

HOUSE BILL 548

E2

71r1082

By: **Delegates Anderson, Ali, Barnes, Benson, Branch, Braveboy, Bronrott, Burns, Cane, Cardin, Carter, Conaway, Doory, Dumais, Glenn, Gutierrez, Harrison, Haynes, Howard, Hucker, Ivey, Jones, Kaiser, Krysiak, McIntosh, Mizeur, Montgomery, Morhaim, Nathan-Pulliam, Oaks, Pena-Melnyk, Proctor, Ramirez, Robinson, Rosenberg, Shewell, Stein, Stukes, Tarrant, Taylor, F. Turner, Valderrama, Vaughn, and Walker**

Introduced and read first time: February 7, 2007

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Substance Abuse - Diversion**

3 FOR the purpose of altering the penalty for possessing, administering to another,
4 obtaining, or attempting to obtain a controlled dangerous substance, and for
5 procuring or attempting to procure the administration of a controlled dangerous
6 substance under certain circumstances; requiring the court to stay the entering
7 of judgment, defer further proceedings, and place a certain defendant on
8 probation except under certain circumstances; establishing certain penalties for
9 a repeat offender of certain crimes; requiring as a condition of probation that a
10 certain defendant participate in and complete a drug treatment or education
11 program and a program consisting of certain types of training or community
12 service; prohibiting the court from imposing incarceration as an additional
13 condition of probation; authorizing the court to require a certain defendant to
14 contribute to the cost of placement in a certain program; establishing certain
15 penalties for a defendant who fails to participate in and complete certain
16 programs; providing for a delayed effective date; and generally relating to
17 placing a defendant on probation for possession of a controlled dangerous
18 substance and certain associated crimes.

19 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Law
2 Section 5–601
3 Annotated Code of Maryland
4 (2002 Volume and 2006 Supplement)

5 BY repealing and reenacting, with amendments,
6 Article – Criminal Procedure
7 Section 6–220(c)(2)
8 Annotated Code of Maryland
9 (2001 Volume and 2006 Supplement)

10 BY adding to
11 Article – Criminal Procedure
12 Section 6–220(c–1)
13 Annotated Code of Maryland
14 (2001 Volume and 2006 Supplement)

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

17 **Article – Criminal Law**

18 5–601.

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

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

23 (2) obtain or attempt to obtain a controlled dangerous substance, or
24 procure or attempt to procure the administration of a controlled dangerous substance
25 by:

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

27 (ii) the counterfeiting or alteration of a prescription or a written
28 order;

29 (iii) the concealment of a material fact;

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

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

3 (vi) making, issuing, or presenting a false or counterfeit
4 prescription or written order.

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

8 (c) (1) Except as provided in paragraphs (2) [and (3)], **(3), AND (4)** of this
9 subsection, [a person who violates this section is guilty of a misdemeanor and on
10 conviction is subject to imprisonment not exceeding 4 years or a fine not exceeding
11 \$25,000 or both.

12 (2) A person whose violation of this section involves the use or
13 possession of marijuana is subject to imprisonment not exceeding 1 year or a fine not
14 exceeding \$1,000 or both] **WHEN A DEFENDANT PLEADS GUILTY OR NOLO**
15 **CONTENDERE OR IS FOUND GUILTY OF VIOLATING THIS SECTION, THE COURT**
16 **SHALL STAY THE ENTERING OF JUDGMENT, DEFER FURTHER PROCEEDINGS,**
17 **AND PLACE THE DEFENDANT ON PROBATION UNDER § 6-220(C-1) OF THE**
18 **CRIMINAL PROCEDURE ARTICLE.**

19 [(3)](2) (i) In a prosecution for the use or possession of
20 marijuana, the defendant may introduce and the court shall consider as a mitigating
21 factor any evidence of medical necessity.

22 (ii) Notwithstanding paragraph [(2)] (1) of this subsection, if
23 the court finds that the person used or possessed marijuana because of medical
24 necessity, on conviction of a violation of this section, the maximum penalty that the
25 court may impose on the person is a fine not exceeding \$100.

26 **(3) A PERSON WHO VIOLATES THIS SECTION AND WHOSE**
27 **VIOLATION INVOLVES THE USE OR POSSESSION OF MARIJUANA IS GUILTY OF A**
28 **MISDEMEANOR AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT**
29 **EXCEEDING 1 YEAR OR A FINE NOT EXCEEDING \$1,000 OR BOTH IF THE PERSON**
30 **PREVIOUSLY HAS BEEN:**

31 **(I) PLACED ON PROBATION UNDER THIS SECTION; OR**

1 **(II) CONVICTED OF A CRIME UNDER THE LAWS OF ANOTHER**
2 **STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN THIS**
3 **SECTION IF COMMITTED IN THIS STATE.**

4 **(4) A PERSON WHO VIOLATES THIS SECTION AND WHOSE**
5 **VIOLATION INVOLVES THE USE OR POSSESSION OF A CONTROLLED DANGEROUS**
6 **SUBSTANCE OTHER THAN MARIJUANA IS GUILTY OF A MISDEMEANOR AND ON**
7 **CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 4 YEARS OR A**
8 **FINE NOT EXCEEDING \$25,000 OR BOTH IF THE PERSON PREVIOUSLY HAS BEEN:**

9 **(I) PLACED ON PROBATION UNDER THIS SECTION; OR**

10 **(II) CONVICTED OF A CRIME UNDER THE LAWS OF ANOTHER**
11 **STATE OR THE UNITED STATES THAT WOULD BE A CRIME INCLUDED IN THIS**
12 **SECTION IF COMMITTED IN THIS STATE.**

13 **Article – Criminal Procedure**

14 6–220.

15 (c) (2) [When] **EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION**
16 **(C–1) OF THIS SECTION, WHEN** the crime for which the judgment is being stayed is
17 for a violation of any provision of Title 5 of the Criminal Law Article, the court shall
18 impose a period of probation and, as a condition of probation, require the defendant to
19 participate in a drug treatment or education program approved by the Department of
20 Health and Mental Hygiene, unless the court finds and states on the record that the
21 interests of the defendant and the public do not require the imposition of this
22 condition.

23 **(C–1) (1) WHEN THE CRIME FOR WHICH THE JUDGMENT IS BEING**
24 **STAYED IS FOR A FIRST-TIME VIOLATION OF § 5–601 OF THE CRIMINAL LAW**
25 **ARTICLE, THE COURT SHALL IMPOSE A PERIOD OF PROBATION AND, AS A**
26 **CONDITION OF PROBATION, REQUIRE THE DEFENDANT TO PARTICIPATE IN AND**
27 **COMPLETE:**

28 **(I) A DRUG TREATMENT OR EDUCATION PROGRAM**
29 **APPROVED BY THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE; AND**

1 **(II) A PROGRAM APPROVED BY THE COURT THAT CONSISTS**
2 **OF VOCATIONAL TRAINING, FAMILY COUNSELING, LITERACY TRAINING, OR**
3 **COMMUNITY SERVICE.**

4 **(2) THE COURT MAY NOT IMPOSE INCARCERATION AS AN**
5 **ADDITIONAL CONDITION OF PROBATION.**

6 **(3) IN ADDITION TO ANY FINE ASSESSED UNDER OTHER LAW, THE**
7 **COURT MAY REQUIRE A DEFENDANT TO CONTRIBUTE TO THE COST OF**
8 **PLACEMENT IN A DRUG TREATMENT PROGRAM.**

9 **(4) A DEFENDANT WHO FAILS TO MEET A REQUIREMENT UNDER**
10 **THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS**
11 **SUBJECT TO IMPRISONMENT NOT EXCEEDING 4 YEARS OR A FINE NOT**
12 **EXCEEDING \$25,000 OR BOTH.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2008.