

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 992
Judiciary

(Delegates McConkey and Sophocleus)

Criminal Procedure - Sentencing - Substance-Related Disorder - Sudden
Cessation

This bill requires a court to give a defendant, at the defendant's request, an opportunity to address the defendant's substance-related disorder by sudden cessation, which may include treatment that does not involve the use of a controlled dangerous substance (CDS), instead of requiring the defendant to participate in a substance-related disorder treatment program as a condition of sentencing.

Fiscal Summary

State Effect: General fund expenditures for the Department of Health and Mental Hygiene (DHMH) may decrease minimally beginning in FY 2018, as discussed below. Federal fund expenditures may also decrease minimally to the extent that individuals who qualify for services under Medicaid no longer participate in court-ordered substance abuse assessments and/or treatment programs; federal fund revenues decrease correspondingly.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Under § 8-507 of the Health-General Article, a court is authorized to refer an individual to substance abuse treatment as an alternative to incarceration. A court that finds in a criminal case that a defendant has an alcohol or drug dependency may commit the defendant to DHMH for a drug or alcohol treatment program. The commitment may be made as a condition of release, after conviction, or at any other time the defendant

voluntarily agrees to participate in treatment. Before committing a defendant to DHMH, the court must (1) offer the defendant the opportunity to receive treatment; (2) obtain the written consent of the defendant to receive treatment and to have information reported back to the court; (3) order an evaluation of the defendant under § 8-505 or § 8-506 of the Health General Article; (4) consider the report on the defendant's evaluation; and (5) find the treatment that DHMH recommends appropriate and necessary.

A court may not order that the defendant be delivered for treatment until (1) DHMH gives the court notice that an appropriate treatment program is able to begin treating the defendant; (2) any detainer based on an untried indictment, information, warrant, or complaint for the defendant has been removed; and (3) any incarceration sentence for the defendant is no longer in effect. A commitment must be for at least 72 hours but no more than one year. The court may extend the time period in increments of six months for good cause shown. If the defendant withdraws consent to treatment, DHMH must promptly notify the court and have the defendant returned to the court within seven days for further proceedings.

Justice Reinvestment Act – Changes Effective October 1, 2017

Chapter 515 of 2016 (also known as the Justice Reinvestment Act) requires that, effective October 1, 2017, before imposing a sentence for a violation of laws prohibiting the possession of CDS or 10 grams or more of marijuana, a court is authorized to order DHMH, or a certified and licensed designee, to conduct an assessment of the defendant for a substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment. DHMH or the designee must conduct an assessment and provide the results, as specified. The court must consider the results of an assessment when imposing the defendant's sentence and, as specified, (1) must suspend the execution of the sentence, order probation, and require DHMH to provide the medically appropriate level of treatment or (2) may impose a term of imprisonment and order the Division of Correction within the Department of Public Safety and Correctional Services or a local correctional facility to facilitate the medically appropriate level of treatment.

When ordered by a court, DHMH must (1) conduct an assessment regarding whether, by reason of drug or alcohol abuse, a defendant is in need of and may benefit from treatment, as specified and (2) provide the name of a program *immediately* able to provide the recommended treatment to the defendant.

In addition, DHMH must facilitate the *immediate* treatment of a defendant following a court order committing the defendant, under § 8-507 of the Health-General Article, to substance abuse treatment as an alternative to incarceration. If the court finds exigent circumstances, the court may delay a commitment order to DHMH for no longer than

30 days. If a defendant is not placed in treatment within 21 days of the order, the court may order DHMH to appear to explain the reason for the lack of placement.

State Fiscal Effect: General fund expenditures for DHMH may decrease minimally beginning in fiscal 2018 to the extent that individuals successfully choose sudden cessation and are no longer committed to DHMH to undergo a court-ordered substance abuse assessment and/or treatment program. However, the extent of any impact depends on judicial sentencing behavior and whether defendants request sudden cessation, which cannot be reliably estimated at this time. Federal fund expenditures may also decrease minimally to the extent individuals who are covered by Medicaid no longer participate in court-ordered substance abuse assessments and/or treatment programs. Medicaid-eligible services are subject to a federal match rate (which varies depending on the coverage group of the individual). Therefore, federal fund revenues decrease correspondingly.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; Department of Legislative Services

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mm/kdm

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