

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 1449
Judiciary

(Delegate Jones)

Criminal Procedure - Marijuana Diversion Program

This bill requires each county to establish a marijuana diversion program (MDP) approved under regulations of the Alcohol and Drug Abuse Administration (ADAA) within the Department of Health and Mental Hygiene (DHMH). The bill authorizes a court to order an “eligible defendant” who violates specified controlled dangerous substance (CDS) crimes involving marijuana to complete an MDP. The bill requires a State’s Attorney, except for good cause, to offer to dismiss an eligible defendant’s charge or indefinitely postpone an eligible defendant’s trial that involves specified CDS crimes involving marijuana, contingent on completion of MDP by the defendant.

The bill establishes (1) specified criteria and requirements regarding the acceptance of an offer made by a State’s Attorney to an eligible defendant; (2) the duties of a clerk of court upon successful completion of an MDP; and (3) an administrative fee paid by a specified eligible defendant.

Fiscal Summary

State Effect: Minimal decrease in general fund revenues and expenditures as a result of fewer violations that would otherwise result in fines and/or incarceration. Minimal increase in special fund revenues to the Maryland Substance Abuse Fund (MSAF) in DHMH due to the bill’s fee requirement. General fund expenditures for the Judiciary increase by \$22,100 in FY 2015 only for computer reprogramming.

Local Effect: To the extent that a county does not have an MDP, potential significant increase in expenditures to establish an MDP. Potential minimal increase in expenditures for counties that maintain an MDP or a variation of a diversion program to comply with the bill. Minimal decrease in expenditures as a result of fewer violations that would otherwise result in persons being committed to local detention facilities. Minimal

decrease in revenues for fewer violations that would otherwise result in fines in the circuit courts. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: An “eligible defendant” is a person who:

- is charged with a violation of the prohibition against the use or possession of marijuana;
- is at least age 18;
- has no prior convictions or probations before judgment;
- has no prior matters that were placed on the *stet* docket within the past three years;
- has no other pending criminal charges;
- has no convictions of driving while intoxicated; and
- has not previously entered into an MDP program.

If a defendant is eligible, a State’s Attorney must offer to (1) dismiss the charge by entering a *nolle prosequi* for MDP with the requirement of completion of the MDP or (2) move that the court indefinitely postpone trial of the charge by marking the charge *stet* with the requirement of completion of the MDP on the docket. For good cause, a State’s Attorney may choose not to make such an offer to an eligible defendant.

In order for an eligible defendant to qualify for a *nolle prosequi* with the requirement of completion of an MDP or a *stet* with the requirement of completion of an MDP:

- the defendant must be evaluated by the MDP; and
- the evaluation must determine whether the defendant is amenable to the program and recommend the program.

If a State’s Attorney offers an MDP, and an eligible defendant accepts, the eligible defendant must consent to the disclosure of information necessary to allow the disclosure of the disposition of *nolle prosequi* with the requirement of completion of the MDP or *stet* with the requirement of completion of the MDP to criminal justice units. On successful completion of the MDP, the State’s Attorney must dismiss the charge by entering a *nolle prosequi* or move that the court indefinitely postpone trial of the charge by marking the charge *stet*. As specified by law, a clerk of the court must transmit a disposition of *nolle prosequi* with the requirement of completion of the MDP or *stet* with the requirement of completion of the MDP for entry into the appropriate criminal record.

Unless determined by the court to be indigent, an eligible defendant must pay to the court a \$150 administrative fee in addition to any other fees, fines, or costs. The \$150 fee must be paid into MSAF.

Current Law: “*Nolle prosequi*” means a formal entry on the record by the State that declares the State’s intention not to prosecute a charge. On motion of the State’s Attorney, a court may indefinitely postpone trial of a charge by marking the charge “*stet*” on the docket. A steted charge may be rescheduled for trial at the request of either party within one year and, after one year, only by order of the court for good cause.

A State’s Attorney, on request of the defendant or on the State’s Attorney’s own motion, may make an offer to a defendant that, if the defendant qualifies for drug or alcohol treatment, the State’s Attorney will dismiss the charge by entering a *nolle prosequi* with the requirement of drug or alcohol treatment or move that the court indefinitely postpone trial of the charge by marking the charge *stet* with the requirement of drug or alcohol abuse treatment on the docket. An eligible defendant is a person who consents to treatment, has not been charged with specified crimes of violence, and is deemed amenable to treatment by DHMH, a designee of DHMH, or a provider regulated by ADAA.

A drug or alcohol treatment program must be approved by ADAA. Upon successful completion of the program, a State’s Attorney must dismiss the charge by entering a *nolle prosequi* or indefinitely postponing trial of the charge by marking the charge *stet*. Unless a court finds the defendant indigent, the defendant must pay a \$150 fee. The fee must be paid into MSAF.

CDS are listed on one of five schedules (Schedules I through V) set forth in statute depending on their potential for abuse and acceptance for medical use. Under the federal Controlled Dangerous Substances Act, for a drug or substance to be classified as Schedule I, the following findings must be made: (1) the substance has a high potential for abuse; (2) the drug or other substance has no currently accepted medical use in the United States; and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision.

No distinction is made in the law regarding the illegal possession of any CDS, regardless of which schedule it is on, with the exception of marijuana.

In general, a defendant in possession of 10 grams or more of marijuana is guilty of a misdemeanor and subject to imprisonment for up to one year and/or a fine of up to \$1,000. Pursuant to Chapters 193 and 194 of 2012, a person in possession of less than

10 grams of marijuana is subject to a reduced penalty of imprisonment for up to 90 days and/or a maximum fine of \$500.

The use or possession of less than 10 grams of marijuana may not be considered a lesser included crime of any other crime unless specifically charged by the State. If a person is convicted of possessing less than 10 grams of marijuana, the court must stay any imposed sentence that includes an unserved, nonsuspended period of imprisonment without requiring an appeal bond (1) until the time for filing an appeal has expired and (2) during the pendency of a filed appeal of the conviction.

If the court finds that the defendant used or possessed marijuana out of medical necessity, the maximum punishment is a \$100 fine. An affirmative defense is available to defendants for use or possession of marijuana or related paraphernalia due to a debilitating medical condition. Pursuant to Chapters 61 and 62 of 2013, as of June 1, 2013, an affirmative defense is available to defendants for the possession of marijuana if the defendant possessed marijuana because the defendant was a caregiver and the marijuana was intended for medical use by an individual with a debilitating medical condition.

Background: Drug diversion programs allow for an offender to avoid criminal charges associated with certain CDS offenses. While there is no statewide requirement for a local “marijuana drug diversion program,” many counties in the State maintain some variation of such a program.

Baltimore City, for instance, advises that it has a three-tiered diversion program for an offender charged with possession of marijuana for personal use crimes. The diversion program, depending on the tier, may consist of educational lectures, community service, court days, and a fee. Successful completion of any of the tiers by an eligible defendant results in the charge being dismissed by the entry of a *nolle prosequi*.

Wicomico County advises that it has a diversion program for a variety of misdemeanors. If the charge is a first-time marijuana possession charge, an eligible defendant’s charge may be dismissed by entry of a *nolle prosequi* upon successful completion of its diversion program that likely consists of community service and a fee.

Local governments that offer a type of drug diversion program include Baltimore City and Anne Arundel, Baltimore, Calvert, Howard, Montgomery, Prince George’s, Queen Anne’s, and Wicomico counties. Counties that do not offer a drug diversion program include Dorchester, Garrett, and Talbot counties.

The Judiciary’s Administrative Office of the Courts (AOC) advises that, in calendar 2013, there were 34,816 total violations of use or possession of 10 or more

grams of marijuana and use or possession of less than 10 grams of marijuana filed in the District Court. The Maryland State Commission on Criminal Sentencing Policy advises that, in fiscal 2013, there were 355 convictions for violations of use or possession of 10 or more grams of marijuana and four convictions for use or possession of less than 10 grams of marijuana in the circuit courts.

MSAF was established by Chapters 237 and 238 of 2004 for the purpose of assisting local governments with alcohol and drug abuse issues. Specifically, the fund is for “substance abuse evaluation and treatment services,” among other things.

State Revenues: General fund revenues decrease minimally as a result of *nolle prosequi* and *stet* dispositions for violations that would otherwise result in fines in the District Court.

Special fund revenues increase minimally to MSAF within DHMH to the extent that eligible defendants take advantage of the MDP and pay the bill’s administrative fee.

State Expenditures: General fund expenditures decrease minimally as a result of *nolle prosequi* and *stet* dispositions for violations that would otherwise result in more people being committed to State correctional facilities for convictions in Baltimore City. Generally, persons serving a sentence of one year or less in a jurisdiction other than Baltimore City are sentenced to a local detention facility. The Baltimore City Detention Center, a State-operated facility, is used primarily for pretrial detentions.

General fund expenditures for the Judiciary increase by \$22,098 in fiscal 2015 only for computer reprogramming due to the establishment of the administrative fee. AOC advises that the bill’s changes require approximately 367 hours of computer reprogramming.

Local Revenues: Revenues decrease minimally as a result of *nolle prosequi* and *stet* dispositions for violations that would otherwise result in fines and/or costs in circuit courts.

Local Expenditures: Expenditures increase as a result of the bill’s local mandate that counties establish an MDP approved under regulations of ADAA. Counties that do not offer an MDP incur a significant increase in expenditures as the bill requires each county to establish an MDP. Counties that currently offer a diversion program may incur a minimal increase in expenditures to bring their programs into compliance with the bill.

Prince George’s County, for instance, estimates that establishing an MDP (apart from the diversion programs already in place) could cost the county approximately \$232,400 per year. The estimate includes expenses associated with three positions and other program

operating costs. Similarly, Montgomery County advises that implementation of the bill could be expensive, given the staffing requirements and treatment program development. Baltimore City, on the other hand, advises that the bill has no fiscal impact as it already administers a drug diversion program.

Expenditures decrease minimally as a result of *nolle prosequi* and *stet* dispositions for violations that could otherwise result in additional persons being committed to local jails. Counties pay the full cost of incarceration for people in their facilities for the first 12 months of the sentence. Per diem operating costs of local detention facilities have ranged from approximately \$60 to \$160 per inmate in recent years.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Calvert, Dorchester, Garrett, Howard, Montgomery, Prince George's, Queen Anne's, Talbot, and Wicomico counties; Baltimore City; Maryland State Commission on Criminal Sentencing Policy; Governor's Office of Crime Control and Prevention; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Department of State Police; Office of the Public Defender; Department of Public Safety and Correctional Services; Department of Legislative Services

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