

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE

House Bill 924 (Delegate Menes)
 Judiciary

Probation Before Judgment - Driving While Impaired By or Under the Influence of Alcohol and Drugs - Evaluation Required

This bill provides that if the court stays a judgment for driving or attempting to drive: (1) while under the influence of alcohol or under the influence of alcohol per se; (2) while impaired by alcohol; (3) while impaired by drugs or drugs and alcohol; or (4) while impaired by a controlled dangerous substance, then prior to imposing a period of probation, the court must order the Department of Health and Mental Hygiene (DHMH) to evaluate the defendant to determine if the defendant is in need of and may benefit from an alcohol or drug treatment or education program. After a review of the evaluation, the court shall impose a period of probation.

Fiscal Summary

State Effect: General fund expenditures by DHMH increase by \$432,200 in FY 2004 to provide required evaluations for defendants in alcohol- and drug-related driving cases who are being considered for probation before judgment (PBJ). Out-years include annualization and inflation. Significant increase in expenditures for the Judiciary to process evaluation orders, and the addition of sentencing hearings after court review of the required evaluations.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	432,200	524,000	556,000	590,700	628,300
Net Effect	(\$432,200)	(\$524,000)	(\$556,000)	(\$590,700)	(\$628,300)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: A person may not drive or attempt to drive any vehicle while: (1) under the influence of alcohol or under the influence of alcohol per se; (2) impaired by alcohol; (3) impaired by drugs or drugs and alcohol; or (4) impaired by any controlled dangerous substance.

If judgment is being stayed for a violation of an alcohol- or drug-related driving offense, the court must impose a period of probation. As a condition of probation, the court must require the defendant to participate in an alcohol treatment or education program approved by DHMH, unless the court finds and states on the record that the interests of the defendant and the public do not require that condition. The court may also prohibit the defendant from operating a vehicle unless it is equipped with an ignition interlock system.

Before or during a criminal trial, or prior to sentencing, a court may order DHMH to evaluate a defendant to determine if the defendant needs and may benefit from treatment if it appears to the court that the defendant has an alcohol or drug abuse problem, or the defendant alleges an alcohol or drug dependency. The court may require or permit an examination to be conducted on an outpatient basis. If an outpatient examination is authorized, the court shall set bail for the defendant or authorize the release of the defendant on personal recognizance. If the defendant is to be held in custody for the examination, the defendant may be confined in a detention facility or, if the health or safety of the defendant warrants it, the court may order the defendant held in a medical wing, or other isolated or secure unit of the facility. If the defendant would be endangered by confinement in jail, due to the severity of the alcohol or drug dependency or other medical complications, the court may order DHMH to place the defendant in an appropriate health care facility or have qualified personnel immediately conduct an examination of the defendant. Unless DHMH retains the defendant, the defendant must be returned to court promptly after an examination.

If a court orders an evaluation, the evaluator must conduct the evaluation and submit a complete report within seven days to the court, the Alcohol and Drug Abuse Administration of DHMH, and the defendant or the defendant's attorney. The court may extend the time for evaluation for good cause shown.

If the defendant consents to and receives a stay of judgment, the defendant waives the right to appeal from the judgment of guilt. If a condition of probation is violated, the

court may enter judgment as if the defendant had not been on probation. If the conditions of probation are fulfilled, the court must discharge the defendant from probation, which is a final disposition of the matter.

A court may not stay judgment and place a defendant on probation if, within the preceding five years, the defendant was convicted of, or placed on probation for a violation of any of the following offenses:

- driving while under the influence of alcohol or under the influence of alcohol per se;
- driving while impaired by alcohol;
- driving while impaired by drugs or drugs and alcohol;
- driving while impaired by a controlled dangerous substance;
- homicide by motor vehicle or vessel while under the influence of alcohol or under the influence of alcohol per se;
- homicide by motor vehicle or vessel while impaired by alcohol;
- homicide by motor vehicle or vessel while impaired by drugs;
- homicide by motor vehicle or vessel while impaired by a controlled dangerous substance; or
- life-threatening injury by motor vehicle or vessel while under the influence of alcohol and related crimes.

State Fiscal Effect:

Department of Health and Mental Hygiene: General fund expenditures could increase by \$432,218 in fiscal 2004 for eight alcohol and drug assistance counselors, one supervisor, and one clerical support person, and related equipment and supply costs. The alcohol and drug abuse counselors would be assigned to the 34 locations of the District Court on an as-needed basis to provide the evaluations required by the bill. Out-years include annualization and inflation.

According to both the Judiciary and DHMH, an average of about 11,000 PBJs are granted to those convicted of alcohol- or drug-related driving offenses annually. The actual number of people who would be required to undergo DHMH evaluations could actually be higher, since anyone who is considered for PBJ must have an evaluation. After reviewing the evaluation, the judge could deny PBJ or order another disposition. The number of people considered for PBJ who do not receive PBJ for alcohol- or drug-related driving offenses is not readily available.

At least 11,000 people annually would be required to undergo evaluations by DHMH before the judge could grant a PBJ. On a monthly basis, 917 evaluations would have to be completed. DHMH advises that one counselor would be placed in each of the 34 District Courts to process evaluations. Under that scenario each of the 34 counselors who would be assigned to the District Court would process about 27 evaluations per month. Since many of the evaluations take one to two hours, one full-time counselor would only work between 40 to 60 hours per month. Also there are likely to be more offenders in the urban areas of the State than in the less populated areas. The Department of Legislative Services advises that the number of full-time counselors should be reduced to eight and that a supervisor and clerical person would also be needed, for a total of ten positions under this bill. DHMH could implement this bill without having a counselor stationed in each District Court on a full-time basis. The eight alcohol and drug assistance counselors could focus on the urban area District Courts where alcohol- and drug-related driving offense cases would be more prevalent and counselors could be deployed to other District Courts in less populated areas on an as-needed basis. Projected DHMH expenditures for fiscal 2004 are as follows:

	<u>Fiscal 2004</u>
Positions	10
Salaries	\$376,728
Operating Expenditures	<u>55,490</u>
Total DHMH Expenditures	\$432,218

DHMH advises that the majority of those who currently receive the type of alcohol/drug abuse evaluation called for in this bill are usually already incarcerated. The clients are likely to have been arrested and detained for offenses other than driving offenses. Currently, if a judge orders a DHMH evaluation, that order is faxed to the local health department. Sometimes, the local health department visits a defendant in jail to complete the evaluation. The Alcohol and Drug Abuse Administration does not complete court-ordered evaluations currently. Arrangements are made with local health departments to complete the evaluations. DHMH advises that because most of those in court for alcohol- and drug-related driving offenses do not go to jail, it would be more efficient to provide services at the District Court.

Judiciary: General fund expenditures are likely to increase significantly. The District Court advises that under this bill, judges would be required to order evaluations and the cases would have to be continued for sentencing. Staff would be required to prepare the orders for the judge's signature, distribute copies of the order to the defendant and DHMH, and reschedule each case for sentencing. Staff would be required to track

written reports to ensure that DHMH provided written reports within seven days, as required by statute. The District Court advises that an additional 30 minutes per case would be required to process and hold the sentencing hearings. This would have a significant impact on judicial standards for expedition and timeliness of cases.

The District Court also advises that because space is limited at many of the locations of the District Court, it may be difficult to allocate space to a DHMH alcohol/drug assistance counselor for court-ordered evaluations on a permanent basis.

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 Transportation, Department of Legislative Services

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