

HOUSE BILL 490

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2004 Regular Session
4lr1231

By: **Delegates Patterson, Kelley, Marriott, Anderson, Brown, Carter, C. Davis, D. Davis, Haynes, Howard, Jones, Kirk, Lee, Menes, Moe, Nathan-Pulliam, Paige, Parker, Petzold, Proctor, Ramirez, Ross, Sophocleus, Taylor, F. Turner, V. Turner, Vallario, and Vaughn**

Introduced and read first time: February 2, 2004

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Nonviolent Drug Offenders - Drug Treatment instead of Incarceration**

3 FOR the purpose of requiring a court to commit to the Department of Health and
4 Mental Hygiene certain defendants for drug treatment as a condition of
5 probation instead of incarceration under certain circumstances; requiring a
6 court to discharge a certain defendant and dismiss the proceedings against the
7 defendant under certain circumstances; providing that a certain discharge or
8 dismissal may not be deemed a conviction for certain purposes; and generally
9 relating to requiring drug treatment instead of incarceration for nonviolent drug
10 offenders.

11 BY repealing and reenacting, with amendments,
12 Article - Health - General
13 Section 8-507
14 Annotated Code of Maryland
15 (2000 Replacement Volume and 2003 Supplement)

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

18 **Article - Health - General**

19 8-507.

20 (a) (1) If a court finds in a criminal case that a defendant has an alcohol or
21 drug dependency, the court may commit the defendant as a condition of release, after
22 conviction, or at any other time the defendant voluntarily agrees to treatment to the
23 Department for inpatient, residential, or outpatient treatment.

24 (2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT
25 SHALL COMMIT A DEFENDANT TO THE DEPARTMENT FOR DRUG TREATMENT AS A
26 CONDITION OF PROBATION INSTEAD OF INCARCERATION IF:

1 (I) THE DEFENDANT IS FOUND GUILTY:

2 1. FOR A FIRST OR SECOND TIME, OF ANY VIOLATION OF §
3 5-601, § 5-602, § 5-603, § 5-604, § 5-605, § 5-606, § 5-620, OR § 5-708 OF THE CRIMINAL
4 LAW ARTICLE; OR

5 2. OF A CRIME RESULTING FROM DRUG ABUSE OR
6 ADDICTION, AS DETERMINED BY THE COURT;

7 (II) THE OFFENSE OR OFFENSES WITH WHICH THE DEFENDANT IS
8 CHARGED DO NOT INVOLVE VIOLENCE OR THE THREAT OF VIOLENCE; AND

9 (III) THE DEFENDANT WAS NOT CONVICTED OF A CRIME OF
10 VIOLENCE, AS DEFINED IN § 14-101 OF THE CRIMINAL LAW ARTICLE, WITHIN THE
11 PREVIOUS 5 YEARS.

12 (b) Before a court may commit a defendant to the Department for treatment,
13 the court shall:

14 (1) Offer the defendant the opportunity to receive treatment; and

15 (2) Obtain the written consent of the defendant:

16 (i) To receive treatment; and

17 (ii) For the reporting of information back to the court; and

18 (3) Consult with the Administration.

19 (c) The Department shall provide the services required by this section.

20 (d) The Department shall engage in reasonable efforts to facilitate the
21 admission of a defendant to the appropriate treatment facility.

22 (e) Unless the court allows the defendant to provide the defendant's own
23 transportation, on commitment or release of a defendant under this subtitle, the court
24 shall order transportation by law enforcement officials, detention center staff, or
25 sheriff's department staff within the local jurisdiction.

26 (f) (1) A defendant's withdrawal of consent to treatment shall be promptly
27 reported to the court.

28 (2) The defendant shall be returned to the court within 7 days for further
29 proceedings.

30 (g) A defendant who is committed for treatment under this section may
31 question at any time the legality of the commitment by a petition for a writ of habeas
32 corpus.

33 (h) (1) A commitment under this section shall be for at least 72 hours and
34 not more than 1 year.

7 (i) Continued commitment is not in the best interest of the
8 individual; or

9 (ii) The individual is no longer amenable to treatment.

10 (i) (1) [When] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
11 SUBSECTION, WHEN an individual is to be released from a commitment under this
12 section, the Director or the Director's designee shall consult with the court to
13 determine if the individual is to be returned to the court.

20 (j) In the event an individual committed under this section leaves a treatment
21 facility without authorization, the responsibility of the Department is limited to the
22 notification of the court that committed the individual as soon as it is reasonably
23 possible.

24 (k) Nothing in this section imposes any obligation on the Administration:

25 (1) To treat any defendant who knowingly and willfully declines to
26 consent to further treatment; or

27 (2) In reporting to the court under this section, to include an assessment
28 of a defendant's dangerousness to one's self, to another individual, or to the property
29 of another individual by virtue of a drug or alcohol problem.

30 (I) Any time served by a criminal defendant held for evaluation or committed
31 for treatment shall be credited against the sentence imposed by the court, IF ANY.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
33 October 1, 2004.