

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

House Bill 376

(Delegate Menes, *et al.*)

(Special Committee on Drug and Alcohol Abuse)

Judiciary

Judicial Proceedings

Probation before Judgment - Alcohol- or Drug-Related Offenses - Evaluation

This bill clarifies that if the court stays a judgment for various alcohol- or drug-related driving offenses, then before imposing a period of probation, the court may 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. If an evaluation was ordered, the court must review the evaluation before imposing a period of probation.

Fiscal Summary

State Effect: The District Court and DHMH could handle the bill's requirements within existing resources. It is noted that the Governor's proposed FY 2005 budget contains about \$4 million to provide residential treatment services to individuals in the criminal justice and juvenile systems as an alternative to incarceration.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: 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 or drug 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 (ADAA) 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.

Background: This bill is one of several bills sponsored by the House Special Committee on Drug and Alcohol Abuse.

According to the report, *Driving Under the Influence of Drugs Legislation in the United States*, prepared by The Walsh Group and the American Bar Association, as of 2000, 31 states provided for court-ordered substance abuse treatment or education for alcohol- or drug-related driving offenders. Some states “sentence” offenders to inpatient or outpatient treatment facilities or programs as part of their sentences. Several states require defendants to participate in screening processes to establish whether additional participation in educational or treatment programs would be beneficial. Other states require participation in a program or treatment as a condition of probation or as a prerequisite to reinstatement of driving privileges.

ADAA of DHMH oversees a system of 24 local programs operated by local health departments. Research from the University of Maryland suggests that as many as 286,000 Maryland residents are in need of drug treatment, and about 25% are currently receiving treatment. According to ADAA, treatment capacity has been improving, but the total amount needed is not clear. The number receiving treatment is dependent on the number presenting for treatment and the number of available slots.

State Expenditures: 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. DHMH advises that in fiscal 2004, \$113 million in evaluation and treatment grants was provided to the 24 local health departments. The fiscal 2005 allowance is for \$129 million. If appropriated, \$115 million of that amount would be distributed as grants to local health departments for alcohol and drug abuse evaluation and treatment.

Additional Information

Prior Introductions: This bill is a reintroduction of HB 924 from the 2003 session. HB 924 was heard before the Judiciary Committee, then it was withdrawn.

Cross File: None.

Information Source(s): Department of Health and Mental Hygiene, Maryland Department of Transportation, The Walsh Group, American Bar Association, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2004
mll/jr Revised - House Third Reader - March 29, 2004

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