

# HOUSE BILL 1119

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CF 6lr2726

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By: **Delegates Morhaim, Barron, Cullison, Hettleman, McCray, Moon, Reznik, Tarlau, M. Washington, and K. Young**  
Introduced and read first time: February 11, 2016  
Assigned to: Judiciary

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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 violations relating to the use or possession of certain de minimis  
5 quantities of certain controlled dangerous substances a civil offense rather than a  
6 misdemeanor; applying penalties for use or possession of less than 10 grams of  
7 marijuana to use or possession of a de minimis quantity of certain controlled  
8 dangerous substances; applying certain procedural provisions relating to issuance of  
9 a citation for use or possession of less than 10 grams of marijuana to use or  
10 possession of a de minimis quantity of certain controlled dangerous substances;  
11 defining a certain term; making a conforming change; and generally relating to use  
12 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 (2012 Replacement Volume and 2015 Supplement)  
18 (As enacted by Chapter 4 of the Acts of the General Assembly of 2016)

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

### Article – Criminal Law

22 5–601.

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1           **(1) 10 GRAMS OF MARIJUANA;**
- 2           **(2) 2 GRAMS OF COCAINE;**
- 3           **(3) 1 GRAM OF HEROIN;**
- 4           **(4) 10 TABLETS OF 3, 4-METHYLENEDIOXYMETHAMPHETAMINE**  
5 **(MDMA);**
- 6           **(5) 0.0015 GRAMS OF LYSERGIC ACID DIETHYLAMIDE (LSD);**
- 7           **(6) 1 GRAM OF METHADONE; OR**
- 8           **(7) 1 GRAM OF AMPHETAMINE.**

9           **[(a)] (B)** Except as otherwise provided in this title, a person may not:

- 10           (1) possess or administer to another a controlled dangerous substance,  
11 unless obtained directly or by prescription or order from an authorized provider acting in  
12 the course of professional practice; or
- 13           (2) obtain or attempt to obtain a controlled dangerous substance, or  
14 procure or attempt to procure the administration of a controlled dangerous substance by:
  - 15           (i) fraud, deceit, misrepresentation, or subterfuge;
  - 16           (ii) the counterfeiting or alteration of a prescription or a written  
17 order;
  - 18           (iii) the concealment of a material fact;
  - 19           (iv) the use of a false name or address;
  - 20           (v) falsely assuming the title of or representing to be a  
21 manufacturer, distributor, or authorized provider; or
  - 22           (vi) making, issuing, or presenting a false or counterfeit prescription  
23 or written order.

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

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

4            (2)        (i)        Except as provided in subparagraph (ii) of this paragraph, a  
5 person whose violation of this section involves the use or possession of marijuana is subject  
6 to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

7                            (ii)        1.        A first violation of this section involving the use or  
8 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
9 **CONTROLLED DANGEROUS SUBSTANCE** is a civil offense punishable by a fine not  
10 exceeding \$100.

11                            2.        A second violation of this section involving the use or  
12 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
13 **CONTROLLED DANGEROUS SUBSTANCE** 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] **A DE MINIMIS QUANTITY OF A**  
17 **CONTROLLED DANGEROUS SUBSTANCE** is a civil offense punishable by a fine not  
18 exceeding \$500.

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

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

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

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

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

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- 1 A. is a resident of the State;
- 2 B. is at least 21 years old;
- 3 C. is an immediate family member, a spouse, or a domestic  
4 partner of the patient;
- 5 D. has not been convicted of a crime of violence as defined in  
6 § 14–101 of this article;
- 7 E. has not been convicted of a violation of a State or federal  
8 controlled dangerous substances law;
- 9 F. has not been convicted of a crime of moral turpitude;
- 10 G. has been designated as caregiver by the patient in writing  
11 that has been placed in the patient’s medical record prior to arrest;
- 12 H. is the only individual designated by the patient to serve as  
13 caregiver; and
- 14 I. is not serving as caregiver for any other patient.
- 15 4. “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. cachexia or wasting syndrome;
- 20 B. severe or chronic pain;
- 21 C. severe nausea;
- 22 D. seizures;
- 23 E. severe and persistent muscle spasms; or
- 24 F. any other condition that is severe and resistant to  
25 conventional medicine.
- 26 (ii) 1. In a prosecution for the use or possession of marijuana, the  
27 defendant may introduce and the court shall consider as a mitigating factor any evidence  
28 of medical necessity.

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

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

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

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

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

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

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

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

25                  A.     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.     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)] (E)     The provisions of subsection [(c)(2)(ii)] (D)(2)(II) of this section making  
32 the possession of [marijuana] A DE MINIMIS QUANTITY OF A CONTROLLED DANGEROUS  
33 SUBSTANCE a civil offense may not be construed to affect the laws relating to:

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

1 (2) seizure and forfeiture.

2 5–601.1.

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

5 (1) 10 GRAMS OF MARIJUANA;

6 (2) 2 GRAMS OF COCAINE;

7 (3) 1 GRAM OF HEROIN;

8 (4) 10 TABLETS OF 3, 4–METHYLENEDIOXYMETHAMPHETAMINE  
9 (MDMA);

10 (5) 0.0015 GRAMS OF LYSERGIC ACID DIETHYLAMIDE (LSD);

11 (6) 1 GRAM OF METHADONE; OR

12 (7) 1 GRAM OF AMPHETAMINE.

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

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

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

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

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

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

- 1 (i) the name and address of the person charged;
- 2 (ii) the date and time that the violation occurred;
- 3 (iii) the location at which the violation occurred;
- 4 (iv) the fine that may be imposed;
- 5 (v) a notice stating that prepayment of the fine is allowed, except as  
6 provided in paragraph (2) of this subsection; and
- 7 (vi) a notice in boldface type that states that the person shall:
- 8 1. pay the full amount of the preset fine; or
- 9 2. request a trial date at the date, time, and place established  
10 by the District Court by writ or trial notice.

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

15 (ii) If the court finds that a person at least 21 years old has  
16 committed a third or subsequent violation of § 5–601 of this part involving the use or  
17 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
18 **CONTROLLED DANGEROUS SUBSTANCE**, the court shall summon the person for trial.

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

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

23 [(f)] (G) A person issued a citation for a violation of § 5–601 of this part involving  
24 the use or possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
25 **CONTROLLED DANGEROUS SUBSTANCE** who is under the age of 18 years shall be subject  
26 to the procedures and dispositions provided in Title 3, Subtitle 8A of the Courts Article.

27 [(g)] (H) A citation for a violation of § 5–601 of this part involving the use or  
28 possession of [less than 10 grams of marijuana] **A DE MINIMIS QUANTITY OF A**  
29 **CONTROLLED DANGEROUS SUBSTANCE** and the official record of a court regarding the  
30 citation are not subject to public inspection and may not be included on the public Web site  
31 maintained by the Maryland Judiciary.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2016.