

Notes and Forms: Health General Sections 8-505; 8-506; and 8-507¹

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Table of Contents

Overview of Health General Relief Under Sections 8-505; 8-506; and 8-507 (Page 3)

Motion for Evaluation by the Department of Health and Mental Hygiene (Page 7)

Motion for Evaluation by the Department (Multiple Sentencing Judges) (Page 8)

Sample Consent for Treatment Pursuant to Health General Article 8-507(b)(2) (Page 10)

Sample Letter to Client Regarding Consent for Treatment (Page 11)

Sample Commitment Order Pursuant to 8-507 (Page 12)

Sample Transportation Order (Page 13)

Update Letter to Department of Health and Mental Hygiene (Page 14)

Show Cause Petition for Failure to Comply (Page 15)

Overview of Health General Relief Under Sections 8-505; 8-506; and 8-507

Maryland Law allows a Defendant who is either awaiting trial, under sentence, or at any other time to receive relief under Health General Article 8-505, 8-506, and 8-507.³ These statutes work in tandem to allow a Defendant to be released from the custody of the Department of Public Safety and Correctional Services or Local Detention, to the Department of Health and Mental Hygiene to receive treatment.⁴ The statutes permit the relief to be given prior to trial.⁵ However, a conservative time estimate between the initial filing and the Defendant being taken into the custody of the Department of Health and Mental Hygiene is one hundred and twenty days.⁶ That being the case, seeking relief under these sections is not commonly feasible for Defendants prior to trial.⁷ Counsel should refer to the Maryland District Court's standard motions for relief.⁸

It should be noted that the standard ninety-day filing rule, prescribed by Maryland Rule 4-345, is not applicable in this instance.⁹ A court has the authority, under Health General Article 8-505 and 8-507, to grant relief, under said sections, to a Defendant currently incarcerated and amends his sentence accordingly.¹⁰ The Maryland Court of Special Appeals has held that when Health General Section 8-507(a) is read in tandem with the sub section of Health General Section 8-507 prohibiting a court from ordering a defendant into drug or alcohol treatment until any sentence of incarceration for that defendant is no longer in effect, leads to the conclusion that the court may use the powers set forth in Section 8-507 by suspending the sentence even if the provisions of Maryland Rule 4-345 are not met.¹¹ The Court acknowledged that Health General Section 8-507

³ See Generally Maryland Health General Section 8-505, 8-506, and 8-507. See *infra* Motion for Evaluation by the Department of Health and Mental Hygiene (Single Judge) at page 7.

⁴ *Id.*

⁵ *Id.*

⁶ 120 days is an estimate based on the author's prior experiences. The number could vary widely in different jurisdictions and judges.

⁷ *Id.*

⁸ These forms can be located at <http://mdcourts.gov/courtforms/internal/table.html>. DC/CR 101, DC/CR 102, DC/CR 103, DC/CR 104, DC/CR 105, and DC/CR 109.

⁹ See Generally Maryland Health General Section 8-505, 8-506, and 8-507, Maryland Rule 4-345, and *Howsare v. Maryland* 185 Md. App. 369, 384 (2009).

¹⁰ *Id.*

¹¹ *Howsare v. Maryland* 185 Md. App. 369, 384 (2009).

(e)(iii) states that as a condition of admission to a facility, a sentence of incarceration for the defendant is no longer in effect.¹² However, the Health General Section overall, Section 8-507 (a) in particular, and Maryland Rule 4-345 by implication of Section 8-507, authorize the court revisory power over a sentence to make a defendant eligible for admission to a facility.¹³ When the entire sentence of incarceration is suspended, the sentence is no longer in effect and therefore the requirements of Health General 8-507(e)(iii) are met.¹⁴

Attempting to achieve Health General relief for a client becomes significantly more complicated when a client is serving multiple sentences with multiple judges.¹⁵ In order to receive ultimate relief under Health General Section 8-507, a Defendant must be released from all outstanding sentences, before commitment to the Department of Health and Mental Hygiene.¹⁶ If Health General relief is still sought by a client in such circumstances, counsel must make efforts to have the existing sentences suspended.¹⁷ This may be done by relief under Maryland Rule 4-345.¹⁸ In the case of expired general revisory power, similar relief may be obtained through Health General Section 8-507 implication.¹⁹

In order to present a more compelling argument to the subsequent courts, it may be in the Defendant's best interest to obtain an evaluation, pursuant to Health General Section 8-505.²⁰ If one sentencing judge grants an evaluation, recommending treatment, it can only strengthen the client's future request for relief with the other sentencing

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 387: "a sentencing judge in a criminal proceeding is vested with virtually boundless discretion, provided the sentence does not violate any constitutional requirements... the trial judge, having observed the defendant before and after treatment, will be in the position to determine whether society's interest would be better served if that defendant, upon completion of treatment, is returned to prison or released."

¹⁵ See Maryland Health General Section 8-507, see *infra* Motion for Evaluation by the Department of Health and Mental Hygiene (Multiple Judges) at page 8.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* and Maryland Rule 4-345.

¹⁹ See *Generally: Howsare v. Maryland*, 185 Md. App. 369 (2009).

²⁰ See Maryland Health General Section 8-507, see *infra* Motion for Evaluation by the Department of Health and Mental Hygiene (Multiple Judges) at page 8.

judges.²¹ In making a request for an 8-505 evaluation to the first sentencing judge, counsel should clearly indicate 1) that the client has other outstanding sentences, 2) demonstrate the steps counsel is taking to relieve the client other sentences (i.e. Rule 4-345 motion being held *sub curia*) and 3) indicate that relief under Section 8-507 will not be sought until the resolution of the other sentences.²²

A client must give informed consent to receive treatment under the Health General Article.²³ The consent must be reduced to a writing and included in the motion for relief under the section.²⁴ Typically, a client will be incarcerated during the process for seeking Health General Relief.²⁵ As such, it may be difficult for counsel to obtain the necessary consent form in person.²⁶ There is a standard court form for commitment and transport, pursuant to 8-507.²⁷ Nevertheless, some counsel and courts prefer independently drafted orders.²⁸

For a variety of reasons, after an 8-507 order has been granted, there may be a delay in a client being taken into the custody of the Department of Health and Mental Hygiene. The Alcohol and Drug Abuse Administration (part of the Department of Health and Mental Hygiene) is charged with overseeing and coordinating Health General Relief. 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.²⁹ 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.³⁰

²¹ *Id.*

²² *Id.*

²³ See *infra* Consent for Treatment Pursuant to Health General Article 8-507(b)(2) at page 10 and CC-DR/CR 109 at <http://mdcourts.gov/courtforms/internal/table.html>

²⁴ *Id.*

²⁵ See *infra* Explanation Letter to Defendant Regarding Consent for Treatment Pursuant to Health General Article 8-507(b)(2) at page 11.

²⁶ *Id.*

²⁷ CC-DR/CR 104, 105 and 109 at <http://mdcourts.gov/courtforms/internal/table.html>.

²⁸ See *infra* *Transportation Order* and *Commitment Order* at pages 12 and 13.

²⁹ See *infra* *Letter to ADA Justice Services/Office of Forensics Services* at page 14.

³⁰ See *infra* *Petition for Show Cause Order for Contempt* at page 15. Example: a defendant is incarcerated and on an administrative punishment for a regulation violation in the Department of Public Safety and Correctional Services. The Department may refuse to transport the client. However, this justification is invalid under COMAR section 12.02.27.03, which holds that all administrative punishments are immediately suspended in the case of transportation for mental health services.

IN THE DISTRICT / CIRCUIT COURT FOR BLANK COUNTY / CITY

STATE OF MARYLAND,
Plaintiff,

V. Case No:

J. DOE,
Defendant.

Motion for Evaluation by the Department of Health and Mental Hygiene

Comes Now: The above captioned Defendant, by and through counsel, pursuant to Health General Sections 8-505, 8-506, and 8-507, and all other applicable law, to request relief under those sections, and offers the following:

One: On (Conviction Date), this Honorable Court found the Defendant Guilty of (Charge) in the above captioned matter, and that the Defendant received a sentence of (Length and Nature of Sentence).

Two: That the Defendant is currently under sentence in the following matters identified in the preceding paragraph in the (Name of Detention Facility).

Three: To the best of counsel's knowledge and belief, the matters identified in paragraph one represent all of the Defendant's current sentences and that there are no unserved warrants or detainers or other sentences.

Four: That the Defendant consents to treatment and the release of any information necessary for the evaluation and referral pursuant to Health General Sections 8-505, 8-506, and 8-507. (See attached Consent Form and Release of Information).

Five: The Defendant offers all criminal conduct of the Defendant was caused in part or in whole by the Defendant's substance abuse condition, that the Defendant has never benefited from substantial long-term treatment, and that such treatment is a critical and necessary component of the Defendant's rehabilitation into society.

Wherefore: The Defendant requests the following relief: 1) An order for evaluation pursuant to Health General Section 8-505; 2) Placement pursuant to Health General 8-507; and for any further relief which this Honorable Court finds appropriate.

END FORM

IN THE DISTRICT / CIRCUIT COURT FOR BLANK COUNTY / CITY

STATE OF MARYLAND,
Plaintiff,

V. Case No:

J. DOE,
Defendant.

Motion for Evaluation Motion for Evaluation by the Department of Health and Mental
Hygiene (Multiple Sentencing Judges)

Comes Now: The above captioned Defendant, by and through counsel, pursuant to Health General Sections 8-505, 8-506, and 8-507, and all other applicable law, to request relief under those sections, and offers the following:

One: On (Conviction Date), this Honorable Court found the Defendant Guilty of (Charge) in the above captioned matter, and that the Defendant received a sentence of (Length and Nature of Sentence).

Two: That the Defendant is currently under sentence in the following matters identified in the preceding paragraph in the (Name of Detention Facility).

Three: To the best of counsel's knowledge and belief, the Defendant has additional sentences from other courts of this State, specifically (Identify additional sentences, courts, whether the sentences are consecutive or concurrent, length and nature of sentences).

Four: To the best of counsel's knowledge and belief, the matters identified in paragraphs one and three represent all of the Defendant's current sentences and that there are no unserved warrants or detainers or other sentences.

Five: That the Defendant wishes to receive treatment and relief pursuant to the Health General Article, and to that end, wishes to have an evaluation performed on him, pursuant to Health General Article 8-505, with the knowledge that relief under that subsection will not be available to the Defendant until all of the sentences identified in paragraph three are resolved as defined under Health General Article 8-507.

Six: That the Defendant has (taken or intended to take) the following steps to resolve his outstanding sentences identified in paragraph three.

Seven: That the Defendant consents to treatment and the release of any information necessary for the evaluation and referral pursuant to Health General Sections 8-505,

8-506, and 8-507. (*See attached Consent Form and Release of Information*).

Eight: The Defendant offers all criminal conduct of the Defendant was caused in part or in whole by the Defendant's substance abuse condition, that the Defendant has never benefited from substantial long-term treatment, and that such treatment is a critical and necessary component of the Defendant's rehabilitation into society.

Wherefore: The Defendant requests the following relief: 1) An order for evaluation pursuant to Health General Section 8-505 and for any further relief which this Honorable Court finds appropriate.

END FORM

IN THE DISTRICT / CIRCUIT COURT FOR BLANK COUNTY / CITY

STATE OF MARYLAND,
Plaintiff,

V. Case No:

J. DOE,
Defendant.

Consent for Treatment Pursuant to Health General Article 8-507(b)(2)

I, (Defendant's Name), agree to receive treatment and do voluntarily consent to treatment at a treatment program arranged by the Department of Health and Mental Hygiene.

I further agree to enter and complete any residential or out-patient program recommended and arranged by the Department of Health and Mental Hygiene and to comply with the terms of any Probation Order in this case and any after-care plan developed for me. I have been informed that if I fail to comply with the conditions of my probation, I will face imposition of the sentence which was suspended.

I further agree to the release of any and all information pertaining to my evaluation, treatment, and counseling to the District Court of Maryland, or the Circuit Court for Allegany County, the Department of Health and Mental Hygiene; any applicable pretrial agency; and the Division of Parole and Probation.

The terms of this document have been fully explained to me, and I have been given the opportunity to ask questions.

Signature of Defendant

____/____/____
Date

Signature of Attorney

END FORM

LETTERHEAD

Dear (Defendant's Name):

As you have previously indicated, you wish to seek relief under Maryland Health General Article Sections 8-505, 8-506, and 8-507.

Enclosed with this letter is a consent for treatment form. If you still wish to seek treatment pursuant to Maryland Health General Article 8-505, 8-506, and 8-507; I will need you to sign this form and return it to me as part of our motion to the court.

The first part of the waiver indicates that you wish to receive treatment.

The second part states that you understand and agree to fully participate in a treatment program and obey all of its terms and conditions. It also states that the terms of the program become probation terms and if you violate them, it is the same as a probation violation. This means, if you do not obey or fail to obey the conditions of treatment, you could be subject to any suspended sentence in our case.

The last section is a waiver for your medical and treatment records to be disclosed to the court, the State's Attorney, Parole and Probation, and the Department of Health and Mental Hygiene.

If you understand the waiver, and wish to go into treatment, sign it and return it to me. If you do not understand the terms, do not sign it. Write back so that I can explain them to you again and answer any questions.

END FORM

IN THE DISTRICT / CIRCUIT COURT FOR BLANK COUNTY / CITY

STATE OF MARYLAND,
Plaintiff,

V.

Case No:

J. DOE,
Defendant.

Commitment Order

HAVING READ AND CONSIDERED the Defendant's Motion for Evaluation, the subsequent report of the (Department of Health and Mental Hygiene or Specific County Health Department), and the TAP Narrative, having found that the Defendant has a drug dependency, and having obtained the written consent of the Defendant to obtain treatment and to permit reporting back to the Court, it is this _____ day of _____, by the (Identify Court), it is hereby

ORDERED that the Defendant is hereby committed to the Department of Health and Mental Hygiene (hereafter referred to as DHMH) for the purpose of long-term, inpatient treatment at the appropriate treatment facility determined by DHMH, pursuant to Health General Article, Section 8-507; and it is further,

ORDERED that upon notification by DHMH that a bed is available, the Defendant will be transferred from the custody of the Division of Correction to the custody of DHMH for placement at the appropriate facility; and it is further,

ORDERED that upon completion of the program, the Defendant is to be returned to the Court for further review; and it is further,

ORDERED that in the event that the Defendant leaves the treatment facility without authorization, or withdraws his consent for treatment, the Department shall immediately notify this Court, Office of the State's Attorney, and counsel for the Defendant.

JUDGE

END FORM

IN THE DISTRICT / CIRCUIT COURT FOR BLANK COUNTY / CITY

STATE OF MARYLAND,
Plaintiff,

V. Case No:

J. DOE,
Defendant.

Transportation Order

Having committed the Defendant to the Department of Health and Mental Hygiene for the purpose of treatment, pursuant to Health General Article, Section 8-507, it is this _____ day of _____, 20____, by the (Name of Court) for (County/City), Maryland;

Ordered that upon notification by the Department of Health and Mental Hygiene that a bed is available, the Transportation Unit of the (Division of Correction or Local Detention) shall transport the Defendant from his current location at the (Name of Institution and Address) to (Name of Institution and Address) for release to the custody of the Department of Health and Mental Hygiene.

Judge

END FORM

LETTER HEAD

ADAA Justice Services/Office of Forensics Services
8470 Dorsey Run Road
Jessup, MD 20794-9486

DATE

RE: *Maryland v.* (DEFENDANT)

Dear Sir or Madam:

I represent (DEFENDANT). (DEFENDANT) is currently incarcerated in the (Department of Public Safety and Correctional Services/ Sheriff's Department) at (Name of Institution).

On (DATE), (DEFENDANT) was granted an Order, pursuant to Health General 8-507, from the (Circuit/District) Court of Maryland, for (County Name).

The Ordered states that (DEFENDANT) was to be committed into the custody of the Department of Health and Mental Hygiene on or about (DATE indicated on Order).

As of this time, (DEFENDANT) has not been transported into the custody of the Department of Health and Mental Hygiene.

Please advise as to my client's status and expected transport date.

Sincerely,

END FORM

IN THE DISTRICT / CIRCUIT COURT FOR BLANK COUNTY / CITY

STATE OF MARYLAND,
Plaintiff,

V. Case No:

J. DOE,
Defendant.

Petition for Show Cause Order for Contempt

COMES NOW: The above captioned Defendant, by and through counsel, to hereby state that:

ONE: On (Date of 8-507 Order), this Honorable Court ordered the Defendant to a commitment to the Department of Health and Mental Hygiene for Drug or Alcohol treatment, pursuant to Health General Section 8-507. The Defendant was to be taken into the custody of the Department of Health and Mental Hygiene on, or about, (Date of Original Commitment).

TWO: That the head of the Department of Health and Mental Hygiene is Dr. (Name), M.D., Secretary of Health and Mental Hygiene. The Secretary's offices are located at 201 West Preston Street, Baltimore, MD 21201.

THREE: That the Defendant alleges that the Department of Health and Mental Hygiene has violated the Court's order as follows: The Department of Health and Mental Hygiene has failed to take the Defendant into custody for inpatient treatment, in direct violation of the order. The Defendant remains incarcerated in (the Department of Correctional Services and Public Safety/Sheriff's Department) at (Name of Institution). As of the date of this filing, it has been (Amount of elapsed time) from the Order's original transfer date.

FOUR: Undersigned counsel has made the following efforts to communicate and resolve this matter with the Department of Health and Mental Hygiene: (Describe efforts).

FIVE: Undersigned counsel has (or has not) received the following response from the Department of Health and Mental Hygiene: (Describe response, if any).

SIX: The Department of Health and Mental Hygiene is bound by the order of this Honorable Court and has no authority to summarily ignore the order of this Court.

SEVEN: The Department of Health and Mental Hygiene had the ability, duty, and obligation to seek to have the order of this court amended or modified if it felt it had

difficulty in satisfying its requirements.

EIGHT: The Defendant is still adamant about receiving treatment for his substance abuse condition.

WHEREFORE: The Defendant respectfully requests that this Honorable Court pass an order to require the Department of Health and Mental Hygiene, specifically Dr. (Name), to appear before this Honorable Court and show cause why an order for contempt should not be passed, and grant any relief that this Honorable Court finds to be appropriate and necessary, to include incarceration, until the court order is obeyed.

Description of Alleged Violator

NAME: Dr. (NAME), Secretary.

ORGANIZATION: Department of Health and Mental Hygiene

ADDRESS: 201 West Preston Street, Baltimore, MD 21201.

END FORM