meanings indicated, unless the 4 context of their use indicates otherwise.
- 5 (dd) "Violation" means a violation for which a citation is issued under:
- 6 (1) § 5-601 of the Criminal Law Article involving the use or possession of less than [10 grams] 1 OUNCE of marijuana;
- 8 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;
- 9 (3) § 10–132 of the Criminal Law Article;
- 10 (4) § 10–136 of the Criminal Law Article; or
- 11 (5) § 26–103 of the Education Article.
- 12 3–8A–33.
- 13 (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:
- 15 (1) § 5–601 of the Criminal Law Article involving the use or possession of less than [10 grams] 1 OUNCE of marijuana;
- 17 (2) § 10–113, § 10–114, § 10–115, or § 10–116 of the Criminal Law Article;
- 18 (3) § 10–132 of the Criminal Law Article;
- 19 (4) § 10–136 of the Criminal Law Article; or
- 20 (5) § 26–103 of the Education Article.
- 21 Article Criminal Law
- 22 5–601.
- 23 (a) Except as otherwise provided in this title, a person may not:
- 24 (1) possess or administer to another a controlled dangerous substance, 25 unless obtained directly or by prescription or order from an authorized provider acting in 26 the course of professional practice; or



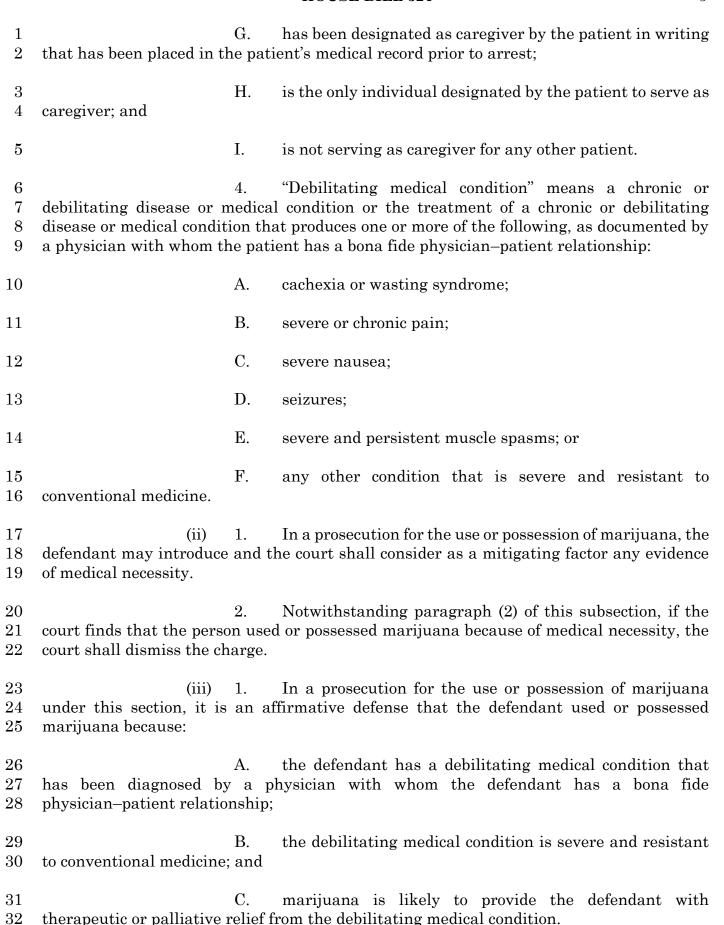
30 2. A second finding of guilt under this section involving the use or possession of less than [10 grams] **1 OUNCE** of marijuana is a civil offense punishable by a fine not exceeding \$250.

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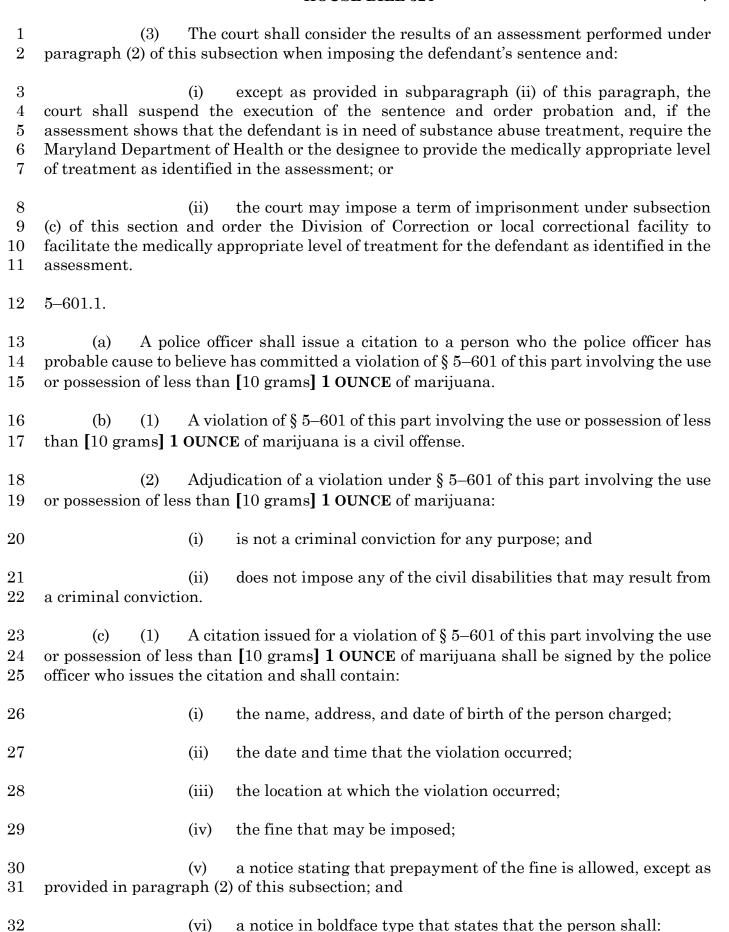
1 3. A third or subsequent finding of guilt under this section involving the use or possession of less than [10 grams] 1 OUNCE of marijuana is a civil 2 3 offense punishable by a fine not exceeding \$500. 4 4. A. In addition to a fine, a court shall order a person 5 under the age of 21 years who commits a violation punishable under subsubparagraph 1, 2, or 3 of this subparagraph to attend a drug education program approved by the Maryland 6 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 subsubparagraph 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 person to substance abuse treatment, if necessary. 13 14 A court that orders a person to a drug education program C. 15 or substance abuse assessment or treatment under this subsubparagraph 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 indicated. 19 20 "Bona fide physician-patient relationship" means a 21relationship in which the physician has ongoing responsibility for the assessment, care, and 22treatment of a patient's medical condition. 23 "Caregiver" means an individual designated by a patient 24with a debilitating medical condition to provide physical or medical assistance to the patient, including assisting with the medical use of marijuana, who: 25 26 A. is a resident of the State: 27В. is at least 21 years old; 28 C. is an immediate family member, a spouse, or a domestic 29 partner of the patient; 30 has not been convicted of a crime of violence as defined in D. § 14–101 of this article; 31 32 has not been convicted of a violation of a State or federal Ε. controlled dangerous substances law; 33

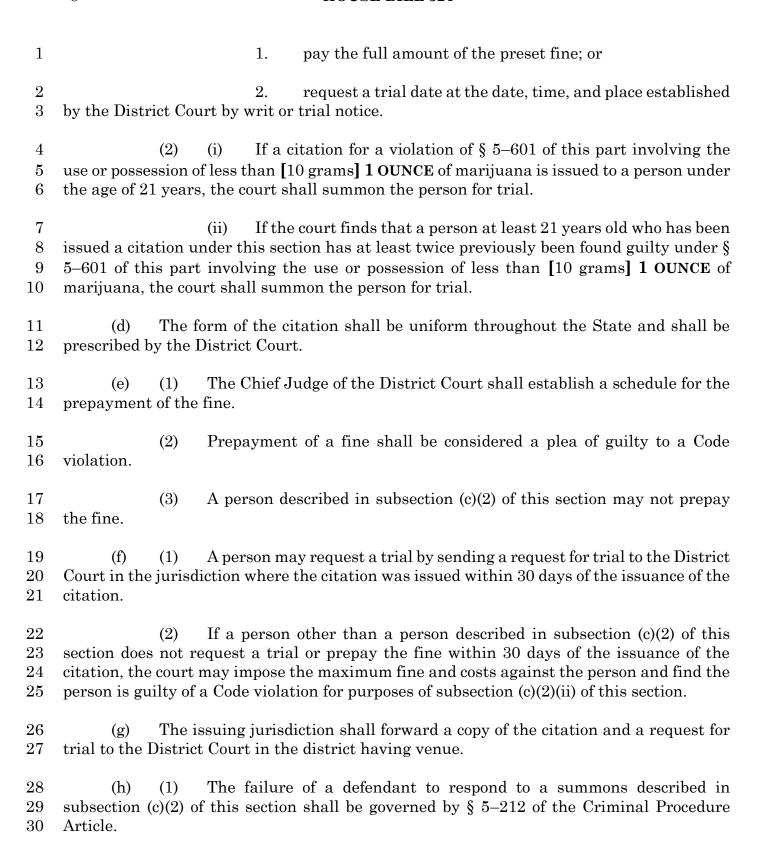
has not been convicted of a crime of moral turpitude;

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- 2. A. In a prosecution for the possession of marijuana under this section, it is an affirmative defense that the defendant possessed marijuana because the marijuana was intended for medical use by an individual with a debilitating medical condition for whom the defendant is a caregiver.
- B. A defendant may not assert the affirmative defense under this subsubparagraph unless the defendant notifies the State's Attorney of the defendant's intention to assert the affirmative defense and provides the State's Attorney with all documentation in support of the affirmative defense in accordance with the rules of 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:
- 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.
- 16 (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.
- 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.





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 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 the State has the burden to prove the guilt of the defendant by a preponderance of the evidence; 4 5 the court shall apply the evidentiary standards as prescribed by law or 6 rule for the trial of a criminal case: 7 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 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 the defendant is entitled to be represented by counsel of the defendant's (5)13 choice and at the expense of the defendant; and 14 the defendant may enter a plea of guilty or not guilty, and the verdict of the court in the case shall be: 15 16 (i) guilty of a Code violation; 17 not guilty of a Code violation; or (ii) probation before judgment, imposed by the court in the same 18 (iii) manner and to the same extent as is allowed by law in the trial of a criminal case. 19 20 (j) The defendant is liable for the costs of the proceedings in the District (1) 21Court. 22(2)The court costs in a Code violation case under § 5-601 of this part 23involving the use or possession of less than [10 grams] 1 OUNCE of marijuana in which 24costs are imposed are \$5. 25 (k) The State's Attorney for any county may prosecute a Code violation under § 5-601 of this part involving the use or possession of less than [10 grams] 1 OUNCE 26 27of 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:

enter a nolle prosegui or move to place the case on the stet docket;

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and

(i)

- 10 **HOUSE BILL 324** 1 (ii) exercise authority in the same manner as prescribed by law for 2 violation of the criminal laws of the State. 3 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 A citation for a violation of § 5–601 of this part involving the use or possession (m) 8 of less than [10 grams] 1 OUNCE of marijuana and the official record of a court regarding the citation are not subject to public inspection and may not be included on the public 9 website maintained by the Maryland Judiciary if: 10 11 the defendant has prepaid the fine; (1) 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 the defendant has received a probation before judgment and has fully (3)15 paid the fine and completed any terms imposed by the court; the case has been removed from the stet docket after the defendant fully 16 **(4)** 17 paid the fine and completed any terms imposed by the court; 18 (5)the State has entered a nolle prosequi; the defendant has been found not guilty of the charge; or 19 (6)20(7)the charge has been dismissed. 215-602. 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 25reasonably to indicate under all circumstances an intent to distribute or dispense a
  - (B) THERE IS A PRESUMPTION THAT A PERSON IN POSSESSION OF LESS THAN 1 OUNCE OF MARIJUANA IS NOT IN VIOLATION OF SUBSECTION (A) OF THIS SECTION WITH REGARD TO MARIJUANA IN THE ABSENCE OF ANY OTHER EVIDENCE OF A VIOLATION OF SUBSECTION (A) OF THIS SECTION.

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controlled dangerous substance.

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