

The Justice Reinvestment Act Supplement for Notes and Forms: Health General Sections 8-505; 8-506; and 8-507¹

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¹ Version 1.1 10/5/16

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Summary

The 2016 Justice Reinvestment Act includes some drastic changes to Health General Sections 8-505 and 8-507.³ In theory, these changes should favor people suffering from drug addiction in Maryland. The Justice Reinvestment Act states: “It is the intent of the General Assembly that the Governor provide funding annually in the budget bill for... the Department of Health and Mental Hygiene to expand the use of drug treatment under Section 8-507 of the Health General Article...”⁴

Maryland criminal practitioners should be aware of two key points. One, clients convicted for possession of a controlled dangerous substance may compel a sentencing court to either 1) order probation with treatment; 2) if a client is incarcerated, order the detention facility to provide treatment; or, if not, 3) the sentencing judge must state on the record the basis for denial.⁵ The second point is that the Department of Health and Mental Hygiene is now compelled to provide immediate services to incarcerated clients.⁶

NOTE: The 2016 Justice Reinvestment Act has many provisions that do not take effect until at least 2017. This article is meant as a useful guide. Practitioners should verify the status of specific amendments in the event they have not yet taken effect or have been subject to further amendment.

Specific Amendments

Maryland Criminal Law Article Section 5-601, as amended reads in pertinent part, that ***when a defendant is convicted*** under this section, “Before imposing a sentence ... the court may order the Department of Health and Mental Hygiene or a certified and licensed designee to conduct an assessment of the defendant for substance use disorder and determine whether the defendant is in need of and may benefit from drug treatment ... ***if an assessment for substance use disorder is requested by the defendant and the court***

³ See *Generally*: Justice Reinvestment Act, 2016 Maryland Laws Ch. 515 (S.B. 1005).

⁴ *Id.* at Section 6.

⁵ *Id.* at Maryland Criminal Law Article Section 5-601.

⁶ See *Id.* at Maryland Health General Article Sections 8-505 and 8-507 (the language now reads “shall facilitate the immediate treatment... if a defendant...is not placed in treatment within 21 days of the order [for treatment], the court may order the Department [of Health and Mental Hygiene] to appear [in court].” See also and compare to Paul J. Notarianni *Notes and Forms: Health General Sections 8-505; 8-506; and 8-507*, The Maryland Advocate Version 2.0 Beta! (www.theMarylandAdvocate.com) (Version 1.0 Date 7.1.2016); “...a conservative time estimate between the initial filing [of Health General 8-505] and the Defendant being taken into the custody of the Department of Health and Mental Hygiene is one hundred and twenty days.”

denies the request, the court shall state on the record the basis for the denial ... the court shall consider the results of an assessment performed ... when imposing the defendant's sentence and ... **the court shall suspend the execution of the sentence and order probation** and, if the assessment shows that the defendant is in need of substance abuse treatment, require the Department of Health and Mental Hygiene or the designee to provide the medically appropriate level of treatment as identified in the assessment; **or the court may impose a term of imprisonment... and order...[the] correctional facility to facilitate** the medically appropriate level of **treatment for the defendant** as identified in the assessment."⁷

Health General Article Section 8-505 (d)(3) as amended reads in pertinent part "Whenever an evaluator recommends treatment, the evaluator's report shall name a specific program able to **immediately** provide for the recommended treatment."⁸

Health General Article Section 8-505 (e)(1) as amended reads "The Department [of Health and Mental Hygiene] shall **immediately** provide the services required by this section."⁹

Health General Article Section 8-505 (d)(2) and (e)(2), as amended, has had the language "if appropriate funding is provided" stricken. As amended, it reads "a designee of the Department [of Health and Mental Hygiene] may carry out any of its duties under this section."¹⁰

Health General Article Section 8-507 (e) has had drastic revision. As amended, the following language has been stricken: "A court may not order that the defendant be delivered for treatment until...the Department [of Health and Mental Hygiene] gives the court notice that an appropriate treatment program is able to begin treatment of the Defendant." Section 8-507 (e)(2) and (3) As amended, it reads, in pertinent part, that the Department of Health and Mental Hygiene "**shall facilitate the immediate treatment** of a defendant unless the court finds exigent circumstances to delay commitment for treatment for longer than 30 days... **if a defendant** who has been committed for treatment under this section **is not placed in treatment within 21 days of the order, the court may order the Department to appear** to explain the reason for the lack of placement."¹¹

Maryland Correctional Services Article Section 7-401 as amended reads, in pertinent part, "If a parolee is alleged to have violated a condition of parole ... [and is subsequently found to be in violation] ... the

⁷ *Emphasis added. See:* Justice Reinvestment Act, 2016 Maryland Laws Ch. 515 (S.B. 1005) at Maryland Criminal Law Article Section 5-601. Maryland Criminal Law Article Section 5-601 criminalizes possession of controlled dangerous substances.

⁸ *Emphasis added. See: id.* at Health General Article Section 8-505.

⁹ *Emphasis added. Id.*

¹⁰ *Id.*

¹¹ *Emphasis added. Id.* at Health General Article Section 8-507. *See also* Notarianni, *supra* note 6, at pages 5, 14-16: "If an inordinate amount of time has passed, and a client remains incarcerated; counsel should consider sending a direct inquiry letter to the Department of Health and Mental Hygiene. In extreme circumstances, counsel may wish to file a petition for contempt of court on the Department of Health and Mental Hygiene to force compliance;" "Update Letter to Department of Health and Mental Hygiene"; and "Show Cause Petition for Failure to Comply."

commissioner may...commit the parolee to the Department of Health and Mental Hygiene for treatment under Section 8-507 of the Health General Article.”¹²

Maryland Criminal Law Article Section 5-607 as amended reads, in pertinent part, “A person convicted under this section is not prohibited from participating in a drug treatment program under section 8-507 of the Health General Article because of the length of the sentence.”¹³

Maryland Criminal Procedure Article Sections 6-223 and 6-224 now reads, in pertinent part, that if a probationer is found to be in violation of probation “the court may...commit the probationer or defendant to the Department of Health and Mental Hygiene for treatment under Section 8-507 of the Health General Article.”¹⁴

Maryland State Government Article Section 9-3207 as amended reads, in pertinent part, that at each meeting of the Justice Reinvestment Oversight Board, “the Secretary of the Department of Health and Mental Hygiene, or the Secretary’s designee, shall report to the Board 1) the number of individuals committed to the Department of Health and Mental Hygiene for treatment under Section 8-507 of the Health General Article in the previous 3 months including the number of days that it took to place each individual into treatment and where the individual was placed for treatment [and] 2) the number of individuals committed to the Department of Health and Mental Hygiene for treatment under Section 8-507 of the Health General Article who are waiting for treatment but cannot be placed due to lack of capacity...”¹⁵

¹² *Id.* at Maryland Correctional Services Article Section 7-401.

¹³ *Id.* at Maryland Criminal Law Name Article Section 5-607.

¹⁴ *Id.* at Maryland Criminal Procedure Article Sections 6-223 and 6-224.

¹⁵ *Id.* at Maryland State Government Article Section 9-3207.