

# SENATE BILL 446

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CF HB 325

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By: **Senator Astle**

Introduced and read first time: January 25, 2018

Assigned to: Judicial Proceedings

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## 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; applying penalties for a first or second finding of guilt  
7 involving the use or possession of less than 10 grams of marijuana to a first or second  
8 finding of guilt involving the use or possession of a de minimis quantity of certain  
9 controlled dangerous substances; applying certain procedural provisions relating to  
10 issuance of a citation for use or possession of less than 10 grams of marijuana to a  
11 first or second finding of guilt involving the use or possession of a de minimis  
12 quantity of certain controlled dangerous substances; altering a certain provision of  
13 law to require a court to order a person who commits a certain violation, regardless  
14 of the age of the person, to attend a certain drug education program, refer the person  
15 to an assessment for substance use disorder, and refer the person to substance use  
16 treatment under certain circumstances; defining a certain term; making conforming  
17 changes; making technical changes; and generally relating to use or possession of a  
18 controlled dangerous substance.

19 BY repealing and reenacting, with amendments,  
20 Article – Criminal Law  
21 Section 5–601 and 5–601.1  
22 Annotated Code of Maryland  
23 (2012 Replacement Volume and 2017 Supplement)

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

26 **Article – Criminal Law**

27 5–601.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 (1) 10 GRAMS OF MARIJUANA;

4 (2) 300 MILLIGRAMS OF COCAINE;

5 (3) 300 MILLIGRAMS OF HEROIN;

6 (4) 5 TABLETS OF 3, 4-METHYLENEDIOXYMETHAMPHETAMINE  
7 (MDMA);

8 (5) 5 TABLETS OF LYSERGIC ACID DIETHYLAMIDE (LSD);

9 (6) 300 MILLIGRAMS OF METHADONE; OR

10 (7) 200 MILLIGRAMS OF AMPHETAMINE.

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

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

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

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

18 (ii) the counterfeiting or alteration of a prescription or a written  
19 order;

20 (iii) the concealment of a material fact;

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

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

24 (vi) making, issuing, or presenting a false or counterfeit prescription  
25 or written order.

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

1 communication.

2 [(c)] (D) (1) Except as provided in paragraphs (2), (3), and (4) of this  
3 subsection, a person who violates this section is guilty of a misdemeanor and on conviction  
4 is subject to:

5 (i) for a first conviction, imprisonment not exceeding 1 year or a fine  
6 not exceeding \$5,000 or both;

7 (ii) for a second or third conviction, imprisonment not exceeding 18  
8 months or a fine not exceeding \$5,000 or both; or

9 (iii) for a fourth or subsequent conviction, imprisonment not  
10 exceeding 2 years or a fine not exceeding \$5,000 or both.

11 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a  
12 person whose violation of this section involves the use or possession of marijuana is guilty  
13 of the misdemeanor of possession of marijuana and is subject to imprisonment not  
14 exceeding 6 months or a fine not exceeding \$1,000 or both.

15 (ii) 1. A first finding of guilt under this section involving the use  
16 or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
17 **CONTROLLED DANGEROUS SUBSTANCE** is a civil offense punishable by a fine not  
18 exceeding \$100.

19 2. A second finding of guilt under this section involving the  
20 use or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
21 **CONTROLLED DANGEROUS SUBSTANCE** is a civil offense punishable by a fine not  
22 exceeding \$250.

23 3. A third or subsequent finding of guilt under this section  
24 involving the use or possession of less than 10 grams of marijuana is a civil offense  
25 punishable by a fine not exceeding \$500.

26 4. A. In addition to a fine, a court shall order a person  
27 [under the age of 21 years] who commits a violation punishable under subparagraph 1,  
28 2, or 3 of this subparagraph to attend a drug education program approved by the Maryland  
29 Department of Health, refer the person to an assessment for substance [abuse] **USE**  
30 disorder, and refer the person to substance [abuse] **USE** treatment, if necessary.

31 B. [In addition to a fine, a court shall order a person at least  
32 21 years old who commits a violation punishable under subparagraph 3 of this  
33 subparagraph to attend a drug education program approved by the Maryland Department  
34 of Health, refer the person to an assessment for substance abuse disorder, and refer the  
35 person to substance abuse treatment, if necessary.

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

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

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

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

13 A. is a resident of the State;

14 B. is at least 21 years old;

15 C. is an immediate family member, a spouse, or a domestic  
16 partner of the patient;

17 D. has not been convicted of a crime of violence as defined in  
18 § 14–101 of this article;

19 E. has not been convicted of a violation of a State or federal  
20 controlled dangerous substances law;

21 F. has not been convicted of a crime of moral turpitude;

22 G. has been designated as caregiver by the patient in writing  
23 that has been placed in the patient’s medical record prior to arrest;

24 H. is the only individual designated by the patient to serve as  
25 caregiver; and

26 I. is not serving as caregiver for any other patient.

27 4. “Debilitating medical condition” means a chronic or  
28 debilitating disease or medical condition or the treatment of a chronic or debilitating  
29 disease or medical condition that produces one or more of the following, as documented by  
30 a physician with whom the patient has a bona fide physician–patient relationship:

31 A. cachexia or wasting syndrome;

32 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 subparagraph 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

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

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

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

6 [(d)] (E) The provisions of subsection [(c)(2)(ii)] (D)(2)(II) of this section making  
7 the possession of [marijuana] A DE MIMINIS QUANTITY OF A CONTROLLED DANGEROUS  
8 SUBSTANCE a civil offense may not be construed to affect the laws relating to:

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

11 (2) seizure and forfeiture.

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

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

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

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

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

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

34 5-601.1.

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

3 (1) 10 GRAMS OF MARIJUANA;

4 (2) 300 MILLIGRAMS OF COCAINE;

5 (3) 300 MILLIGRAMS OF HEROIN;

6 (4) 5 TABLETS OF 3, 4-METHYLENEDIOXYMETHAMPHETAMINE  
7 (MDMA);

8 (5) 5 TABLETS OF LYSERGIC ACID DIETHYLAMIDE (LSD);

9 (6) 300 MILLIGRAMS OF METHADONE; OR

10 (7) 200 MILLIGRAMS OF AMPHETAMINE.

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

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

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

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

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

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

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

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

- 1 (iii) the location at which the violation occurred;
- 2 (iv) the fine that may be imposed;
- 3 (v) a notice stating that prepayment of the fine is allowed, except as  
4 provided in paragraph (2) of this subsection; and
- 5 (vi) a notice in boldface type that states that the person shall:

- 6 1. pay the full amount of the preset fine; or
- 7 2. request a trial date at the date, time, and place established  
8 by the District Court by writ or trial notice.

9 (2) (i) If a citation for a violation of § 5–601 of this part involving the  
10 use or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
11 **CONTROLLED DANGEROUS SUBSTANCE** is issued to a person under the age of 21 years,  
12 the court shall summon the person for trial.

13 (ii) If the court finds that a person at least 21 years old who has been  
14 issued a citation under this section has at least twice previously been found guilty under §  
15 5–601 of this part involving the use or possession of [less than 10 grams of marijuana] **A**  
16 **DE MINIMIS QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE**, the court shall  
17 summon the person for trial.

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

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

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

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

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

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



1 this section.

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

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

7 (2) If a person at least 21 years old fails to appear after having requested  
8 a trial, the court may impose the maximum fine and costs against the person and find the  
9 person is guilty of a Code violation for purposes of subsection **[(c)(2)(ii)] (D)(2)(II)** of this  
10 section.

11 **[(i)] (J)** In any proceeding for a Code violation under § 5–601 of this part  
12 involving the use or possession of **[less than 10 grams of marijuana] A DE MINIMIS**  
13 **QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE:**

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

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

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

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

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

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

27 (i) guilty of a Code violation;

28 (ii) not guilty of a Code violation; or

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

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

1 (2) The court costs in a Code violation case 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** in which costs are imposed are  
4 \$5.

5 **[(k)] (L)** (1) The State’s Attorney for any county may prosecute a Code  
6 violation under § 5–601 of this part involving the use or possession of [less than 10 grams  
7 of marijuana] **A DE MINIMIS QUANTITY OF A CONTROLLED DANGEROUS SUBSTANCE**  
8 in the same manner as prosecution of a violation of the criminal laws of the State.

9 (2) In a Code violation case under § 5–601 of this part involving the use or  
10 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
11 **CONTROLLED DANGEROUS SUBSTANCE**, the State’s Attorney may:

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

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

16 **[(l)] (M)** A person issued a citation 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** who is under the age of 18 years shall be subject  
19 to the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts Article.

20 **[(m)] (N)** A citation for a violation of § 5–601 of this part involving the use or  
21 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
22 **CONTROLLED DANGEROUS SUBSTANCE** and the official record of a court regarding the  
23 citation are not subject to public inspection and may not be included on the public Web site  
24 maintained by the Maryland Judiciary if:

25 (1) the defendant has prepaid the fine;

26 (2) the defendant has pled guilty to or been found guilty of the Code  
27 violation and has fully paid the fine and costs imposed for the violation;

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

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

32 (5) the State has entered a nolle prosequi;

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

1                   (7)    the charge has been dismissed.

2                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
3   October 1, 2018.