

1 (3) If the inmate is not subject to a judgment of restitution or the judgment
2 of restitution is satisfied, of the money withheld under paragraph (1) of this subsection, the
3 Department shall pay:

4 (i) 50% into the Criminal Injuries Compensation Fund established
5 under § 11–819 of the Criminal Procedure Article; and

6 (ii) 50% into the State Victims of Crime Fund established under §
7 11–916 of the Criminal Procedure Article.

8 (d) The Department shall:

9 (1) credit to the inmate’s account any balance that remains after paying
10 the items in subsection (b)(1) through (3) of this section; and

11 (2) pay the balance in the inmate’s account to the inmate within 15 days
12 after the inmate is released.]

Article – Criminal Law

5–601.

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

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

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

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

22 (ii) the counterfeiting or alteration of a prescription or a written
23 order;

24 (iii) the concealment of a material fact;

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

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

28 (vi) making, issuing, or presenting a false or counterfeit prescription
29 or written order.

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

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

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

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

12 **(3) FOR A FOURTH OR SUBSEQUENT CONVICTION, IMPRISONMENT**
13 **NOT EXCEEDING 2 YEARS OR A FINE NOT EXCEEDING \$25,000 OR BOTH.**

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

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

20 **(2) FOR A SECOND OR SUBSEQUENT CONVICTION, IMPRISONMENT**
21 **NOT EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000 OR BOTH.**

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

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

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

31 4. A. In addition to a fine, a court shall order a person
32 under the age of 21 years who commits a violation punishable under subparagraph 1,
33 2, or 3 of this subparagraph to attend a drug education program approved by the

1 Department of Health and Mental Hygiene, refer the person to an assessment for substance
2 abuse disorder, and refer the person to substance abuse treatment, if necessary.

3 B. In addition to a fine, a court shall order a person at least
4 21 years old who commits a violation punishable under subparagraph 3 of this
5 subparagraph to attend a drug education program approved by the Department of Health
6 and Mental Hygiene, refer the person to an assessment for substance abuse disorder, and
7 refer the person to substance abuse treatment, if necessary.]

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

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

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

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

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

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

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

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

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

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

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

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

30 [4.] (IV) “Debilitating medical condition” means a chronic or
31 debilitating disease or medical condition or the treatment of a chronic or debilitating

1 disease or medical condition that produces one or more of the following, as documented by
2 a physician with whom the patient has a bona fide physician–patient relationship:

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

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

5 [C.] 3. severe nausea;

6 [D.] 4. seizures;

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

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

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

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

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

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

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

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

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

30 [B.] 2. A defendant may not assert the affirmative defense
31 under this [subsubparagraph] **SUBPARAGRAPH** unless the defendant notifies the State’s
32 Attorney of the defendant’s intention to assert the affirmative defense and provides the

1 State's Attorney with all documentation in support of the affirmative defense in accordance
2 with the rules of discovery provided in Maryland Rules 4-262 and 4-263.

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

5 [A.] 1. using marijuana in a public place or assisting the
6 individual for whom the defendant is a caregiver in using the marijuana in a public place;
7 or

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

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

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

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

15 (2) seizure and forfeiture.]

16 (F) (1) BEFORE IMPOSING A SENTENCE UNDER SUBSECTION (C) OR (D)
17 OF THIS SECTION, THE COURT SHALL ORDER THE DEPARTMENT OF PUBLIC SAFETY
18 AND CORRECTIONAL SERVICES TO EVALUATE THE DEFENDANT FOR DRUG
19 DEPENDENCE AND PROVIDE AN ASSESSMENT TO DETERMINE WHETHER THE
20 DEFENDANT IS IN NEED OF AND MAY BENEFIT FROM DRUG TREATMENT.

21 (2) THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL
22 SERVICES SHALL CONDUCT AN EVALUATION OF THE DEFENDANT AND PROVIDE AN
23 ASSESSMENT TO THE COURT, THE DEFENDANT OR THE DEFENDANT'S ATTORNEY,
24 AND THE STATE IDENTIFYING THE DEFENDANT'S DRUG TREATMENT NEEDS.

25 (3) THE COURT SHALL CONSIDER AND INCORPORATE THE RESULTS
26 OF THE ASSESSMENT PERFORMED IN PARAGRAPH (2) OF THIS SUBSECTION INTO
27 THE DEFENDANT'S SENTENCE AND:

28 (I) IF THE COURT FINDS THAT THE DEFENDANT IS NOT AN
29 IMMINENT RISK TO PUBLIC SAFETY, THE COURT SHALL SUSPEND THE SENTENCE
30 AND ORDER PROBATION AND, IF THE ASSESSMENT SHOWS THAT THE DEFENDANT IS
31 IN NEED OF SUBSTANCE ABUSE TREATMENT, REQUIRE THE DIVISION OF PAROLE
32 AND PROBATION TO PROVIDE APPROPRIATE TREATMENT IN THE COMMUNITY AS
33 IDENTIFIED IN THE ASSESSMENT; OR

Links

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Maryland Alliance for Justice Reform (MAJR) played a central 2015 role in advocating and supporting efforts to pass the Justice Reinvestment initiative in Maryland. While the 2016 JRA bill is not perfect from MAJR's viewpoint, its many important reforms could reduce Maryland's prison population by 16% and save \$270 million within 10 years.

By reinvesting those funds in alternatives to incarceration, our state's crime rate also could be reduced, taxpayer funds could be saved, while communities and families are strengthened. **For all these reasons, MAJR strongly recommends support and passage of the 2016 Maryland Justice Reinvestment Act.** Together, we can work to fill policy gaps and make further improvements through supplemental policy initiatives and legislation in future years.