

# HOUSE BILL 1166

E4, J1

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By: **Delegates Ebersole, Bagnall, T. Branch, J. Lewis, and Lierman**

Introduced and read first time: February 7, 2020

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2020

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Public Safety – Law Enforcement Diversion Programs**

3 FOR the purpose of authorizing the establishment of certain law enforcement diversion  
4 programs subject to certain restrictions; authorizing certain individuals to  
5 participate in certain programs; authorizing certain providers to provide case  
6 management including certain approaches under certain circumstances; requiring  
7 certain planning for the implementation of law enforcement diversion programs;  
8 requiring the establishment of a certain law enforcement diversion program plan;  
9 providing for the use and release of certain information under certain circumstances;  
10 requiring the ~~Governor's Office of Crime Control and Prevention~~ Governor's Office of  
11 Crime Prevention, Youth, and Victim Services to submit a certain annual report with  
12 certain information; ~~authorizing the Governor to include in the State budget certain~~  
13 ~~appropriations for the Governor's Office of Crime Control and Prevention to fund~~  
14 ~~certain health and social services; authorizing the Governor's Office of Crime Control~~  
15 ~~and Prevention to adopt certain guidelines and requirements; requiring funding to~~  
16 ~~be made available to certain law enforcement diversion programs in certain~~  
17 ~~geographic regions of the State; establishing activities eligible for funding under this~~  
18 ~~Act~~; authorizing involvement by certain individuals and services in a law  
19 enforcement diversion program; authorizing a law enforcement diversion program to  
20 use certain measures and practices; requiring the ~~Governor's Office of Crime Control~~  
21 ~~and Prevention~~ Governor's Office of Crime Prevention, Youth, and Victim Services,  
22 in conjunction with certain other entities, to develop certain guidelines and a certain  
23 performance measurement system on or before a certain date; and generally relating  
24 to law enforcement diversion programs.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



BY repealing and reenacting, with amendments,  
Article – Public Safety  
Section 4–1001  
Annotated Code of Maryland  
(2018 Replacement Volume and 2019 Supplement)

Preamble

WHEREAS, The General Assembly acknowledges that opioid use disorders, poverty, and homelessness in Maryland are persistent and growing concerns for Maryland communities, and that these concerns compound existing challenges to adequately address and manage behavioral health disorders; and

WHEREAS, Law enforcement officers have a unique opportunity to facilitate connections to community–based behavioral health interventions that provide behavioral health services and can help save and restore lives, help reduce drug use, overdose incidence, and criminal offending and recidivism, and help prevent arrest and conviction records that destabilize health, families, and opportunities for community citizenship and self–sufficiency; and

WHEREAS, These efforts are bolstered when pursued in partnership with behavioral health services providers and community members or organizations; and

WHEREAS, It is the intent of the General Assembly to authorize law enforcement agencies to develop and implement collaborative law enforcement diversion programs in Maryland that offer immediate pathways to behavioral health services and other services as an alternative to traditional case processing and involvement in the criminal justice system; now, therefore,

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

**Article – Public Safety**

4–1001.

**(A) (1) SUBJECT TO THE PROVISIONS OF THIS SECTION, A LAW ENFORCEMENT AGENCY MAY ESTABLISH A LAW ENFORCEMENT DIVERSION PROGRAM IN PARTNERSHIP WITH ONE OR MORE PROVIDERS OF BEHAVIORAL HEALTH SERVICES OR ONE OR MORE COMMUNITY MEMBERS OR ORGANIZATIONS.**

**(2) A LAW ENFORCEMENT DIVERSION PROGRAM ESTABLISHED UNDER THIS SECTION MAY INCLUDE INDIVIDUALS REFERRED TO THE PROGRAM BY:**

**(I) A LAW ENFORCEMENT OFFICER:**

1                               1.     AFTER THE ADMINISTRATION OF MEDICATION TO  
2 REVERSE AN OVERDOSE;

3                               2.     AS A RESULT OF THE PROACTIVE IDENTIFICATION OF  
4 THE INDIVIDUAL AS HAVING A SUBSTANCE USE DISORDER; OR

5                               3.     AFTER THE INDIVIDUAL IS DETAINED OR ARRESTED  
6 BY THE OFFICER;

7                               (II)   THE INDIVIDUAL THROUGH CONTACT WITH A LAW  
8 ENFORCEMENT OFFICER TO ACKNOWLEDGE THE INDIVIDUAL'S SUBSTANCE USE  
9 DISORDER; OR

10                              (III)  A LAW ENFORCEMENT OFFICER IN LIEU OF ISSUING A  
11 CITATION OR ARREST WHEN PROBABLE CAUSE FOR CHARGES FOR AN INDIVIDUAL  
12 ARE PRESENT BUT HELD IN ABEYANCE.

13                              (3)   A LAW ENFORCEMENT AGENCY MAY DEVELOP A LAW  
14 ENFORCEMENT DIVERSION PROGRAM BASED ON A MODEL THAT:

15                              (I)   IS UNIQUE AND RESPONSIVE TO LOCAL ISSUES,  
16 BEHAVIORAL HEALTH AND SOCIAL SERVICE NEEDS, AND PARTNERSHIPS;

17                              (II)  USES EVIDENCE-BASED PRACTICES; AND

18                              (III) DOES NOT WITHHOLD SERVICES BASED ON  
19 NONCOMPLIANCE.

20                              (4)   WHEN APPROPRIATE AND AVAILABLE, A BEHAVIORAL HEALTH  
21 SERVICES PROVIDER OR OTHER APPROPRIATE PROVIDER MAY PROVIDE CASE  
22 MANAGEMENT THAT INCLUDES PEER RECOVERY SUPPORT APPROACHES.

23                              (5)   PLANNING FOR A LAW ENFORCEMENT DIVERSION PROGRAM  
24 SHALL INCLUDE:

25                              (I)   THE INVOLVEMENT OF ONE OR MORE BEHAVIORAL HEALTH  
26 SERVICES PROGRAMS OR ONE OR MORE COMMUNITY MEMBERS OR ORGANIZATIONS;  
27 AND

28                              (II)  AN AGREEMENT WITH THE ~~GOVERNOR'S OFFICE OF CRIME~~  
29 ~~CONTROL AND PREVENTION~~ GOVERNOR'S OFFICE OF CRIME PREVENTION,  
30 YOUTH, AND VICTIM SERVICES TO COLLECT AND EVALUATE STATISTICAL DATA FOR  
31 THE PROGRAM.

(B) (1) THE LAW ENFORCEMENT AGENCY, BEHAVIORAL HEALTH SERVICES PROVIDERS, AND COMMUNITY MEMBERS OR ORGANIZATIONS SHALL ESTABLISH A LOCAL LAW ENFORCEMENT DIVERSION PROGRAM PLAN THAT INCLUDES PROTOCOLS AND PROCEDURES FOR:

(I) PARTICIPANT IDENTIFICATION, SCREENING OR ASSESSMENT;

(II) BEHAVIORAL HEALTH AND SOCIAL SERVICES FACILITATION;

(III) REPORTING; AND

(IV) ONGOING INVOLVEMENT OF THE LAW ENFORCEMENT AGENCY, OFFICE OF THE STATE'S ATTORNEY, THE DIVISION OF PAROLE AND PROBATION, AND THE OFFICE OF THE PUBLIC DEFENDER.

(2) THE USE AND RELEASE OF ANY PERSONAL IDENTIFICATION OR MEDICAL INFORMATION OBTAINED IN ACCORDANCE WITH THIS SECTION IS GOVERNED BY THE CONFIDENTIALITY PROVISIONS OF STATE LAW.

(C) ON OR BEFORE DECEMBER 31 EACH YEAR, THE ~~GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION~~ GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL PREPARE AN ANNUAL REPORT WITH:

(1) DATA REQUIRED BY THE ~~GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION~~ GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES, IN CONJUNCTION WITH THE MARYLAND CHIEFS OF POLICE ASSOCIATION AND THE MARYLAND DEPARTMENT OF HEALTH, INCLUDING DEMOGRAPHIC INFORMATION ON PROGRAM PARTICIPANTS, NUMBER OF LAW ENFORCEMENT ENCOUNTERS THAT RESULTED IN A BEHAVIORAL HEALTH SERVICES REFERRAL, AND TIME FROM LAW ENFORCEMENT ENCOUNTER TO BEHAVIORAL HEALTH SERVICES ENGAGEMENT; AND

(2) PERFORMANCE MEASUREMENTS, INCLUDING KEY PERFORMANCE INDICATORS FOR LAW ENFORCEMENT DIVERSION PROGRAMS, INCLUDING RATE OF BEHAVIORAL HEALTH SERVICES ENGAGEMENT 30 DAYS AFTER THE POINT OF INITIAL CONTACT.

(D) THE ~~GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION~~ GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL SUBMIT THE ANNUAL REPORT REQUIRED UNDER SUBSECTION (C) OF THIS SECTION TO THE ~~GOVERNOR'S OFFICE OF CRIME CONTROL AND PREVENTION~~

1 GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT  
2 ARTICLE, THE SENATE BUDGET AND TAXATION COMMITTEE AND THE HOUSE  
3 APPROPRIATIONS COMMITTEE.

4 ~~(E) THE GOVERNOR MAY INCLUDE IN THE STATE BUDGET AN ANNUAL~~  
5 ~~APPROPRIATION TO THE GOVERNOR'S OFFICE OF CRIME CONTROL AND~~  
6 ~~PREVENTION FOR THE PURPOSE OF FUNDING LAW ENFORCEMENT DIVERSION~~  
7 ~~PROGRAMS UNDER THIS SECTION, INCLUDING BEHAVIORAL HEALTH SERVICES AND~~  
8 ~~SOCIAL SERVICES THAT MAY BE AN ALTERNATIVE TO ARREST.~~

9 ~~(F) (1) THE GOVERNOR'S OFFICE OF CRIME CONTROL AND~~  
10 ~~PREVENTION MAY ADOPT GUIDELINES AND REQUIREMENTS FOR THE DISTRIBUTION~~  
11 ~~OF FUNDS FOR EXPENSES RELATED TO LAW ENFORCEMENT DIVERSION PROGRAMS.~~

12 ~~(2) FUNDING UNDER THIS SECTION SHALL BE MADE AVAILABLE TO~~  
13 ~~SUPPORT BOTH NEW AND EXISTING LAW ENFORCEMENT DIVERSION PROGRAMS IN A~~  
14 ~~BROAD SPECTRUM OF GEOGRAPHIC REGIONS IN THE STATE, INCLUDING URBAN,~~  
15 ~~SUBURBAN, AND RURAL COMMUNITIES.~~

16 ~~(G) ACTIVITIES ELIGIBLE FOR FUNDING UNDER THIS SECTION INCLUDE:~~

17 ~~(1) ACTIVITIES RELATED TO PROGRAM ADMINISTRATION,~~  
18 ~~COORDINATION, OR MANAGEMENT, INCLUDING THE DEVELOPMENT OF~~  
19 ~~COLLABORATIVE PARTNERSHIPS WITH LICENSED BEHAVIORAL HEALTH PROVIDERS~~  
20 ~~AND COMMUNITY MEMBERS OR ORGANIZATIONS, COLLECTION OF PROGRAM DATA,~~  
21 ~~AND MONITORING OF COMPLIANCE WITH A LOCAL LAW ENFORCEMENT DIVERSION~~  
22 ~~PROGRAM PLAN;~~

23 ~~(2) CASE MANAGEMENT, INCLUDING CASE MANAGEMENT PROVIDED~~  
24 ~~BEFORE ASSESSMENT, DIAGNOSIS, AND ENGAGEMENT IN BEHAVIORAL HEALTH~~  
25 ~~SERVICES, AS WELL AS ASSISTANCE NAVIGATING AND GAINING ACCESS TO VARIOUS~~  
26 ~~BEHAVIORAL HEALTH MODALITIES AND SUPPORT SERVICES, SUCH AS HOUSING AND~~  
27 ~~OTHER BASIC HUMAN NEEDS.~~

28 ~~(3) PEER RECOVERY OR RECOVERY SUPPORT SERVICES THAT~~  
29 ~~INCLUDE THE PERSPECTIVES OF PERSONS WITH THE EXPERIENCE OF RECOVERING~~  
30 ~~FROM A SUBSTANCE USE DISORDER, EITHER THEMSELVES OR AS FAMILY MEMBERS;~~

31 ~~(4) TRANSPORTATION TO AND FROM A LICENSED BEHAVIORAL~~  
32 ~~HEALTH SERVICES PROVIDER OR OTHER PROGRAM PARTNER LOCATION; AND~~

33 ~~(5) PROGRAM EVALUATION ACTIVITIES.~~

1        ~~(H)~~ **(E)**        (1) A LAW ENFORCEMENT DIVERSION PROGRAM MAY DEVELOP  
2 SPECIFIC LINKAGE AGREEMENTS WITH RECOVERY SUPPORT SERVICES OR  
3 SELF-HELP ENTITIES.

4                    (2) A LAW ENFORCEMENT DIVERSION PROGRAM MAY INVOLVE KEY  
5 FAMILY MEMBERS OF INDIVIDUALS IN THE PROGRAM AS A PART OF A FAMILY-BASED  
6 APPROACH TO BEHAVIORAL HEALTH.

7                    (3) A LAW ENFORCEMENT DIVERSION PROGRAM MAY USE  
8 EVIDENCE-BASED PRACTICES AND OUTCOME MEASURES IN THE PROVISION OF  
9 BEHAVIORAL HEALTH SERVICES AND MEDICATION-ASSISTED TREATMENT.

10        [(a)] ~~(H)~~ **(F)** For fiscal years 2020 through 2023, each year the Governor shall  
11 appropriate \$425,000 in the annual State budget for Baltimore City to be used as an  
12 operating grant for the Law Enforcement Assisted Diversion Program in Baltimore City.

13        [(b)] ~~(H)~~ **(G)** The funds appropriated under subsection [(a)] ~~(H)~~ **(F)** of this section  
14 shall be used solely to supplement, and not supplant, funds otherwise available for the Law  
15 Enforcement Assisted Diversion Program in Baltimore City.

16        SECTION 2. AND BE IT FURTHER ENACTED, That, on or before April 1, 2021,  
17 the ~~Governor's Office of Crime Control and Prevention~~ Governor's Office of Crime  
18 Prevention, Youth, and Victim Services, in conjunction with the Maryland Chiefs of Police  
19 Association and the Maryland Department of Health, shall:

20                    (1) develop guidelines for the data required to be collected by the  
21 ~~Governor's Office of Crime Control and Prevention~~ Governor's Office of Crime Prevention,  
22 Youth, and Victim Services, including demographic information on program participants,  
23 number of law enforcement encounters that result in a behavioral health referral, and time  
24 from law enforcement encounter to behavioral health services engagement; and

25                    (2) develop a performance measurement system, including key  
26 performance indicators for law enforcement diversion programs, such as rate of behavioral  
27 health services engagement 30 days after the point of initial contact.

28        SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
29 October 1, 2020.