

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1414  
Judiciary

(Delegate Shewell, *et al.*)

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**Criminal Procedure - Violent Offenders - Parole as Condition for Alcohol or Drug Abuse Treatment**

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This bill specifies that a defendant sentenced to the Division of Correction (DOC) after being convicted of a crime of violence is not eligible for a commitment to the Department of Health and Mental Hygiene (DHMH) by the courts for substance abuse treatment under § 8-507 of the Health-General Article until the defendant is eligible for parole.

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**Fiscal Summary**

**State Effect:** Delaying substance abuse treatment options by the courts for certain offenders is not expected to significantly affect State operations or finances. The Alcohol and Drug Abuse Administration (ADAA) can handle the bill's requirements within existing resources since the number of treatment slots annually available to the courts for such referrals is not affected.

**Local Effect:** None.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Under the Health-General Article, § 8-507, a court is authorized to refer an individual to substance abuse treatment as an alternative to incarceration. A court that finds in a criminal case that a defendant has an alcohol or drug dependency may commit the defendant to a drug or alcohol treatment program. The commitment can be made as a condition of release, after conviction, or at any other time the defendant voluntarily agrees to participate in treatment.

The Maryland Parole Commission has the exclusive power to authorize the parole of an inmate in DOC. The Board of Review of the Patuxent Institution has the exclusive power to recommend an inmate for parole to the Secretary of Public Safety and Correctional Services or the Governor.

A person sentenced to a term of incarceration of six months or more is entitled to a parole hearing after having served one-fourth of the term or consecutive terms. A person sentenced to more than one term, including a term during which the person is eligible for parole and a term during which the person is not eligible for parole, cannot be considered for parole unless the person has served the greater of one-fourth of the aggregate term or a period equal to the term during which the inmate is not eligible for parole.

For purposes of parole eligibility for a violent crime, the term “crime of violence” means:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct with a child;
- first degree assault;
- assault with intent to murder, rape, or rob;
- assault with intent to commit first or second degree sexual offense; and
- first, second, or third degree burglary.

Parole eligibility for persons incarcerated for commission of a violent crime is as follows:

- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes or one-fourth of the inmate's total aggregate sentence.
- An inmate who has been sentenced to DOC after being convicted of a violent crime committed on or after October 1, 1994, and who has been sentenced to more than one term of imprisonment, including a term during which the inmate is eligible for parole and a term during which the inmate is not eligible for parole, is not eligible for parole until the inmate has served the greater of one-half of the inmate's aggregate sentence for violent crimes; one-fourth of the inmate's total aggregate sentence; or a period equal to the term during which the inmate is not eligible for parole.
- An inmate who is serving a term of imprisonment for a violent crime committed on or after October 1, 1994, must receive an administrative review of the inmate's progress in the correctional facility after the inmate has served the greater of one-fourth of the inmate's aggregate sentence; or if the inmate is serving a term of imprisonment that includes a mandatory term during which the inmate is not eligible for parole, a period equal to the term during which the inmate is not eligible for parole.

A person sentenced to life imprisonment is not eligible for parole consideration until that person has served 15 years. A person sentenced to life imprisonment for first degree murder is not eligible for parole consideration until that person has served 25 years. An inmate sentenced to life imprisonment without the possibility of parole is not eligible for parole consideration and may not be granted parole at any time during the inmate's sentence. This does not restrict the authority of the Governor to pardon or remit any part of a sentence. If eligible for parole, an inmate serving a life term may only be paroled with the approval of the Governor.

**Background:** The Maryland State Commission on Criminal Sentencing Policy received guideline worksheets in fiscal 2008 from the circuit courts for 2,003 offenders convicted of a crime of violence. The worksheets indicate that these offenders were convicted of 2,904 crimes of violence. It is not known how many of these persons may have been considered by a court for a § 8-507 commitment prior to parole eligibility.

While this bill may delay a § 8-507 commitment for persons convicted of violent crimes and otherwise eligible for treatment referrals until after eligibility for parole release, the number of actual referrals made by a court in any given year is limited by available

treatment slots. Accordingly, the number of annual court referrals under § 8-507 are not expected to change under the bill.

Recent reports by the Department of Legislative Services have found that a lack of residential treatment alternatives has limited the use of § 8-507 commitments. ADAA rebid its three statewide residential contracts in calendar 2009. The existing contracts for women and children (46 beds) and co-occurring disorders (80 beds) are not exclusively for court-involved individuals although generally serve such clients. The third, and largest, contract is exclusively for court-ordered individuals (110 beds). The Judiciary continues to have concerns generally about how court-ordered treatment should be funded in the context of overall prevention and treatment funding.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 695 (Senator Haines) - Judicial Proceedings.

**Information Source(s):** Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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