

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE

Senate Bill 1047 (Senator Stone)
 Education, Health, and Environmental Affairs

Health - Alcohol and Drug Abuse - Alternative Treatment Programs

This bill provides that defendants meeting specified conditions must be offered the option of entering an “alternative treatment program” under specified circumstances.

Fiscal Summary

State Effect: General fund expenditures could increase by at least \$46,000 in FY 2007, accounting for the bill’s effective date. Future year estimates reflect annualization and inflation. Potential loss of federal funding for drug treatment courts as a result of this bill.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
FF Revenue	-	-	-	-	-
GF Expenditure	46,000	56,000	59,300	62,800	66,600
Net Effect	(\$46,000)	(\$56,000)	(\$59,300)	(\$62,800)	(\$66,600)

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

Local Effect: Any operational costs associated with circuit court judges determining whether a defendant is eligible to be offered the option of entering an alternative treatment program could be handled by existing local resources.

Small Business Effect: None.

Analysis

Bill Summary: A defendant must be offered the option of entering an alternative treatment program if:

- the defendant attempted to enter at least three certified treatment programs and was rejected because of the defendant's lack of insurance to cover drug treatment or inability to pay for treatment;
- the alternative treatment program includes an extended series of educational classes; and
- the alternative treatment program records attendance and participation and provides the information to a court.

Alternative treatment programs must be registered with the Department of Health and Mental Hygiene (DHMH), which is to provide the most current list of available alternative treatment programs to each circuit court and the District Court as often as the list is updated.

Alternative treatment program is defined as: (1) an alcohol or drug abuse treatment program that is not required to be certified with DHMH; or (2) a treatment program offered through a community or religious organization that provides educational support services for persons who have a dependency on drugs or alcohol.

The bill's provisions apply to a defendant who is: (1) evaluated by DHMH for treatment for drug or alcohol abuse pursuant to a court order; (2) committed for treatment by a court for an alcohol or drug dependency; or (3) required to receive treatment as a result of a *nolle prosequi* or stet with requirement of drug or alcohol treatment.

Uncodified language provides that the General Assembly urges the District Court of Maryland and the drug treatment courts throughout the State to encourage the use of alternative drug treatment programs for defendants who are rejected from other treatment programs because of a lack of insurance or inability to pay for drug or alcohol abuse treatment.

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.

An alcohol abuse and drug abuse treatment program must be certified by DHMH before program services may be provided. The requirement does not apply to: (1) a licensed health professional who meets specified requirements; (2) Alcoholics Anonymous, Narcotics Anonymous, transitional housing programs, or other similar organizations, if the organization holds meetings or provides support services to help individuals who show the effects of drug abuse or alcohol abuse; or (3) an employees' assistance program of a business entity. Hospitals meeting specific accreditation requirements can request exemptions from the certification requirement.

As an alternative to incarceration for a criminal defendant charged with a nonviolent offense, a State's Attorney, upon the State's Attorney's own motion or upon request of the defendant, may make an offer to the defendant that if the defendant qualifies for drug or alcohol treatment, the State's Attorney will dismiss the charge by entering a *nolle prosequi* for drug or alcohol treatment or move that the court indefinitely postpone trial of the charge by marking the charge stet with drug or alcohol treatment on the docket.

In order to qualify, a defendant must be evaluated for drug or alcohol abuse by DHMH, its designee, or a private provider. If the evaluation determines that the defendant is amenable to treatment, an appropriate treatment program that is approved by the Alcohol and Drug Abuse Administration (ADAA) must be recommended.

A defendant must accept the offer and sign a consent to disclosure of such treatment information as may be necessary to allow the disclosure of the disposition to criminal justice units. A State's Attorney must dismiss the charge and enter it on the stet or *nolle prosequi* docket upon successful completion of the drug or alcohol treatment by the defendant.

A defendant may only receive one disposition of *nolle prosequi* or stet with the requirement of alcohol or drug treatment.

These options are not available to: (1) a person charged with a crime of violence, abuse and other offensive conduct, stalking or harassment, second degree assault, reckless endangerment, volume dealer, kingpin, importer of a controlled dangerous substance (CDS), use of weapon as a separate crime in connection with CDS, carrying a firearm if a convicted felon, or use of a minor in connection with CDS; or (2) a person who has been convicted of a crime of violence within the previous five years.

Background: 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.

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. Each contract contains incentives if certain performance measures are attained.

According to ADAA, defendants who are evaluated or referred to treatment for drug or alcohol abuse through the court system are referred to public programs. Public programs use a sliding fee scale based on the defendant's ability to pay. ADAA advises that no one is turned away from a public program based on inability to pay.

State Revenues: The Judiciary assists in the operation of a statewide system of drug treatment courts. Twenty-seven drug courts are in operation for fiscal 2006. Thirty-three are slated for operation in fiscal 2007. In June 2005, the program had approximately 1,500 participants. Federal funding for drug courts requires certification "...that all treatment programs and providers used in the drug court program are licensed, certified, or accredited by appropriate state government or professional agencies." The method of operation of drug treatment courts is determined by each local jurisdiction. If this bill affects criminal defendants in drug court, the requirement that defendants meeting specific requirements be offered participation in an alternative treatment program may impact federal funding for drug treatment courts in the State, since alternative treatment programs are uncertified and are only required to register with DHMH under the bill.

State Expenditures: DHMH general fund expenditures could increase by an estimated \$45,998 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. This estimate reflects the cost of hiring one coordinator to: (1) develop guidelines; and (2) develop and maintain the registration of each entity that chooses to become an alternative treatment program. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1
Salary and Fringe Benefits	\$40,533
Operating Expenses	<u>5,465</u>
Total FY 2007 State Expenditures	\$45,998

Future year expenditures reflect: • full salaries with 4.6% annual increases and 3% employee turnover; and • 1% annual increases in ongoing operating expenses.

ADAA advises that:

- 850 requests for evaluation were made under § 8-505 of the Health General Article in calendar 2005;
- one defendant was committed for evaluation under § 8-506 of the Health General Article in fiscal 2005; and
- 358 requests for treatment were made under § 8-507 of the Health General Article in calendar 2005.

Since alternative treatment programs are not required to be certified with DHMH, information on the number of these programs in the State is not readily available.

The District Court does not keep separate statistics on the number of cases resulting in: (1) *nolle prosequi* for drug or alcohol treatment; or (2) stet with drug or alcohol treatment.

The bill does not address if DHMH is required to pay for any costs associated with defendants attending alternative treatment programs. If DHMH is responsible for these costs, general fund expenditures could increase further.

Any operational costs associated with District Court judges determining whether a defendant is eligible to be offered the option of entering an alternative treatment program could be handled by the existing resources of the Judiciary.

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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mam/jr

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