

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

Senate Bill 591

(Senator Frosh)

Judicial Proceedings

Judiciary

**Criminal Procedure - Defendant with an Alcohol or Drug Dependency -
 Commitment Procedures**

This bill repeals a requirement that only a defendant in a criminal case who has an alcohol or drug dependency and for whom no sentence of incarceration is in effect, and for whom no detainer has been lodged, can be committed to the Department of Health and Mental Hygiene (DHMH) for treatment. Instead, a court may not order the defendant be delivered for treatment until any detainer based on an untried indictment, information, warrant, or complaint for the defendant has been removed and any sentence of incarceration for the defendant is no longer in effect. Immediately after receiving an order to treat a defendant, DHMH must order a report of all pending cases, warrants, and detainers for the defendant and forward a copy of the report to the court, the defendant, and the defendant's last attorney of record.

Fiscal Summary

State Effect: General fund expenditures for DHMH could increase by \$47,200 in FY 2007 to hire a coordinator for special programs. Future years assume annualization and inflation. No effect on revenues.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	47,200	57,600	60,900	64,500	68,300
Net Effect	(\$47,200)	(\$57,600)	(\$60,900)	(\$64,500)	(\$68,300)

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

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: Before or during a criminal trial or before sentencing, the court may order DHMH to evaluate a defendant to determine whether, by reason of drug or alcohol abuse, the defendant is in need of and may benefit from treatment if it appears to the court that the defendant has a drug or alcohol problem or the defendant alleges an alcohol or drug dependency.

If a court orders an evaluation, an evaluation of the defendant must be conducted and a complete report of the results must be submitted within seven days to the court, DHMH, and the defendant or the defendant's attorney. Whenever treatment is recommended, the report must name a specific program able to provide the treatment and give an actual or estimated date the program can begin treating the defendant.

Only a defendant in a criminal case who has an alcohol or drug dependency and for whom no sentence of incarceration is in effect and no detainer is lodged can be committed to DHMH for treatment.

Before committing a defendant, the court must offer the defendant the opportunity to receive treatment, obtain the defendant's written consent to receive treatment and have information reported back to the court, order an evaluation of the defendant, consider the report on the defendant's evaluation, and find that the treatment DHMH recommends is appropriate and necessary.

The court may not order the defendant be delivered for treatment until DHMH gives the court notice that an appropriate treatment program is able to begin treating the defendant.

Background: There is currently an interagency workgroup seeking expansion of voluntary protocols to address the issues addressed by this bill. The workgroup consists of representatives of the Judiciary, the Governor's Office, the Alcohol and Drug Abuse Administration (ADAA), the Department of Public Safety and Correctional Services, the State's Attorneys, and the Office of the Public Defender.

During the 2005 interim, the House Special Committee on Drug and Alcohol Abuse heard testimony from Maryland judges concerned that the residential treatment program for defendants with an alcohol or drug dependency established under § 8-507 of the Health-General Article was not working because of the length of time it takes for a defendant to be placed in treatment. That wait can be as long as 12 to 18 months. The

judges said they are frustrated because, for so many of the defendants they see in court, the defendants' addiction caused the criminal behavior. According to the judges, treatment is cost effective, but a wait of 12 to 18 months to get a placement is unworkable. Instead, the defendant is detained in a correctional facility for the length of the sentence without getting into a treatment program.

This bill allows a court to lift a sentence of incarceration in a criminal case over which a court has jurisdiction in order to commit a defendant to drug treatment.

The fiscal 2007 budget allowance for evaluation and treatment of alcohol and/or drug abuse is about \$108 million. It funds several initiatives, including program expansion as determined by locally determined priorities, new long-term residential slots, as well as a provider cost-of-living adjustment. After considerable discussion, ADAA has recently awarded contracts for the delivery of residential services for patients in the criminal justice system and to pregnant and postpartum women with children. It is also in the process of issuing a contract for the delivery of services to patients with co-occurring disorders. Each contract contains incentives if certain performance measures are attained.

State Expenditures: General fund expenditures could increase by an estimated \$47,236 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of ADAA hiring one special program coordinator to comply with the bill's report and notification requirements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salary and Fringe Benefits	\$40,533
Operating Expenses	<u>6,703</u>
Total FY 2007 State Expenditures	\$47,236

Future year expenditures reflect: (1) a full salary with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None.

Cross File: HB 656 (Delegates Menes and Vallario) – Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of Health and Mental Hygiene; *Summary Reports of Committees to the Legislative Policy Committee*, 2005 Interim Report, Department of Legislative Services, January 2006; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2006
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