

HOUSE BILL 1449

E2, E1

4lr3174

By: **Delegate Jones**

Introduced and read first time: February 18, 2014

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Marijuana Diversion Program**

3 FOR the purpose of requiring each county to establish a certain marijuana diversion
4 program; providing that a certain person who is charged with a violation of a
5 certain provision of law prohibiting the use or possession of marijuana is eligible
6 for the program; requiring a State’s Attorney to offer to dismiss a certain charge
7 by entering a nolle prosequi with a certain requirement or move that the court
8 indefinitely postpone trial of the charge by marking the charge stet with a
9 certain requirement under certain circumstances; requiring a certain defendant
10 to undergo a certain evaluation for a certain purpose; requiring a certain
11 program to be approved under regulations of the Alcohol and Drug Abuse
12 Administration; requiring a certain defendant to consent to a certain disclosure
13 under certain circumstances; requiring the State’s Attorney to dismiss a certain
14 charge or make a certain motion under certain circumstances subject to an
15 exception; requiring a clerk of court to transmit a certain disposition for entry
16 into certain records; providing for a certain defendant to pay a certain
17 administrative fee except under certain circumstances; providing that a certain
18 fee be paid into a certain fund; defining a certain term; and generally relating to
19 marijuana.

20 BY repealing and reenacting, without amendments,
21 Article – Criminal Law
22 Section 5–601(c)(1)
23 Annotated Code of Maryland
24 (2012 Replacement Volume and 2013 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Criminal Law
27 Section 5–601(c)(2)
28 Annotated Code of Maryland
29 (2012 Replacement Volume and 2013 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article – Criminal Procedure
3 Section 6–229.1
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2013 Supplement)

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

8 **Article – Criminal Law**

9 5–601.

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

13 (2) (i) A person whose violation of this section involves the use or
14 possession of marijuana is subject to:

15 1. imprisonment not exceeding 1 year or a fine not
16 exceeding \$1,000 or both; **OR**

17 2. **IF ELIGIBLE, COMPLETION OF A MARIJUANA**
18 **DIVERSION PROGRAM DESCRIBED IN § 6–229.1 OF THE CRIMINAL PROCEDURE**
19 **ARTICLE.**

20 (ii) 1. A person convicted of the use or possession of less
21 than 10 grams of marijuana is subject to:

22 A. imprisonment not exceeding 90 days or a fine not
23 exceeding \$500 or both; **OR**

24 B. **IF ELIGIBLE, COMPLETION OF A MARIJUANA**
25 **DIVERSION PROGRAM DESCRIBED IN § 6–229.1 OF THE CRIMINAL PROCEDURE**
26 **ARTICLE.**

27 2. Unless specifically charged by the State, the use or
28 possession of less than 10 grams of marijuana under subparagraph 1 of this
29 subparagraph may not be considered a lesser included crime of any other crime.

30 3. If a person is convicted under this subparagraph, the
31 court shall stay any sentence imposed that includes an unserved, nonsuspended period
32 of imprisonment without requiring an appeal bond:

- 1 A. until the time for filing an appeal has expired; and
2 B. if an appeal is filed, during the pendency of the
3 appeal.

4 **Article – Criminal Procedure**

5 **6–229.1.**

6 **(A) IN THIS SECTION, “ELIGIBLE DEFENDANT” MEANS AN INDIVIDUAL**
7 **CHARGED WITH A VIOLATION OF § 5–601(C) OF THE CRIMINAL LAW ARTICLE**
8 **INVOLVING THE USE OR POSSESSION OF MARIJUANA WHO:**

9 **(1) IS AT LEAST 18 YEARS OF AGE;**

10 **(2) HAS NO PRIOR CONVICTIONS OR PROBATIONS BEFORE**
11 **JUDGMENT;**

12 **(3) HAS NO PRIOR MATTERS THAT WERE PLACED ON THE STET**
13 **DOCKET WITHIN THE PAST 3 YEARS;**

14 **(4) HAS NO OTHER PENDING CRIMINAL CHARGES;**

15 **(5) HAS NO CONVICTIONS OF DRIVING WHILE INTOXICATED; AND**

16 **(6) HAS NOT PREVIOUSLY ENTERED INTO A MARIJUANA**
17 **DIVERSION PROGRAM ESTABLISHED UNDER THIS SECTION.**

18 **(B) EACH COUNTY SHALL ESTABLISH A MARIJUANA DIVERSION**
19 **PROGRAM FOR ELIGIBLE DEFENDANTS.**

20 **(C) (1) SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, IF A**
21 **DEFENDANT QUALIFIES FOR THE MARIJUANA DIVERSION PROGRAM, THE**
22 **STATE’S ATTORNEY SHALL OFFER TO:**

23 **(I) DISMISS THE CHARGE BY ENTERING A NOLLE PROSEQUI**
24 **WITH THE REQUIREMENT OF COMPLETION OF THE PROGRAM; OR**

25 **(II) MOVE THAT THE COURT INDEFINITELY POSTPONE**
26 **TRIAL OF THE CHARGE BY MARKING THE CHARGE STET WITH THE**
27 **REQUIREMENT OF COMPLETION OF THE PROGRAM ON THE DOCKET.**

28 **(2) IN ORDER FOR AN ELIGIBLE DEFENDANT TO QUALIFY FOR A**
29 **NOLLE PROSEQUI WITH THE REQUIREMENT OF COMPLETION OF THE**

1 MARIJUANA DIVERSION PROGRAM OR A STET WITH THE REQUIREMENT OF
2 COMPLETION OF THE MARIJUANA DIVERSION PROGRAM:

3 (I) THE DEFENDANT SHALL BE EVALUATED BY THE
4 MARIJUANA DIVERSION PROGRAM; AND

5 (II) THE EVALUATION SHALL DETERMINE WHETHER THE
6 DEFENDANT IS AMENABLE TO THE PROGRAM AND RECOMMEND THE PROGRAM.

7 (3) A MARIJUANA DIVERSION PROGRAM SHALL BE APPROVED
8 UNDER REGULATIONS OF THE ALCOHOL AND DRUG ABUSE ADMINISTRATION.

9 (4) IF AN ELIGIBLE DEFENDANT ACCEPTS AN OFFER DESCRIBED
10 IN PARAGRAPH (1) OF THIS SUBSECTION:

11 (I) THE DEFENDANT SHALL SIGN A CONSENT TO THE
12 DISCLOSURE OF INFORMATION NECESSARY TO ALLOW THE DISCLOSURE OF THE
13 DISPOSITION OF NOLLE PROSEQUI WITH THE REQUIREMENT OF COMPLETION
14 OF THE MARIJUANA DIVERSION PROGRAM OR STET WITH THE REQUIREMENT
15 OF COMPLETION OF THE MARIJUANA DIVERSION PROGRAM TO CRIMINAL
16 JUSTICE UNITS; AND

17 (II) ON SUCCESSFUL COMPLETION OF THE MARIJUANA
18 DIVERSION PROGRAM, THE STATE'S ATTORNEY SHALL DISMISS THE CHARGE
19 BY ENTERING A NOLLE PROSEQUI OR MOVE THAT THE COURT INDEFINITELY
20 POSTPONE TRIAL OF THE CHARGE BY MARKING THE CHARGE STET.

21 (5) FOR GOOD CAUSE, THE STATE'S ATTORNEY MAY CHOOSE NOT
22 TO MAKE AN OFFER TO AN ELIGIBLE DEFENDANT AS DESCRIBED IN PARAGRAPH
23 (1) OF THIS SUBSECTION.

24 (D) IN THE MANNER PROVIDED BY LAW, A CLERK OF THE COURT SHALL
25 TRANSMIT A DISPOSITION OF NOLLE PROSEQUI WITH THE REQUIREMENT OF
26 COMPLETION OF THE MARIJUANA DIVERSION PROGRAM OR STET WITH THE
27 REQUIREMENT OF COMPLETION OF THE MARIJUANA DIVERSION PROGRAM
28 FOR ENTRY INTO THE APPROPRIATE CRIMINAL RECORDS.

29 (E) (1) IN ADDITION TO ANY OTHER FEES, FINES, OR COSTS IMPOSED,
30 UNLESS THE COURT MAKES A FINDING ON THE RECORD THAT AN ELIGIBLE
31 DEFENDANT IS UNABLE BY REASON OF INDIGENCY TO PAY THE COSTS, A
32 PERSON WHO RECEIVES A DISPOSITION OF NOLLE PROSEQUI WITH THE
33 REQUIREMENT OF COMPLETION OF THE MARIJUANA DIVERSION PROGRAM OR
34 STET WITH THE REQUIREMENT OF COMPLETION OF THE MARIJUANA

1 **DIVERSION PROGRAM SHALL PAY TO THE COURT AN ADMINISTRATIVE FEE OF**
2 **\$150.**

3 **(2) THE FEE REQUIRED UNDER PARAGRAPH (1) OF THIS**
4 **SUBSECTION SHALL BE PAID INTO THE MARYLAND SUBSTANCE ABUSE FUND**
5 **UNDER § 8-6A-01 OF THE HEALTH - GENERAL ARTICLE.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2014.