



Senate

General Assembly

File No. 585

January Session, 2001

Substitute Senate Bill No. 1428

Senate, May 3, 2001

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PRISON OVERCROWDING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) For the purposes of sections 1 to 6, inclusive, of
2 this act:

3 (1) "Nonviolent drug possession offense" means an offense wherein
4 a person possesses controlled substances for personal use and not with
5 intent to sell or dispense, which possession is not authorized by
6 chapter 420b of the general statutes, and which offense did not involve
7 the use, attempted use or threatened use of physical force against
8 another person and in the commission of which such person neither
9 was armed with nor threatened the use of or displayed or represented
10 by word or conduct that such person possessed any firearm, deadly
11 weapon or dangerous instrument, as those terms are defined in section
12 53a-3 of the general statutes.

13 (2) "Drug treatment program" means a licensed or certified

14 community drug treatment program that may include one or more of
15 the following: Outpatient treatment, halfway house treatment, narcotic
16 replacement therapy, drug education or prevention courses and
17 limited inpatient or residential drug treatment as needed to address
18 special detoxification or relapse situations or severe dependence.

19 (3) "Successful completion of a drug treatment program" means that
20 a person who has had participation in a drug treatment program
21 imposed as a condition of probation under section 2 of this act has
22 completed the prescribed course of drug treatment and, as a result,
23 there is reasonable cause to believe that such person will not abuse
24 controlled substances in the future.

25 Sec. 2. (NEW) (a) Notwithstanding any provision of the general
26 statutes, and except as provided in subsection (c) of this section, there
27 shall be a presumption that any person convicted of a nonviolent drug
28 possession offense on and after the effective date of this act shall be
29 sentenced to a term of imprisonment, with the execution of such
30 sentence of imprisonment suspended entirely, and to a period of
31 probation.

32 (b) As a condition of such probation, the court shall require
33 participation in and successful completion of an appropriate drug
34 treatment program. In addition to any term or condition of probation
35 that may be ordered pursuant to section 53a-31 of the general statutes,
36 the court may also order, as a condition of such probation, that such
37 person participate in vocational training, family counseling, literacy
38 training or community service. The court may require any person who
39 is reasonably able to do so to contribute to the cost of their
40 participation in such drug treatment program.

41 (c) This section shall not be applicable to any person who: (1) Has
42 been convicted within the previous five years of a felony or
43 misdemeanor involving the use, attempted use or threatened use of
44 physical force against another person; (2) in addition to the conviction

45 of the nonviolent drug possession offense, has been convicted in the
46 same proceeding of any felony or of a misdemeanor not related to the
47 use of drugs; (3) has, at separate times prior to the commission of the
48 present nonviolent drug possession offense, been twice convicted of a
49 nonviolent drug possession offense, has participated in two separate
50 courses of drug treatment pursuant to this section and is found by the
51 court, by clear and convincing evidence, to be unamenable to any and
52 all forms of available drug treatment; or (4) refuses participation in a
53 drug treatment program as a condition of probation.

54 (d) Within seven days of an order imposing probation under this
55 section, the Office of Adult Probation shall notify the drug treatment
56 provider designated to provide drug treatment under this section. Not
57 later than thirty days after receiving such notice, the treatment
58 provider shall prepare a treatment plan and forward it to the Office of
59 Adult Probation. After the person begins the drug treatment program,
60 the treatment provider shall prepare and forward a progress report to
61 the Office of Adult Probation on a quarterly basis.

62 (e) If, during the course of drug treatment, the treatment provider
63 notifies the Office of Adult Probation that the defendant is unamenable
64 to the drug treatment being provided, but may be amenable to other
65 drug treatments or related programs, the Office of Adult Probation
66 may move the court to modify the terms of probation to ensure that
67 the person receives the alternative drug treatment or program.

68 (f) If, during the course of drug treatment, the treatment provider
69 notifies the Office of Adult Probation that the defendant is unamenable
70 to the drug treatment being provided and all other forms of drug
71 treatment, the Office of Adult Probation may move for the revocation
72 of such person's probation. At the probation revocation hearing, unless
73 the person proves by a preponderance of the evidence that there is a
74 drug treatment program to which such person is amenable, the court
75 may revoke such person's probation.

76 (g) Drug treatment services provided as a condition of probation
77 under this section shall not exceed a period of twelve months, except
78 that additional aftercare services as a condition of probation may be
79 required for not more than six months.

80 (h) If such person successfully completes such person's drug
81 treatment program and period of probation, such person may apply
82 for dismissal of the charges against such person and the court, on
83 finding such successful completion, shall dismiss such charges. If the
84 person does not apply for dismissal of the charges against such person
85 after successfully completing such person's drug treatment program
86 and period of probation, the court, upon receipt of a report submitted
87 by the Office of Adult Probation that the person successfully
88 completed such person's drug treatment program and period of
89 probation, may on its own motion make a finding of such successful
90 completion and dismiss such charges. Upon dismissal, all records of
91 such charges shall be erased pursuant to section 54-142a of the general
92 statutes. An order of the court denying a motion to dismiss the charges
93 against a person who has completed such person's drug treatment
94 program and period of probation shall be a final judgment for
95 purposes of appeal.

96 Sec. 3. (NEW) (a) If a person sentenced to a period of probation in
97 accordance with section 2 of this act violates that probation by (1)
98 being arrested for an offense other than a nonviolent drug possession
99 offense, or (2) violating a non-drug-related condition of probation, the
100 state may proceed as provided in section 53a-32 of the general statutes
101 with respect to such alleged violation.

102 (b) If a person sentenced to a period of probation in accordance with
103 section 2 of this act violates that probation by (1) being arrested for a
104 nonviolent drug possession offense, or (2) violating a drug-related
105 condition of probation, the state may proceed as provided in section
106 53a-32 of the general statutes with respect to such alleged violation.

107 Notwithstanding the provisions of subsection (b) of section 53a-32 of
108 the general statutes and except as provided in subsections (c) and (d)
109 of this section, the court shall not revoke such probation unless the
110 state proves by a preponderance of the evidence that such person
111 violated a condition of probation and poses a danger to the safety of
112 other persons.

113 (c) If a person sentenced to a period of probation in accordance with
114 section 2 of this act violates that probation for a second time by (1)
115 being arrested for a nonviolent drug possession offense, or (2)
116 violating a drug-related condition of probation, the state may proceed
117 as provided in section 53a-32 of the general statutes with respect to
118 such alleged violation. Notwithstanding the provisions of subsection
119 (b) of section 53a-32 of the general statutes, the court shall not revoke
120 such probation unless the state proves by a preponderance of the
121 evidence that such person violated a condition of probation and that
122 such person poses a danger to the safety of other persons or is
123 unamenable to drug treatment. In determining whether such person is
124 unamenable to drug treatment, the court may consider, to the extent
125 relevant, whether such person (A) has committed a serious violation of
126 rules at the drug treatment program, (B) has repeatedly committed
127 violations of program rules that inhibit such person's ability to
128 function in the program, or (C) has continually refused to participate
129 in the program or asked to be removed from the program.

130 (d) If a person sentenced to a period of probation in accordance with
131 section 2 of this act violates that probation for a third time by (1) being
132 arrested for a nonviolent drug possession offense, or (2) violating a
133 drug-related condition of probation, the state may proceed as provided
134 in section 53a-32 of the general statutes with respect to such alleged
135 violation.

136 Sec. 4. (NEW) (a) If a person on probation on the effective date of
137 this act for a nonviolent drug possession offense violates that

138 probation by (1) being arrested for an offense other than a nonviolent
139 drug possession offense, or (2) violating a non-drug-related condition
140 of probation, the state may proceed as provided in section 53a-32 of the
141 general statutes with respect to such alleged violation.

142 (b) If a person on probation on the effective date of this act for a
143 nonviolent drug possession offense violates that probation by (1) being
144 arrested for a nonviolent drug possession offense, or (2) violating a
145 drug-related condition of probation, the state may proceed as provided
146 in section 53a-32 of the general statutes with respect to such alleged
147 violation. Notwithstanding the provisions of subsection (b) of section
148 53a-32 of the general statutes, the court shall not revoke such probation
149 unless the state proves by a preponderance of the evidence that such
150 person violated a condition of probation and poses a danger to the
151 safety of other persons. If the court modifies or enlarges the conditions
152 of probation, it may require participation in and successful completion
153 of a drug treatment program as provided in section 2 of this act as a
154 condition of probation.

155 (c) If a person on probation on the effective date of this act for a
156 nonviolent drug possession offense violates that probation for a second
157 time by (1) being arrested for a nonviolent drug possession offense, or
158 (2) violating a drug-related condition of probation, the state may
159 proceed as provided in section 53a-32 of the general statutes with
160 respect to such alleged violation. Notwithstanding the provisions of
161 subsection (b) of section 53a-32 of the general statutes, the court shall
162 not revoke such probation unless the state proves by a preponderance
163 of the evidence that such person violated a condition of probation and
164 poses a danger to the safety of other persons or is unamenable to drug
165 treatment. In determining whether such person is unamenable to drug
166 treatment, the court may consider, to the extent relevant, whether such
167 person (A) has committed a serious violation of rules at the drug
168 treatment program, (B) has repeatedly committed violations of
169 program rules that inhibit such person's ability to function in the

170 program, or (C) has continually refused to participate in the program
171 or asked to be removed from the program. If the court modifies or
172 enlarges the conditions of probation, it may impose participation in a
173 drug treatment program as provided in section 2 of this act as a
174 condition of probation.

175 (d) If a person on probation on the effective date of this act for a
176 nonviolent drug possession offense violates that probation for a third
177 time by (1) being arrested for a nonviolent drug possession offense, or
178 (2) violating a drug-related condition of probation, the state may
179 proceed as provided in section 53a-32 of the general statutes with
180 respect to such alleged violation.

181 Sec. 5. (NEW) (a) Notwithstanding any provision of the general
182 statutes, and except as provided in subsection (b) of this section and
183 subsections (b) and (c) of section 6 of this act, the Board of Parole shall
184 not revoke the parole of any person who is arrested for the commission
185 of a nonviolent drug possession offense or who violates a drug-related
186 condition of parole. The Board of Parole shall impose as a condition of
187 parole for any such person that such person participate in and
188 successfully complete an appropriate drug treatment program. The
189 board may also impose, as a condition of such parole, that such person
190 participate in vocational training, family counseling, literacy training
191 or community service. The board may require any person who is
192 reasonably able to do so to contribute to the cost of their participation
193 in such drug treatment program.

194 (b) The provisions of subsection (a) of this section shall not apply to:
195 (1) Any parolee who has been convicted within the previous five years
196 of a felony or misdemeanor involving the use, attempted use or
197 threatened use of physical force against another person; (2) any parolee
198 who, concurrently with an arrest for the commission of a nonviolent
199 drug possession offense or with a violation of any drug-related
200 condition of parole, is arrested for a felony or a misdemeanor not

201 related to the use of drugs; or (3) any parolee who refuses drug
202 treatment as a condition of parole.

203 (c) Within seven days of finding that a parolee has committed a
204 nonviolent drug possession offense or violated any drug-related
205 condition of parole, the Board of Parole shall notify the drug treatment
206 provider designated to provide drug treatment under this section. Not
207 later than thirty days after receiving such notice, the treatment
208 provider shall prepare a treatment plan and forward it to the Board of
209 Parole. After the person begins the drug treatment program, the
210 treatment provider shall prepare and forward a progress report to the
211 Board of Parole on a quarterly basis.

212 (d) If, during the course of drug treatment, the treatment provider
213 notifies the Board of Parole that the parolee is unamenable to the drug
214 treatment being provided, but may be amenable to other drug
215 treatments or related programs, the board may act to modify the terms
216 of parole to ensure that the person receives the alternative drug
217 treatment or program.

218 (e) If, during the course of drug treatment, the treatment provider
219 notifies the Board of Parole that the parolee is unamenable to the drug
220 treatment being provided and all other forms of drug treatment, the
221 board may act to revoke such person's parole. At the parole revocation
222 hearing, unless the parolee proves by a preponderance of the evidence
223 that there is a drug treatment program to which such parolee is
224 amenable, the board may revoke such person's parole.

225 (f) Drug treatment services provided as a condition of parole under
226 this section shall not exceed a period of twelve months, except that
227 additional aftercare services as a condition of parole may be required
228 for not more than six months.

229 Sec. 6. (NEW) (a) If a person for whom participation in a drug
230 treatment program is imposed as a condition of parole pursuant to

231 subsection (a) of section 5 of this act violates that parole by (1) being
232 arrested for an offense other than a nonviolent drug possession
233 offense, or (2) violating a non-drug-related condition of parole, and the
234 Board of Parole acts to revoke parole, a hearing shall be conducted to
235 determine whether parole should be revoked. If the alleged violation
236 of parole is proved, the board may modify or revoke such parole.

237 (b) If a person for whom participation in a drug treatment program
238 is imposed as a condition of parole pursuant to subsection (a) of
239 section 5 of this act violates that parole by (1) being arrested for a
240 nonviolent drug possession offense, or (2) violating a drug-related
241 condition of parole, and the Board of Parole acts to revoke parole, a
242 hearing shall be conducted to determine whether parole should be
243 revoked. The Board of Parole shall not revoke such parole unless the
244 state proves by a preponderance of the evidence that such person
245 violated a condition of parole and that such person poses a danger to
246 the safety of other persons. If the board does not revoke parole, it may
247 intensify the conditions of parole to achieve the goals of drug
248 treatment.

249 (c) If a person for whom participation in a drug treatment program
250 is imposed as a condition of parole pursuant to subsection (a) of
251 section 5 of this act violates that parole for a second time by (1) being
252 arrested for a nonviolent drug possession offense, or (2) violating a
253 drug-related condition of parole, and the Board of Parole acts to
254 revoke parole, a hearing shall be conducted to determine whether
255 parole should be revoked. If the state proves by a preponderance of the
256 evidence that such person violated a condition of parole, the board
257 may modify or revoke such parole and such person shall not be
258 eligible thereafter for release on parole pursuant to the provisions of
259 subsection (a) of section 5 of this act.

260 Sec. 7. (NEW) The court, on its own motion or on motion of the
261 state's attorney or a person charged with a crime or convicted of a

262 crime but not yet sentenced, may order, if the interests of justice will be
263 served, that such person be examined, pursuant to the provisions of
264 section 8 of this act, to determine if the person is a person with
265 psychiatric disabilities and eligible for treatment under section 10 or 13
266 of this act. A probation officer may order that such an examination be
267 conducted as part of a presentence investigation conducted pursuant
268 to the provisions of section 54-91a of the general statutes.

269 Sec. 8. (NEW) (a) The Commissioner of Mental Health and
270 Addiction Services or the commissioner's designee shall appoint one or
271 more clinical examiners to conduct examinations for psychiatric
272 disabilities ordered pursuant to the provisions of section 7 of this act.
273 Each examiner shall be authorized by the department to conduct
274 independent evaluations.

275 (b) The examiner shall determine whether the person being
276 examined was a person with psychiatric disabilities at the time of the
277 crime. If such person is determined to have been a person with
278 psychiatric disabilities, the examiner shall further determine (1) the
279 history and pattern of the disability, and (2) whether the person
280 presently needs and is likely to benefit from treatment for the
281 psychiatric disability.

282 (c) The examiner shall prepare and sign, without notarization, a
283 written examination report and deliver it to the court, the Court
284 Support Services Division, the state's attorney and defense counsel no
285 later than thirty days after the examination was ordered. An
286 examination report ordered pursuant to section 7 of this act shall
287 otherwise be confidential and not open to public inspection or subject
288 to disclosure.

289 (d) No statement made by the person in the course of an
290 examination under the provisions of this section may be admitted in
291 evidence on the issue of guilt in a criminal proceeding concerning the
292 person.

293 Sec. 9. (NEW) After receipt by the court of the examination report,
294 the accused person may make a motion for suspension of prosecution
295 and an order of treatment for psychiatric disabilities pursuant to the
296 provisions of section 10 of this act. Unless the opportunity for a
297 hearing is waived by both the accused person and the state's attorney,
298 the court shall hear the motion. The clinical examiner shall not be
299 required to be present to testify on the report unless the presence of the
300 clinical examiner is requested by the court, the accused person or the
301 state's attorney.

302 Sec. 10. (NEW) (a) The provisions of this section shall not apply to
303 any person charged with a violation of section 53a-54a, 53a-54b, 53a-
304 54c or 53a-54d of the general statutes.

305 (b) The court may order suspension of prosecution and order such
306 person be referred to the Court Support Services Division for
307 placement in an alternative incarceration center as provided in section
308 16 of this act for treatment of such person's psychiatric disabilities if it,
309 after considering information before it concerning the psychiatric
310 disabilities of the person, including the examination report made
311 pursuant to the provisions of section 8 of this act, finds that (1) the
312 accused person was a person with psychiatric disabilities at the time of
313 the crime, (2) the accused person is not dangerous to himself or herself
314 or others or gravely disabled, (3) the accused person is not in need of
315 care and treatment in a hospital for psychiatric disabilities, (4) the
316 accused person presently needs and is likely to benefit from treatment
317 for psychiatric disabilities, (5) there is no less restrictive alternative
318 than placement in the alternative incarceration center, and (6)
319 suspension of prosecution will advance the interests of justice.

320 (c) A suspension of prosecution ordered under the provisions of
321 subsection (b) of this section may be for a period not exceeding two
322 years. During the period of suspension, an accused person shall be
323 placed in the custody of the Court Support Services Division for

324 placement in an alternative incarceration center as provided in section
325 16 of this act and treatment for such person's psychiatric disabilities.
326 The court or the Court Support Services Division may require that the
327 person (1) comply with any of the conditions specified in subsections
328 (a) and (b) of section 53a-30 of the general statutes, and (2) be tested for
329 use of alcohol or drugs during the period of suspension. The accused
330 person shall, unless indigent, pay the cost of treatment ordered under
331 this section.

332 (d) If prosecution is suspended under the provisions of subsection
333 (b) of this section, (1) the statute of limitations applicable to the crime
334 charged shall be tolled during the period of suspension, and (2) the
335 accused person shall be deemed to have waived such person's right to
336 a speedy trial for the crime charged.

337 (e) The court shall not suspend prosecution under subsection (b) of
338 this section unless (1) the accused person has acknowledged that such
339 person understands the consequences of the suspension of
340 prosecution, (2) the accused person has given notice, by registered or
341 certified mail on a form prescribed by the Chief Court Administrator,
342 to the victim, if any, of the crime of which the person is accused and of
343 the pending motion for suspension of prosecution, (3) such victim, if
344 any, has been given an opportunity to be heard on the motion for
345 suspension of prosecution, and (4) the accused person, unless such
346 person is indigent, has paid to the clerk of the court an administration
347 fee of twenty-five dollars.

348 (f) If the prosecution is suspended, the person shall be released on a
349 written promise to appear or on a bond and any other bond posted in
350 any criminal proceeding concerning such person shall be terminated.

351 (g) If the court denies the motion for suspension of prosecution, the
352 state's attorney may proceed with prosecution of the crime.

353 (h) A person shall be deemed to be indigent for the purposes of this

354 section if the court determines the person has an estate insufficient to
355 provide for such person's support or there is no person legally liable or
356 able to support such person.

357 Sec. 11. (NEW) (a) The director of the treatment program shall
358 discharge from treatment any person being treated pursuant to the
359 provisions of section 10 of this act who completes the treatment
360 program. The director of the program shall notify the Court Support
361 Services Division of the director's intent to discharge such person at
362 least seven days before the date the person is to be discharged.

363 (b) At any time before the end of the period of suspension of
364 prosecution, the Court Support Services Division may recommend to
365 the court that the charge be dismissed if the person has (1) completed
366 the treatment program, (2) complied with all conditions set under
367 subsection (c) of section 10 of this act, and (3) abstained from the use of
368 alcohol for one year if such person was alcohol dependent or abstained
369 from the unlawful use of drugs for one year if such person was drug
370 dependent.

371 (c) Not later than one month before the end of the period of
372 suspension of prosecution, the Court Support Services Division shall
373 notify the court of the impending conclusion of the suspension and
374 submit a report on whether the person has completed the treatment
375 program and has complied with all conditions set under subsection (c)
376 of section 10 of this act and on whether the office recommends
377 dismissal of the charge.

378 (d) If the court, on motion by the person discharged from treatment,
379 or on its own motion, finds that the person (1) is responding favorably
380 to treatment at the expiration of the period of suspension of
381 prosecution or has completed the treatment program, and (2) has
382 complied with all other conditions of suspension, it may dismiss the
383 charge for which prosecution had been suspended under the
384 provisions of section 10 of this act. If the court denies the motion and

385 terminates the suspension of prosecution, the state's attorney may
386 proceed with prosecution of the crime.

387 Sec. 12. (NEW) (a) The court shall conduct a hearing to determine
388 whether the conditions of the suspension of prosecution should be
389 modified or the suspension terminated, if the Court Support Services
390 Division, after receipt of a report from the director of the treatment
391 program, notifies the clerk of the court that a person treated pursuant
392 to section 10 of this act (1) has committed a violent act against another
393 person at the alternative incarceration center or a violent act that
394 damages property at the alternative incarceration center, (2) has
395 threatened to commit such a violent act, (3) has committed a serious
396 violation of rules of the alternative incarceration center, (4) has
397 repeatedly committed violations of program rules that inhibit the
398 person's ability to function in the program, (5) has continually refused
399 to participate in the program, (6) has asked to be removed from the
400 program, or (7) is unable to participate in the treatment program
401 because of a medical or psychosocial condition which is not
402 appropriately treated by the program operated by the alternative
403 incarceration center. The director of the treatment program shall have
404 the burden of establishing facts to support the director's report. If the
405 court terminates the suspension, the state's attorney may proceed with
406 prosecution of the crime.

407 (b) If a person being treated has not complied with conditions set
408 pursuant to subsection (c) of section 10 of this act, the Court Support
409 Services Division shall notify the clerk of the court. The court may
410 terminate the suspension of prosecution and the state's attorney may
411 proceed with prosecution of the crime if the court, after a hearing,
412 finds the person has not complied with such conditions.

413 (c) A person who has not completed treatment may not be
414 discharged sooner than four days after the Court Support Services
415 Division is notified of the proposed discharge, except that if immediate

416 discharge from treatment is necessary to protect the health or safety of
417 persons in the alternate incarceration center or staff of the center, the
418 person may be discharged less than four days after notification with
419 the agreement of the Court Support Services Division.

420 Sec. 13. (NEW) (a) The provisions of this section shall not apply to
421 any person convicted of a violation of section 53a-54a, 53a-54b, 53a-54c
422 or 53a-54d of the general statutes.

423 (b) Before sentencing a convicted person, the court may consider
424 any information before it concerning the psychiatric disabilities of the
425 person, including an examination report made pursuant to section 8 of
426 this act. The court may impose a sentence and order the person be
427 referred to the Court Support Services Division for placement in an
428 alternative incarceration center as provided in section 16 of this act for
429 treatment of such person's psychiatric disabilities, as provided in
430 subsection (c) of this section if the court finds that (1) the convicted
431 person was a person with psychiatric disabilities at the time of the
432 crime for which the person was convicted, (2) there was a relationship
433 between the psychiatric disabilities and the crime, (3) the convicted
434 person is not dangerous to himself or herself or others or gravely
435 disabled, (4) the convicted person does not need care and treatment in
436 a hospital for psychiatric disabilities, (5) the convicted person presently
437 needs and is likely to benefit from treatment for psychiatric disabilities,
438 (6) there is no less restrictive alternative than placement in the
439 alternative incarceration center, (7) the person is not ineligible under
440 subsection (a) of this section, and (8) the person meets the criteria for
441 probation under subsection (a) of section 53a-29 of the general statutes.

442 (c) The court may, after imposing sentence, (1) suspend execution of
443 a sentence of imprisonment, either entirely or after a period set by the
444 court, (2) impose a period of probation as provided in this section and
445 subsections (b) and (c) of section 53a-28 of the general statutes, and (3)
446 as a condition of probation, order the Court Support Services Division

447 to place the person in an alternative incarceration center as provided in
448 section 16 of this act for treatment of such person's psychiatric
449 disabilities. The court may require that a probation officer have at least
450 one contact per week with the treatment program in which the person
451 is participating and at least one contact per week with the person when
452 such person is not participating in an inpatient program. Placement in
453 a treatment program shall be no earlier than the date that space is
454 available in a treatment program as reported by the clinical examiner
455 under section 8 of this act.

456 (d) The court may order that the person be transferred immediately
457 to an alternative incarceration center as provided in section 16 of this
458 act provided space is available as provided in subsection (c) of this
459 section. If the court orders an immediate transfer, it shall issue a
460 mittimus directing the judicial marshal to convey the person to the
461 alternative incarceration center.

462 (e) Time spent in an alternative incarceration center by a person
463 pursuant to the provisions of this section shall not be credited against
464 any sentence, the execution of which was suspended because of such
465 treatment.

466 (f) Any violation of conditions set under this section shall be a
467 violation of probation under section 53a-32 of the general statutes.

468 (g) The provisions of this section shall not be construed to limit the
469 application of any provision of the general statutes requiring
470 mandatory minimum sentences and prohibiting probation for certain
471 offenses.

472 Sec. 14. (NEW) (a) The director of the treatment program shall
473 submit a report to the Court Support Services Division whenever a
474 person treated pursuant to section 13 of this act has completed the
475 treatment program. Such report shall recommend whether the person
476 should receive further treatment for psychiatric disabilities.

477 (b) The Court Support Services Division shall notify the clerk of the
478 court when a person (1) has completed the treatment program, (2) has
479 complied with all the conditions set under section 13 of this act, and (3)
480 if alcohol dependent, has abstained from the use of alcohol for two
481 consecutive years, or, if drug dependent, has abstained from the
482 unlawful use of drugs for two consecutive years. Upon receipt of such
483 notification, the clerk shall set a hearing. The Court Support Services
484 Division may advise the court of any recommendation it may make,
485 including if it recommends a modification of sentence or terms of
486 probation or a termination of probation and release of the person.
487 After a hearing, the court may modify the sentence or terms of
488 probation or terminate the probation and release the person.

489 Sec. 15. (NEW) (a) The court shall conduct a hearing to determine if
490 the sentence or terms of probation should be modified if the Court
491 Support Services Division, after a report from the director of the
492 treatment program, notifies the clerk of the court that a person being
493 treated pursuant to section 13 of this act (1) has committed a violent act
494 against another person at the alternative incarceration center or a
495 violent act that damages property at the alternative incarceration
496 center, (2) has threatened to commit such a violent act, (3) has
497 committed a serious violation of rules of the treatment program, (4)
498 has repeatedly committed violations of program rules that inhibit the
499 person's ability to function in the program, (5) has continually refused
500 to participate in the program, (6) has asked to be removed from the
501 program, or (7) is unable to participate in the treatment program
502 because of a medical or psychosocial condition that is not
503 appropriately treated by the program operated by the alternative
504 incarceration center. The director of the treatment program has the
505 burden of establishing facts to support the director's report to the
506 Court Support Services Division.

507 (b) A person who has not completed treatment may not be
508 discharged sooner than four days after the Court Support Services

509 Division is notified of the proposed discharge, except that if immediate
510 discharge from treatment is necessary to protect the health or safety of
511 persons in the program or staff of the program, the person may be
512 discharged less than four days after notification with the agreement of
513 the Court Support Services Division.

514 Sec. 16. (NEW) (a) The Court Support Services Division shall
515 establish in each mental health region in the state a fifteen-bed
516 alternative incarceration center that, in addition to the programs and
517 services offered by an alternative incarceration center, provides a
518 residential and day reporting program for accused and convicted
519 persons with psychiatric disabilities.

520 (b) The program director shall hold a clinical license, and the center
521 shall be staffed by licensed clinical social workers and residential
522 counselors who are trained to work with persons with psychiatric
523 disabilities who are accused or convicted of criminal offenses.

524 (c) The program shall develop a memorandum of agreement with
525 the local mental health authority to provide a full range of psychiatric
526 treatment services to the program participants. The local mental health
527 authority shall assign a clinical coordinator to work with the director
528 of the alternative incarceration center in facilitating timely access to
529 appropriate services and to develop a network of community, social
530 and vocational rehabilitation supports that will enhance successful
531 program participation and long-term community integration.

532 (d) Any person referred to the center pursuant to section 10 or 13 of
533 this act shall be screened to determine such person's eligibility for the
534 program. Such person shall (1) consent to such screening and
535 participation in the program, (2) sign releases authorizing the
536 disclosure of past and current psychiatric information, (3) agree to
537 abide by program rules, and (4) be clinically stable and not dangerous
538 to himself or herself or others. Any person determined to be eligible
539 for the program shall be accepted into the program based on

540 availability of space.

541 (e) The program director and the clinical coordinator shall develop
542 an integrated individualized alternative incarceration program and
543 treatment plan for each person that will include a schedule of daily
544 activities. The alternate incarceration center shall provide supervision,
545 community service, meals, transportation, assistance in applying for
546 any entitlements for which the program participant may be eligible
547 and, if required by the court or Court Support Services Division, drug
548 screening. The local mental health authority shall provide clinical
549 assessment, emergency intervention, outpatient treatment, medication
550 assistance when needed, social supports, case management and
551 community reintegration planning.

552 Sec. 17. Section 54-63f of the general statutes is repealed and the
553 following is substituted in lieu thereof:

554 (a) A person who has been convicted of any offense, except a
555 violation of section 53a-54a, 53a-54b, 53a-54c or 53a-54d, [or any
556 offense involving the use, attempted use or threatened use of physical
557 force against another person,] and is either awaiting sentence or has
558 given oral or written notice of such person's intention to appeal or file
559 a petition for certification or a writ of certiorari may be released
560 pending final disposition of the case, unless the court finds custody to
561 be necessary to provide reasonable assurance of such person's
562 appearance in court, upon the first of the following conditions of
563 release found sufficient by the court to provide such assurance: (1)
564 Upon such person's execution of a written promise to appear, (2) upon
565 such person's execution of a bond without surety in no greater amount
566 than necessary, (3) upon such person's execution of a bond with surety
567 in no greater amount than necessary, (4) upon such person's deposit,
568 with the clerk of the court having jurisdiction of the offense with which
569 such person stands convicted or any assistant clerk of such court who
570 is bonded in the same manner as the clerk or any person or officer

571 authorized to accept bail, a sum of money equal to the amount called
572 for by the bond required by the court, or (5) upon such person's pledge
573 of real property, the equity of which is equal to the amount called for
574 by the bond required by the court, provided the person pledging such
575 property is the owner of such property. When cash bail is offered, such
576 bond shall be executed and the money shall be received in lieu of a
577 surety or sureties upon such bond. Such cash bail shall be retained by
578 the clerk of such court until a final order of the court disposing of the
579 same is passed, provided, if such bond is forfeited, the clerk of such
580 court shall pay the money to the payee named therein, according to the
581 terms and conditions of the bond.

582 (b) There shall be a presumption that a person convicted of any
583 offense involving the use, attempted use or threatened use of physical
584 force against another person shall not be released under subsection (a)
585 of this section. The court may release a person convicted of any such
586 offense, other than a violation of section 53a-54a, 53a-54b, 53a-54c or
587 53a-54d, provided the court, in addition to the findings required under
588 subsection (a) of this section concerning conditions of release, makes
589 the following findings and specifically states such findings in writing
590 for the record: (1) That the conditions imposed on such person's release
591 will reasonably protect any victim of the offense from such person
592 during such person's release, (2) that the conditions imposed on such
593 person's release will reasonably assure such person's appearance in
594 court when called, (3) that the victim of the offense has been notified,
595 or reasonable efforts have been made to locate and notify the victim,
596 and the victim has been given an opportunity to make or submit a
597 statement concerning whether the person should be released, and the
598 court has considered any such statement made by the victim, and (4)
599 that it is in the interests of justice that such person should be released.

600 Sec. 18. Section 18-86b of the general statutes is repealed and the
601 following is substituted in lieu thereof:

602 (a) Notwithstanding the provisions of sections 18-105 to 18-107,
603 inclusive, the Commissioner of Correction is authorized to improve the
604 operation of the state's correctional facilities by entering into contracts
605 with any governmental or private nonprofit vendor for supervision of
606 not more than five hundred inmates outside the state. Any such
607 governmental or private nonprofit vendor shall agree to be bound by
608 the provisions of the Interstate Corrections Compact, and any
609 [governmental or privately-operated] facility operated by a
610 government or private nonprofit organization to which state inmates
611 are transferred pursuant to a contract under this section shall be
612 located in a state which has enacted and entered into the Interstate
613 Corrections Compact.

614 (b) A state inmate confined in any [governmental or privately-
615 operated] facility operated by a government or private nonprofit
616 organization pursuant to the terms of any contract with the state shall
617 at all times be subject to the authority of the Commissioner of
618 Correction who may at any time remove the inmate for transfer to a
619 state correctional facility or other institution, for transfer to another
620 [governmental or privately-operated] facility operated by a
621 government or private nonprofit organization, for release on probation
622 or parole, for discharge or for any other purpose permitted by the laws
623 of this state.

624 Sec. 19. (NEW) The Commissioner of Correction shall not enter into
625 any contract with a for-profit organization for the supervision or
626 housing of inmates in or outside this state.

627 Sec. 20. (NEW) The Board of Parole shall, in consultation with the
628 Department of Mental Health and Addiction Services, develop a
629 specialized screening program for the performance of a risk
630 assessment of persons eligible for parole.

Statement of Legislative Commissioners:

An incorrect reference to treatment being provided "in this section and sections 11 and 12 of this act" was deleted in section 10(b) and an incorrect statutory reference was corrected in section 13(b)(8).

JUD *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: See Below¹

Affected Agencies: Various Criminal Justice Agencies, Department of Mental Health and Addiction Services

Municipal Impact: None

Explanation

State Impact:

The bill makes various changes in the programs and sentencing of criminal offenders and would result in cost and savings to various agencies as follows:

Department of Mental Health and Addiction Services

The bill (in section 8) will result in significant additional costs to the Department of Mental Health and Addiction Services (DMHAS). This section requires DMHAS to conduct examinations for psychiatric disabilities for people charged with a crime or convicted of a crime but not yet sentenced and for whom an order has been entered for such examination.

The number of people potentially subject to these evaluations is

¹ The estimates contained in this note are subject to further review.

unknown. Based on FY 99 data, it is estimated that approximately 114,000 persons are arraigned annually in lower courts, with about 12% estimated to meet the DMHAS target population definition. Assuming a cost of \$1,000 per evaluation (which includes the cost for licensed clinician to travel, write report, testify, etc.), it would cost DMHAS approximately \$13.7 million annually to perform evaluations on those traditionally considered to be part of DMHAS's target population. This cost estimate could be significantly higher if evaluations are required for a larger segment of those who are arraigned.

The bill (in section 16) also requires the Court Support Services Division (CSSD) to establish five 15-bed alternative incarceration centers and to enter into agreements with the local mental health authorities for provision of mental health services, including clinical assessment, emergency intervention, outpatient treatment, medication assistance, social supports, case management, and community reintegration planning. It is estimated that DMHAS would require 29 positions and approximately \$2.7 million annually to carry out the provisions of this section. These costs include additional staff and treatment capacity at five local mental health authorities.

Judicial Department

The bill would increase the number of individuals that would be sentenced to probation and drug and mental health treatment rather than incarceration. The cost and type of services potentially necessary to address this increase appear in the following Table.

Items	FY 02	FY 03
Residential Drug Treatment	\$ 187,500	\$ 375,000
Outpatient Drug Treatment	500,000	1,000,000
Residential Mental Health Treatment	1,500,000	3,000,000
Outpatient Mental Health Treatment	200,400	900,000
Probation Officers	2,800,000	5,600,000
Total	5,187,900	10,875,000

Board of Parole

The bill establishes special procedures and standards for parolees who are serving sentences for nonviolent drug possession offenses. To the extent that these procedures result in more offenders being placed on parole (as opposed to further incarceration), there would be a potential indeterminate savings to the Department of Correction (DOC) due to a decrease in the need for bed space. The average annual inmate cost is \$25,000. Average annual parolee cost can range between \$8,000 and \$12,000 depending on the level of services that are provided. The board did not provide statistics on the number of parolees who might be impacted by such standards.

The bill requires the Board of Parole to develop a specialized screening program for conducting risk assessments of people eligible for parole. The board currently operates a risk assessment procedure as described in the bill and as such any refinements to the existing procedure could be handled within existing resources.

Department of Correction

The bill eliminates the prohibition against releasing on bail people convicted of certain offenses while they await sentencing or appeal their conviction. Passage of this section of the bill would reduce the need for prison bed space in DOC. The department did not provide information on the number of those incarcerated who might be affected by the elimination of this provision. To the extent that individuals would be referred to community programs, significant savings to DOC, would result.

OLR BILL ANALYSIS

sSB 1428

AN ACT CONCERNING PRISON OVERCROWDING.**SUMMARY:**

This bill establishes a presumption that anyone convicted of a nonviolent drug possession offense after September 30, 2001 must be sentenced to a term of probation without first serving any time in prison. It requires the court to impose as a condition of probation the successful completion of an appropriate drug treatment program and authorizes it to require participants who are reasonably able to do so to contribute to the cost of their participation. The program may not exceed 12 months plus aftercare services of up to six months. It also authorizes the court to order as a condition of probation that he participate in vocational training, family counseling, literacy training, or community service.

The bill establishes probation violation procedures and standards for these offenders and applies these same procedures, standards, and rules for those on probation for nonviolent drug possession offenses on October 1, 2001. It also applies similar standards and rules for parolees who are arrested for a nonviolent drug possession offense or violate a drug-related parole condition.

The bill creates a pre-trial diversion program for people with psychiatric disabilities accused of any crime except murder (See COMMENT). It authorizes the court to suspend prosecution and order such people placed in an alternative incarceration center, to comply with specific conditions concerning treatment and other matters, and to be tested for alcohol or drugs. The court may dismiss the charges if the person complies with all conditions and responds favorably to treatment.

The bill also establishes a program for people with psychiatric disabilities who are convicted of any offense other than murder or any

class A felony. It allows the court to suspend the sentence it imposes either entirely or after a period it sets and order the offender placed in an alternative incarceration center for treatment as a condition of probation. This authority does not affect the imposition of mandatory minimum sentences. If the person satisfactorily completes treatment and complies with all other conditions, the court may modify the sentence or terminate probation and release the offender.

The bill prohibits the correction commissioner from contracting with for-profit organizations to supervise or house inmates outside of Connecticut. It also, restricts his authority to contract with private entities to house up to 500 inmates out-of-state by requiring that the authority be limited to nonprofit entities or a government.

The bill requires the parole board, in consultation with the Department of Mental Health and Addiction Services, to develop a specialized screening program for conducting risk assessments of people eligible for parole.

The bill eliminates the prohibition against releasing on bail people convicted of certain offenses while they await sentence or appeal their conviction. Instead, it creates a presumption that bail not be given to them. The offenses affected are those involving the use, attempted use, or threatened use of physical force against another person. The bill allows a court to release on bail people convicted of these offenses only if it makes certain findings and specifically states them for the record.

EFFECTIVE DATE: October 1, 2001

NONVIOLENT DRUG POSSESSION OFFENSE

The bill defines "nonviolent drug possession offense" as one where the offender (1) possesses illegal drugs for personal use without the intent to sell or dispense them; (2) did not use, attempt to use, or threaten to use physical force; and (3) was not armed and did not threaten to use or display or represent that he possessed any firearm, deadly weapon, or dangerous instrument.

DRUG TREATMENT PROGRAM

The bill defines a "drug treatment program" as a licensed or certified community program that may include outpatient treatment, halfway house treatment, narcotic replacement therapy, drug education or prevention courses, and limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The bill does not specify who licenses or certifies the program.

PEOPLE CONVICTED OF NONVIOLENT POSSESSION OFFENSES AFTER SEPTEMBER 30, 2001

Drug Treatment Plan and Progress Report

The bill requires the Office of Adult Probation (OAP), within seven days of a court order imposing probation for a nonviolent drug offender, to notify drug treatment provider the court designates. Within 30 days after receiving the notice, the treatment provider must prepare a treatment plan and forward it to the OAP. After the offender begins the program, the provider must prepare and forward a quarterly progress report to the OAP.

People Unamenable to Drug Treatment

Under the bill if, during drug treatment, the treatment provider notifies the OAP that the offender is not amenable to the drug treatment being provided but may be amenable to other drug treatments or related programs the OAP may ask the court to modify the terms of probation to ensure that the person receives the alternative drug treatment or program.

If, during drug treatment, the provider notifies the OAP that the offender is not amenable to the drug treatment being provided or any other forms of drug treatment, the OAP may ask the court to revoke his probation. The bill authorizes the court to revoke his probation unless he proves by a preponderance of the evidence that there is a drug treatment program to which he is amenable.

Successful Completion of the Program

The bill allows someone who successfully completes the drug

treatment program and period of probation to apply for dismissal of the charges against him. The court must dismiss the charges if it finds he successfully completed the program and the probation period.

A person successfully completes a drug treatment program if he has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that he will not abuse controlled substances in the future.

If the person does not apply for dismissal of the charges after successfully completing the program and probation period, the court, upon an OAP report that he successfully completed them, may on its own motion make a finding of successful completion and dismiss the charges. Upon dismissal, all records must be erased. The bill makes a court order denying a motion to dismiss the charges a final judgment, thus allowing the defendant to appeal.

Ineligible Offenders

The requirement for a suspended sentence and drug treatment for someone convicted of a nonviolent offense after September 30, 2001 does not apply to anyone who:

1. has been convicted within the previous five years of a felony or misdemeanor involving the use, attempted use, or threatened use of physical force against another person;
2. in addition to the conviction of the nonviolent drug possession offense, has been convicted in the same proceeding of any felony or of a misdemeanor not related to drug use;
3. has, at separate times before the commission of the present nonviolent drug possession offense, been twice convicted of a nonviolent drug possession offense, has participated in two separate courses of drug treatment under the bill, and is found by the court, by clear and convincing evidence, not to be amenable to any form of available drug treatment; or
4. refuses to participate in a drug treatment program as a condition of probation.

Violation of Probation

The bill authorizes the state to proceed under its existing authority if a person sentenced to a period of probation for a nonviolent offense committed after September 30, 2001 violates his probation by (1) being arrested for an offense other than a nonviolent drug possession offense or (2) violating a non-drug-related condition of probation. Under the existing authority, the court may, if it finds the offender has violated a probation condition, continue the sentence of probation, modify or enlarge the conditions, extend the probation period, or revoke the probation. If it revokes the probation, it may require the offender to serve the prison sentence previously imposed or a lesser sentence.

If an offender violates his probation by (1) being arrested for a nonviolent drug possession offense or (2) violating a drug-related condition of probation, the bill allows the state to proceed under its existing authority. But it prohibits the court from revoking probation unless the state proves by a preponderance of the evidence that the offender violated a condition of probation and poses a danger to other people's safety.

If the offender violates his probation for a second time by (1) being arrested for a nonviolent drug possession offense or (2) violating a drug-related condition of probation, the bill allows the state to proceed under its existing authority. But it prohibits the court from revoking probation unless the state proves by a preponderance of the evidence that the offender violated a condition of probation and poses a danger to the safety of other persons or is unamenable to drug treatment.

In determining whether the person is unamenable to drug treatment, the bill allows the court to consider, if relevant, whether he has (1) committed a serious violation of rules at the drug treatment program, (2) repeatedly violated program rules that inhibit his ability to function in the program, or (3) continually refused to participate in the program or asked to be removed from it.

If he violates his probation for a third time by (1) being arrested for a nonviolent drug possession offense or (2) violating a drug-related condition of probation, the bill specifies that the state may proceed

under its existing authority.

PEOPLE ON PROBATION ON OCTOBER 1, 2001 (SEC. 4)

The bill establishes the same probation violation requirements and standards for people on probation on October 1, 2001 for a nonviolent drug offense as it does for those convicted on or after that date. It authorizes the court to impose participation in a drug treatment program as defined by the bill for probationers who violate their probation by being arrested for nonviolent drug possession offenses, or by violating drug-related probation conditions.

PAROLE

The bill prohibits the parole board from revoking the parole of any one who is arrested for a nonviolent drug possession offense or who violates a drug-related parole condition. The board must require such parolees to successfully complete an appropriate drug treatment program and require any parolee who is reasonably able to do so to contribute to the cost of his participation in the program. It authorizes the board to require such parolees to participate in vocational training, family counseling, literacy training, or community service. The drug treatment program may not exceed 12 months followed by an aftercare program of up to six months.

The bill requires the board to notify the drug treatment provider it designates to provide treatment within seven days of finding that a parolee has committed a nonviolent drug possession offense or violated any drug-related condition of parole. The treatment provider must prepare a treatment plan and forward it to the board within 30 days of receiving the notice. After the parolee begins the drug treatment program, the treatment provider must prepare and forward quarterly progress report, to the board.

Parolees Not Amenable to Drug Treatment

Under the bill, if the treatment provider notifies the board that the parolee is not amenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the board may modify the terms of parole to ensure that the parolee receives the

alternative drug treatment or program.

The bill allows the board to revoke someone's parole if the treatment provider notifies it that he is not amenable to the drug treatment being provided or any other forms of drug treatment. The board may not revoke parole if at the parole revocation hearing the parolee proves by a preponderance of the evidence that there is a drug treatment program to which he is amenable.

Parole Violations

The bill allows the board, after a hearing, to modify or revoke parole if a parolee it ordered to participate in a drug treatment program under the authority the bill establishes violates parole by (1) being arrested for an offense other than a nonviolent drug possession offense or (2) violating a non-drug-related condition of parole.

The bill requires the board to hold a hearing if it acts to revoke parole because a person the board ordered to participate in a drug treatment program violates that parole by (1) being arrested for a nonviolent drug possession offense or (2) violating a drug-related condition of parole. The bill prohibits the board from revoking parole unless the state proves by a preponderance of the evidence that the parolee violated a condition of parole and that he poses a danger to the safety of others. The bill authorizes the board to intensify the parole conditions to achieve the goals of drug treatment if it does not revoke parole.

Under the bill, if a parolee the board ordered to participate in a drug treatment program violates that parole for a second time by (1) being arrested for a nonviolent drug possession offense or (2) violating a drug-related condition of parole, and the board acts to revoke parole, it must conduct a hearing to determine whether it should revoke parole. If the state proves by a preponderance of the evidence the parolee violated a condition of parole, the board may modify or revoke parole and the parolee is ineligible for release under the bill's parole provisions.

Ineligible Parolees

The bill excludes from these parole standards and requirements any parolee who: (1) has been convicted within the previous five years of a felony or misdemeanor involving the use, attempted use, or threatened use of physical force; (2) is arrested for a felony or a misdemeanor not related to drug use; or (3) refuses drug treatment as a condition of parole.

ACCUSED OR CONVICTED PEOPLE WITH PSYCHIATRIC DISABILITIES

The bill authorizes the court, if the interests of justice will be served, to order someone accused or convicted of a crime to be examined to determine if he has psychiatric disabilities and is eligible for treatment under the program the bill establishes. The court may do so on its own motion, that of the state's attorney, or that of someone charged with or convicted of a crime but not yet sentenced. It also authorizes a probation officer to order that such an examination be conducted as part of a presentence investigation.

The bill requires the Commissioner of Mental Health and Addiction Services or his designee to appoint one or more clinical examiners to conduct examinations for psychiatric disabilities. Each examiner must be authorized by the department to conduct independent evaluations.

The examiner must determine whether the person being examined was a person with psychiatric disabilities at the time of the crime. If so, the examiner must also determine (1) the history and pattern of the disability and (2) whether the person presently needs and is likely to benefit from treatment for the disability.

The bill requires the examiner to prepare and sign, without notarization, a written examination report and deliver it to the court, the Court Support Services Division, the state's attorney, and defense counsel within 30 days after the court or probation officer ordered the examination. The report is confidential and not open to public inspection or subject to disclosure.

Under the bill, statements made by the person in the course of an examination may not be admitted in evidence on the issue of guilt in a criminal proceeding concerning him.

Accused People

After the court receives the examination report, the accused person may move that the court suspend the prosecution and order treatment for psychiatric disabilities. Unless both the accused person and the state's attorney waive their right to a hearing, the court must hear the motion. The clinical examiner does not have to testify on the report unless the court, the accused person, or the state's attorney requests his presence.

Except for people charged with murder, the bill allows the court to suspend prosecution for up to two years and order the accused referred to the Court Support Services Division for placement in an alternative incarceration center. In doing so, it must consider information before it concerning his psychiatric disabilities and the examination report and find that:

1. the accused had psychiatric disabilities at the time of the crime,
2. he is not dangerous to himself or others or gravely disabled,
3. he does not need care and treatment in a hospital for psychiatric disabilities,
5. he needs and is likely to benefit from treatment for psychiatric disabilities,
6. there is no less restrictive alternative than placement in the alternative incarceration center, and
7. suspension of prosecution will advance the interests of justice.

The court or the Court Support Services Division may require that the person comply with any conditions it specifies and be tested for alcohol or drugs. The bill requires the accused, unless indigent, to pay the cost of treatment ordered. A person is indigent if the court determines he has an estate insufficient to provide for his support or there is no one legally liable or able to support him.

The statute of limitations is tolled during the suspension period and the accused is deemed to have waived his right to a speedy trial for the crime charged.

The court may not suspend prosecution unless (1) the accused has acknowledged that he understands the consequences of the suspension; (2) he has given notice of the crime, by registered or certified mail on a form prescribed by the Chief Court Administrator, to the victim, if any, and of the pending motion for suspension of prosecution; (3) the victim has been given an opportunity to be heard on the suspension motion; and (4) the accused, unless he is indigent, has paid to the clerk of the court an administration fee of \$25.

If the court suspends the prosecution, it must release the accused on a written promise to appear or a bond and any other bond posted in any criminal proceeding concerning him must be terminated. If the court denies the suspension motion, the state's attorney may proceed with prosecution of the crime.

The bill requires the director of the treatment program to discharge anyone who completes the program. He must notify the Court Support Services Division of his intent to discharge the person at least seven days before the discharge date.

At any time before the end of the suspension of prosecution period, the Court Support Services Division may recommend to the court that the charge be dismissed if the person has (1) completed the treatment program, (2) complied with all required conditions, and (3) abstained from the use of alcohol for one year if he was alcohol-dependent or from unlawful drug use for one year if he was drug-dependent.

Within one month before the suspension period ends, the Court Support Services Division must notify the court of the impending conclusion of the suspension and submit a report on whether (1) the person has completed the treatment program, (2) has complied with all required conditions, and (3) the office recommends dismissal of the charge.

The bill authorizes the court to dismiss the charges if, on motion by the person discharged from treatment, or on its own motion, it finds that

the person (1) is responding favorably to treatment at the expiration of the period of suspension of prosecution or has completed the treatment program and (2) has complied with all other conditions of suspension. If it denies the motion and terminates the suspension of prosecution, the state's attorney may proceed to prosecute the crime.

Termination or Modification of Suspension

If a person being treated has not complied with conditions, the Court Support Services Division must notify the court clerk. The bill requires the court to conduct a hearing to determine whether the suspension conditions should be modified or terminated, if the Court Support Services Division, after receiving of a report from the treatment program director, notifies the court clerk that a person being treated:

1. has committed or threatened to commit a violent act against another person at the alternative incarceration center or a violent act that damages property at the alternative incarceration center,
2. has committed a serious violation of the center's rules,
3. has repeatedly violated program rules that inhibit ability to function in the program,
4. has continually refused to participate in the program,
5. has asked to be removed from the program, or
6. is unable to participate in the treatment program because of a medical or psychosocial condition that is not appropriately treated by the program.

The director of the treatment program has the burden of establishing facts to support his report. If the court terminates the suspension, the state's attorney may proceed with prosecution of the crime. The court may terminate the suspension of prosecution and the state's attorney may proceed with prosecution of the crime if the court, after a hearing, finds the person has not complied with required conditions.

The bill prohibits the treatment provider from discharging someone

who has not completed treatment unless it first gives the Court Support Services Division at least four days notice of the proposed discharge. The bill allows the person to be discharged sooner if immediate discharge is necessary to protect the health or safety of people or staff in the alternative incarceration center, as long as the Court Support Services Division is notified and agrees.

Convicted People With Psychiatric Disabilities

Before sentencing a person convicted of any crime, the court may consider any information before it concerning his psychiatric disabilities. The court may impose a sentence and order the person referred to the Court Support Services Division for placement in an alternative incarceration center if it finds that (1) the convicted person had psychiatric disabilities when he committed the crime, (2) there was a relationship between the psychiatric disabilities and the crime, (3) he is not dangerous to himself or others or gravely disabled, (4) he does not need care and treatment in a hospital for psychiatric disabilities, (5) he presently needs and is likely to benefit from treatment for psychiatric disabilities, (6) there is no less restrictive alternative to placement in the alternative incarceration center, and (7) the person meets the criteria for probation contained in existing law. Under existing law, the court may sentence someone to probation for any crime other than a class A felony if it believes (1) present or extended confinement is not necessary to protect the public; (2) the defendant needs guidance, training or assistance which can be effectively administered through probation supervision; and (3) the disposition is consistent with the ends of justice.

The bill authorizes the court, after imposing sentence to (1) suspend execution of a sentence of imprisonment, either entirely or after a period it sets; (2) impose a period of probation; and (3) as a condition of probation, order the Court Support Services Division to place the person in an alternative incarceration center for treatment of his psychiatric disabilities. The court may require that a probation officer have at least one contact per week with the treatment program in which the person is participating and at least one contact per week with him when he is not participating in an inpatient program. The bill specifies that the division may not place someone in a treatment program before space is available in a treatment program as reported

by the clinical examiner.

The bill authorizes the court to order that the person be transferred immediately to an alternative incarceration center if space is available. If the court orders an immediate transfer, it must order the judicial marshal to take him to the alternative incarceration center. The bill specifies that time spent in an alternative incarceration center may not be credited against any sentence which was suspended because of such treatment.

Mandatory Minimum Sentences and Probation

The bill specifies that it does not affect mandatory minimum sentence requirements in existing laws or existing prohibitions against probation for certain offenses.

Completion of Treatment Program

The bill requires the treatment program to submit a report to the Court Support Services Division whenever someone the division sent to it has completed the treatment program. The report must recommend whether the person should receive further treatment.

The division must notify the court clerk when a person (1) has completed the treatment program; (2) has complied with all conditions; and (3) if alcohol-dependent, has abstained from alcohol use for two consecutive years, or, if drug-dependent, has abstained from drug use for two consecutive years. The clerk must set a hearing when it receives the notice. The division may make recommendations to the court, including one to modify the sentence or probation terms or terminate probation and release of the person. After a hearing, the court may modify the sentence or terms of probation or terminate the probation and release the person.

Mandatory Hearing for Violations

The bill requires the court to conduct a hearing to determine if the sentence or terms of probation should be modified if the division, after a report from the treatment program director, notifies the court clerk that a person being treated (1) has committed or threatened to commit

a violent act against another person at the alternative incarceration center or a violent act that damages property there, (2) has committed a serious violation of program rules, (3) has repeatedly committed violations of program rules that inhibit the person's ability to function in the program, (4) has continually refused to participate in the program, (5) has asked to be removed from the program, or (6) is unable to participate in the treatment program because of a medical or psychosocial condition that is not appropriately treated by the program operated by the alternative incarceration center. The director of the treatment program has the burden of establishing facts to support his report to the division.

Discharge by Treatment Provider

The bill prohibits the treatment provider from discharging someone who has not completed the treatment program unless it has given the division four days notice. But the bill allows the person to be released without four days notice if immediate discharge is necessary to protect the health or safety of people in the program or staff and the division has been notified and agrees.

Alternative Incarceration Centers

The bill requires the Court Support Services Division to establish in each mental health region in the state a 15-bed alternative incarceration center that, in addition to the programs and services offered by an alternative incarceration center, provides a residential and day reporting program for accused and convicted people with psychiatric disabilities.

The program director must hold a clinical license. Licensed clinical social workers and residential counselors who are trained to work with people with psychiatric disabilities who are accused or convicted of criminal offenses must staff the center.

The program must develop a memorandum of agreement with the local mental health authority to provide a full range of psychiatric treatment services to program participants. The authority must assign a clinical coordinator to work with the center director to facilitate timely access to appropriate services and to develop a network of

community, social, and vocational rehabilitation supports to enhance successful program participation and long-term community integration.

Accused and convicted people referred to the center must be screened to determine their eligibility for the program. They must (1) consent to screening and participation, (2) sign releases authorizing the disclosure of past and current psychiatric information, (3) agree to abide by program rules, and (4) be clinically stable and not dangerous to themselves or others. People must be accepted into the program based on space availability.

The program director and the clinical coordinator must develop an integrated individualized alternative incarceration program and treatment plan for each person that includes a schedule of daily activities. The center must provide supervision, community service, meals, transportation, assistance in applying for any entitlements for which program participants may be eligible and, if required by the court or Court Support Services Division, drug screening. The local mental health authority must provide clinical assessment, emergency intervention, outpatient treatment, medication assistance when needed, social supports, case management, and community reintegration planning.

BAIL AFTER CONVICTION

The bill eliminates a prohibition against release on bail and, instead, establishes a presumption that someone convicted of any offense involving the use, attempted use, or threatened use of physical force against another person not be released on bail after conviction while awaiting sentencing or appealing his conviction. The court may only release a person convicted of any such offense, other than murder, if it makes the following findings and specifically states them in writing for the record: (1) the release conditions imposed will reasonably protect any victim from him during his release; (2) the conditions imposed will reasonably assure his appearance in court when called; (3) the crime victim has been notified, or reasonable efforts have been made to locate and notify him, and he has been given an opportunity to make or submit a statement concerning whether the person should be released, and the court has considered any such statement; and (4)

release is in the interests of justice

BACKGROUND

Related Legislation

SSB 6802 was reported out by the Judiciary Committee on April 17. It (1) replaces the current 15-member parole board with a full-time three-member board; (2) requires the board to reassess certain inmates after they have served 75% of their sentences in prison and to assess certain other inmates after they completed 85% of their sentences in prison and changes the parole criteria the board must use when it does so; (3) allows a court to impose a probation period as part of a sentence if the nonsuspended prison term is one year or less; (4) allows the court to impose a period of special parole as part of a sentence only when the nonsuspended prison term is more than one year; (5) establishes a Justice Planning Division within the Office of Policy and Management (OPM); (6) adds certain officials to the Commission on Prison and Jail Overcrowding and establishes an 18-member community corrections subcommittee of the commission; (7) requires a probation officer to prepare a sentencing worksheet whenever a presentence investigation is required or requested by the court; (8) requires the Judicial Branch to establish a sentencing team at all criminal court locations; and (9) requires the office of Legislative Research and Fiscal Analysis to prepare prison impact statements for bills that would affect prosecutions, sentences, and prisons.

sSB 1083 voted out by the Public Health Committee on April 9 and the Judiciary Committee on April 17, makes numerous changes to the laws relating to sentencing and treating substance abusers.

Specifically it:

1. requires the Correction Department to provide substance abuse, mental health, and anger management treatment services, rehabilitation, and training sufficient to meet the needs of inmates and offenders under community supervision;
2. allows people to participate in the Judicial Department's drug treatment program and in the Department of Mental Health's

- pretrial drug education program even if they participated before;
3. allows people to apply to participate in the community service labor program even if they were convicted previously of certain drug-related crimes and sets minimum participation periods;
 4. requires those courts that operate special drug dockets to offer substance abuse detoxification, maintenance, and treatment programs, including methadone detoxification and maintenance open to all offenders who need it;
 5. requires each Superior Court to establish an interdisciplinary team to advise judges on appropriate sentences and use of graduated sanctions and establishes a sentencing task force to evaluate the process of sentencing people who have committed felonies;
 6. requires the parole board to modify the conditions of parole for a parole violator whose original sentence was not for a crime involving violence to address the cause of his violation and his treatment needs; and
 7. makes meeting the needs of community-supervised offenders the standard for determining probation and parole officer caseloads and eliminates statutory requirements for intensive probation caseloads.

COMMENT

Psychiatric Disabilities

The bill does not define "psychiatric disabilities."

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report
Yea 19 Nay 17