



# House of Representatives

General Assembly

**File No. 323**

February Session, 2002

Substitute House Bill No. 5516

*House of Representatives, April 4, 2002*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

**AN ACT CONCERNING ALTERNATIVES TO INCARCERATION FOR PERSONS WITH PSYCHIATRIC DISABILITIES.**

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

1 Section 1. Subsection (d) of section 54-56d of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2002*):

4 (d) If the court finds that the request for an examination is justified  
5 and that, in accordance with procedures established by the judges of  
6 the Superior Court, there is probable cause to believe that the  
7 defendant has committed the crime for which he is charged, the court  
8 shall order an examination of the defendant as to his competency. The  
9 court either may appoint one or more physicians specializing in  
10 psychiatry to examine the defendant or it may order the Commissioner  
11 of Mental Health and Addiction Services to conduct the examination  
12 either by a clinical team consisting of a physician specializing in  
13 psychiatry, a clinical psychologist and one of the following: A clinical

14 social worker licensed pursuant to chapter 383b or a psychiatric nurse  
15 clinical specialist holding a master's degree in nursing, or by one or  
16 more physicians specializing in psychiatry, except that no employee of  
17 the Department of Mental Health and Addiction Services who has  
18 served as a member of a clinical team in the course of such  
19 employment for at least five years prior to October 1, 1995, shall be  
20 precluded from being appointed as a member of a clinical team. If the  
21 Commissioner of Mental Health and Addiction Services is ordered to  
22 conduct the examination, he shall select the members of the clinical  
23 team or the physician or physicians. If the examiners determine that  
24 the defendant is not competent, they shall then determine whether  
25 there is substantial probability that the defendant, if provided with a  
26 course of treatment, will regain competency within the maximum  
27 period of any placement order under this section, or whether the  
28 defendant appears to be eligible for a civil commitment, with  
29 monitoring by the Court Support Services Division, pursuant to  
30 subdivision (2) of subsection (h) of this section, as amended by this act.  
31 The court may authorize a physician specializing in psychiatry, a  
32 clinical psychologist, a clinical social worker licensed pursuant to  
33 chapter 383b or a psychiatric nurse clinical specialist holding a master's  
34 degree in nursing selected by the defendant to observe the  
35 examination. Counsel for the defendant may observe the examination.  
36 The examination shall be completed within fifteen days from the date  
37 it was ordered and the examiner or examiners shall prepare and sign,  
38 without notarization, a written report and file it with the court within  
39 twenty-one business days of the date of the order. On receipt of the  
40 written report, the clerk of the court shall cause copies to be delivered  
41 immediately to the state's attorney and to counsel for the defendant.

42 Sec. 2. Subsection (h) of section 54-56d of the general statutes is  
43 repealed and the following is substituted in lieu thereof (*Effective*  
44 *October 1, 2002*):

45 (h) (1) If, at the hearing, the court finds that there is a substantial  
46 probability that the defendant, if provided with a course of treatment,  
47 will regain competency within the period of any placement order

48 under this section, the court shall either order placement of the  
49 defendant for treatment for the purpose of rendering him competent,  
50 or proceed pursuant to subdivision (2) of this subsection.

51 (2) (A) If, at the hearing, the court finds that there is a substantial  
52 probability that the defendant, if provided with a course of treatment,  
53 will regain competency within the period of any placement order  
54 under this section, the court may, on its own motion, on a motion by  
55 the state, or on a motion by the defendant, order placement of the  
56 defendant at a treatment facility pending civil commitment  
57 proceedings. The placement shall be in the custody of, and the  
58 treatment facility shall be determined by, the Commissioner of Mental  
59 Health and Addiction Services, the Commissioner of Children and  
60 Families or the Commissioner of Mental Retardation. Such order shall:  
61 (i) Include an authorization for the Commissioner of Mental Health  
62 and Addiction Services, the Commissioner of Children and Families or  
63 the Commissioner of Mental Retardation to apply for a civil  
64 commitment of such defendant pursuant to sections 17a-75 to 17a-83,  
65 inclusive, as amended, 17a-270 to 17a-283, inclusive, or 17a-495 to 17a-  
66 538, inclusive; (ii) permit the defendant to agree to participate  
67 voluntarily in a treatment plan devised by the Commissioner of  
68 Mental Health and Addiction Services, the Commissioner of Mental  
69 Retardation or the Commissioner of Children and Families, and  
70 monitored by the Court Support Services Division, and require that the  
71 defendant comply with such treatment plan; and (iii) provide that if  
72 the application for civil commitment is denied or not pursued by the  
73 Commissioner of Mental Health and Addiction Services, the  
74 Commissioner of Children and Families or the Commissioner of  
75 Mental Retardation, or if, in the case of a defendant who is  
76 participating voluntarily in a treatment plan, such defendant ceases  
77 such voluntary participation, the person in charge of the treatment  
78 facility or a designee shall submit a written progress report to the court  
79 pursuant to subsection (j) of this section, and the defendant shall be  
80 returned to the court for a hearing pursuant to subsection (k) of this  
81 section. The period of placement and monitoring under such order  
82 shall not exceed the period of the maximum sentence which the

83 defendant could receive on conviction of the charges against such  
84 defendant, or eighteen months, whichever is less. The Court Support  
85 Services Division shall monitor the defendant's compliance with the  
86 court's order. If the defendant has complied, at the end of the period of  
87 placement and monitoring, the court shall approve the entry of a nolle  
88 prosequi to the charges against the defendant, or shall dismiss such  
89 charges.

90 (B) This subdivision shall not be applicable: (i) To any person  
91 charged with a class A felony, a class B felony, except a violation of  
92 section 53a-122 that does not involve the use, attempted use or  
93 threatened use of physical force against another person, or a violation  
94 of section 14-227a, as amended, subdivision (2) of subsection (a) of  
95 section 53-21, section 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71,  
96 53a-72a or 53a-72b, (ii) to any person charged with a crime or motor  
97 vehicle violation who, as a result of the commission of such crime or  
98 motor vehicle violation, causes the death of another person, or (iii)  
99 unless good cause is shown, to any person charged with a class C  
100 felony.

101 Sec. 3. Subsection (j) of section 54-56d of the general statutes is  
102 repealed and the following is substituted in lieu thereof (*Effective*  
103 *October 1, 2002*):

104 (j) The person in charge of the treatment facility or his designee shall  
105 submit a written progress report to the court (1) at least seven days  
106 prior to the date of any hearing on the issue of the defendant's  
107 competency; (2) whenever he believes that the defendant has attained  
108 competency; [or] (3) whenever he believes that there is not a  
109 substantial probability that the defendant will attain competency  
110 within the period covered by the placement order; or (4) whenever a  
111 defendant has been placed for treatment pursuant to subdivision (2) of  
112 subsection (h) of this section, as amended by this act and the  
113 application for civil commitment of such defendant is denied or not  
114 pursued. The progress report shall contain (A) the clinical findings of  
115 the person submitting the report and the facts on which the findings

116 are based; (B) the opinion of the person submitting the report as to  
117 whether the defendant has attained competency or as to whether the  
118 defendant is making progress, under treatment, toward attaining  
119 competency within the period covered by the placement order; and (C)  
120 any other information concerning the defendant requested by the  
121 court, such as the method of treatment or the type, dosage and effect of  
122 any medication the defendant is receiving.

123 Sec. 4. Subsection (m) of section 54-56d of the general statutes is  
124 repealed and the following is substituted in lieu thereof (*Effective*  
125 *October 1, 2002*):

126 (m) If at any time the court determines that there is not a substantial  
127 probability that the defendant will attain competency within the  
128 period of treatment allowed by this section, or if at the end of that  
129 period the court finds that the defendant is still not competent, the  
130 court shall either release the defendant from custody or order the  
131 defendant placed in the custody of the Commissioner of Mental Health  
132 and Addiction Services, the Commissioner of Children and Families or  
133 the Commissioner of Mental Retardation. The commissioner given  
134 custody or his designee shall then apply for civil commitment  
135 according to sections 17a-75 to 17a-83, inclusive, as amended, 17a-270  
136 to 17a-283, inclusive, as amended, and 17a-495 to 17a-528, inclusive.  
137 The court shall hear arguments as to whether the defendant should be  
138 released or should be placed in the custody of the Commissioner of  
139 Mental Health and Addiction Services, the Commissioner of Children  
140 and Families or the Commissioner of Mental Retardation. If the court  
141 orders the release or placement in the custody of the Commissioner of  
142 Mental Health and Addiction Services, the Commissioner of Children  
143 and Families or the Commissioner of Mental Retardation of a  
144 defendant charged with the commission of a crime that resulted in the  
145 death or serious physical injury, as defined in section 53a-3, as  
146 amended, of another person, it may, on its own motion or on motion of  
147 the prosecuting authority, order, as a condition of such release,  
148 periodic examinations of the defendant as to his competency. Such an  
149 examination shall be conducted in accordance with subsection (d) of

150 this section, as amended by this act. Upon receipt of the written report  
151 as provided in said subsection (d) the court shall, upon the request of  
152 either party filed not later than thirty days after the court receives such  
153 report, conduct a hearing as provided in subsection (e) of this section.  
154 Such hearing shall be held not later than ninety days after the court  
155 receives such report. If the court finds that the defendant has attained  
156 competency, he shall be returned to the custody of the Commissioner  
157 of Correction or released, if he has met the conditions for release, and  
158 the court shall continue with the criminal proceedings. Periodic  
159 examinations ordered by the court under this subsection shall continue  
160 until the court finds that the defendant has attained competency or  
161 until the time within which the defendant may be prosecuted for the  
162 crime with which he is charged, as provided in section 54-193 or 54-  
163 193a, has expired, whichever occurs first. The court shall dismiss, with  
164 or without prejudice, any charges for which a nolle prosequi is not  
165 entered when the time within which the defendant may be prosecuted  
166 for the crime with which he is charged, as provided in section 54-193  
167 or 54-193a, has expired. Notwithstanding the erasure provisions of  
168 section 54-142a, police and court records and records of any state's  
169 attorney pertaining to a charge which is nolle or dismissed without  
170 prejudice while the defendant is not competent shall not be erased  
171 until the time for the prosecution of the defendant expires under  
172 section 54-193 or 54-193a. A defendant who is not civilly committed as  
173 a result of an application made by the Commissioner of Mental Health  
174 and Addiction Services, the Commissioner of Children and Families or  
175 the Commissioner of Mental Retardation pursuant to this section shall  
176 be released. A defendant who is civilly committed pursuant to such an  
177 application shall be treated in the same manner as any other civilly  
178 committed person.

179 Sec. 5. Subsection (n) of section 54-56d of the general statutes is  
180 repealed and the following is substituted in lieu thereof (*Effective*  
181 *October 1, 2002*):

182 (n) The cost of the examination effected by the Commissioner of  
183 Mental Health and Addiction Services and of testimony of persons

184 conducting the examination effected by the commissioner shall be paid  
185 by the Department of Mental Health and Addiction Services. The cost  
186 of the examination and testimony by physicians appointed by the  
187 court shall be paid by the Judicial Department. If the defendant is  
188 indigent, the fee of the person selected by the defendant to observe the  
189 examination and to testify on his behalf shall be paid by the Public  
190 Defender Services Commission. The expense of treating a defendant  
191 placed in the custody of the Commissioner of Mental Health and  
192 Addiction Services, the Commissioner of Children and Families or the  
193 Commissioner of Mental Retardation pursuant to subdivision (2) of  
194 subsection (h) or subsection (i) of this section shall be computed and  
195 paid for in the same manner as is provided for persons committed by a  
196 probate court under the provisions of sections 17b-19, 17b-63 to 17b-65,  
197 inclusive, 17b-116 to 17b-138, inclusive, as amended, 17b-220 to 17b-  
198 250, inclusive, as amended, 17b-256, as amended, 17b-259, as amended,  
199 17b-263, 17b-287, 17b-340 to 17b-350, inclusive, as amended, 17b-689,  
200 17b-689b and 17b-743 to 17b-747, inclusive, as amended.

201 Sec. 6. (NEW) (*Effective October 1, 2002*) (a) When used in this  
202 section, "eligible defendant" means a person found by the court to have  
203 a significant psychiatric disability or a history of treatment for a  
204 significant psychiatric disability, and who currently is in need of and  
205 would benefit from appropriate and available treatment programs,  
206 and "psychiatric disability" means a mental or emotional condition that  
207 has substantial adverse effects on the defendant's ability to function  
208 and requires the defendant to receive care and treatment, but shall not  
209 include an abnormality manifested primarily by repeated criminal or  
210 otherwise antisocial conduct.

211 (b) There shall be a pretrial program for alternative placement of  
212 eligible defendants accused of a crime or crimes or a motor vehicle  
213 violation or violations for which a sentence to a term of imprisonment  
214 may be imposed, which crimes or violations are not of a serious  
215 nature. Services pursuant to such program may be provided by the  
216 Commissioner of Mental Health and Addiction Services, by the  
217 Commissioner of Children and Families or through a private provider

218 agreed upon by the state and the eligible defendant.

219 (c) The court may, in its discretion, invoke such program on motion  
220 of a state's attorney or prosecuting attorney, or on motion of the  
221 defendant, with respect to an eligible defendant (1) who agrees to  
222 disclose to the court the existence of any records of any prior cases and  
223 any pending cases concerning the eligible defendant that came before  
224 the courts of probate regarding such eligible defendant's mental health  
225 and the disposition of such cases, and (2) who can demonstrate to the  
226 satisfaction of the court the benefits to be gained by invoking such  
227 program, provided the eligible defendant shall agree thereto and  
228 provided notice has been given by the eligible defendant, on a form  
229 approved by the office of the Chief Court Administrator, to the victim  
230 or victims of such crime or motor vehicle violation, if any, by  
231 registered or certified mail and such victim or victims have an  
232 opportunity to be heard thereon. In determining whether to grant an  
233 application under this section with respect to a person who has been  
234 adjudged a youthful offender under the provisions of sections 54-76b  
235 to 54-76n of the general statutes, inclusive, as amended, more than five  
236 years prior to the date of such application, and notwithstanding the  
237 provisions of section 54-76l of the general statutes, the court shall have  
238 access to the youthful offender records of such person and may  
239 consider the nature and circumstances of the crime with which such  
240 person was charged as a youth.

241 (d) This section shall not be applicable: (1) To any person charged  
242 with a class A felony, a class B felony, except a violation of section 53a-  
243 122 of the general statutes that does not involve the use, attempted use  
244 or threatened use of physical force against another person, or a  
245 violation of section 14-227a, as amended, subdivision (2) of subsection  
246 (a) of section 53-21 of the general statutes, section 53a-56b, 53a-60d,  
247 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b of the general  
248 statutes, (2) to any person charged with a crime or motor vehicle  
249 violation who, as a result of the commission of such crime or motor  
250 vehicle violation, causes the death of another person, or (3) unless  
251 good cause is shown, to any person charged with a class C felony.

252 (e) (1) Any eligible defendant who enters such program shall agree  
253 to the tolling of any statute of limitations with respect to such crime  
254 and to a waiver of the right to a speedy trial. Any such eligible  
255 defendant shall appear in court and shall, under such conditions as the  
256 court shall order, be released to the custody of the Court Support  
257 Services Division. If the eligible defendant refuses to accept, or, having  
258 accepted, violates such conditions, the eligible defendant's case shall be  
259 brought to trial. The period of such probation or supervision, or both,  
260 shall not exceed two years.

261 (2) The court shall order that as a condition of such probation the  
262 eligible defendant participate in a treatment plan. The treatment  
263 provider shall report every ninety days to the Court Support Services  
264 Division regarding the progress of the eligible defendant under the  
265 treatment plan, except, in the event of substantial noncompliance with  
266 the treatment plan, such report shall be made as soon as reasonably  
267 possible. An eligible defendant who participates in such program of  
268 alternative placement shall provide written consent for such reports  
269 for the duration of such program.

270 (3) The court may order that as a condition of such probation the  
271 defendant participate in the zero-tolerance drug supervision program  
272 established pursuant to section 53a-39d of the general statutes.

273 (4) If the defendant has reached the age of sixteen years but has not  
274 reached the age of eighteen years, the court may order that as a  
275 condition of such probation the eligible defendant be referred for  
276 services to a youth service bureau established pursuant to section  
277 17a-39 of the general statutes, provided the court finds, through an  
278 assessment by a youth service bureau or its designee, that the eligible  
279 defendant is in need of and likely to benefit from such services.

280 (5) When determining any conditions of probation to order for a  
281 person entering such program who was charged with a misdemeanor  
282 that did not involve the use, attempted use or threatened use of  
283 physical force against another person or a motor vehicle violation, the  
284 court shall consider ordering the person to perform community service

285 in the community in which the offense or violation occurred. If the  
286 court determines that community service is appropriate, such  
287 community service may be implemented by a community court  
288 established in accordance with section 51-181c of the general statutes if  
289 the offense or violation occurred within the jurisdiction of a  
290 community court established by said section.

291 (6) If the eligible defendant is charged with a violation of section  
292 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181l of the general statutes,  
293 the court may order that as a condition of such probation the eligible  
294 defendant participate in a hate crimes diversion program as provided  
295 in subsection (f) of this section.

296 (f) If the court orders the eligible defendant to participate in a hate  
297 crimes diversion program as a condition of probation, the eligible  
298 defendant shall pay to the court a participation fee of four hundred  
299 twenty-five dollars. No person may be excluded from such program  
300 for inability to pay such fee, provided (1) such person files with the  
301 court an affidavit of indigency or inability to pay, (2) such indigency or  
302 inability to pay is confirmed by the Court Support Services Division,  
303 and (3) the court enters a finding thereof. The Judicial Department  
304 shall contract with service providers, develop standards and oversee  
305 appropriate hate crimes diversion programs to meet the requirements  
306 of this section. Any eligible defendant whose employment or residence  
307 makes it unreasonable to attend a hate crimes diversion program in  
308 this state may attend a program in another state which has standards  
309 substantially similar to, or higher than, those of this state, subject to the  
310 approval of the court and payment of the application and program fees  
311 as provided in this section. The hate crimes diversion program shall  
312 consist of an educational program and supervised community service.

313 (g) If an eligible defendant released to the custody of the Court  
314 Support Services Division satisfactorily completes such eligible  
315 defendant's period of probation, such eligible defendant may apply for  
316 dismissal of the charges against such eligible defendant and the court,  
317 on finding such satisfactory completion, shall dismiss such charges. If

318 the eligible defendant does not apply for dismissal of the charges  
 319 against such eligible defendant after satisfactorily completing such  
 320 eligible defendant's period of probation, the court, upon receipt of a  
 321 report submitted by the Court Support Services Division that the  
 322 eligible defendant satisfactorily completed such eligible defendant's  
 323 period of probation, may on its own motion make a finding of such  
 324 satisfactory completion and dismiss such charges. Upon dismissal, all  
 325 records of such charges shall be erased pursuant to section 54-142a of  
 326 the general statutes. An order of the court denying a motion to dismiss  
 327 the charges against an eligible defendant who has completed such  
 328 eligible defendant's period of probation or supervision or terminating  
 329 the participation of an eligible defendant in such program shall be a  
 330 final judgment for purposes of appeal.

331 Sec. 7. Section 17a-681a of the general statutes is repealed and the  
 332 following is substituted in lieu thereof (*Effective October 1, 2002*):

333 Prior to the [arraignment] trial of a person charged [solely] with [the  
 334 commission of a misdemeanor] a crime other than a class A felony or a  
 335 class B felony, except a violation of section 53a-122 that does not  
 336 involve the use, attempted use or threatened use of physical force  
 337 against another person, the Department of Mental Health and  
 338 Addiction Services shall, to the maximum extent possible within the  
 339 limits of available appropriations, with the consent of the arrested  
 340 person, cause a clinical assessment to be performed of any person who  
 341 has previously received mental health services or treatment for  
 342 substance abuse from the department or who would reasonably  
 343 benefit from such services to determine whether such person should be  
 344 referred for community-based mental health services. If the person is  
 345 determined to be in need of such services and is willing to accept the  
 346 services offered, the court shall be informed of the result of the  
 347 assessment and the recommended treatment plan for consideration by  
 348 the court in the disposition of the criminal case.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>

Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>October 1, 2002</i>

**JUD**      *Joint Favorable Subst.*

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:**

Fund-Type	Agency Affected	Current FY \$	FY 03 \$	FY 04 \$
GF - Cost	Mental Health & Addiction Serv., Dept.; Children & Families, Dept.	-	Significant	Significant
GF - Cost	Mental Retardation, Dept	-	See Below	See Below
GF - Cost	Judicial Dept.	-	386,000	515,000
GF - Savings	Correction, Dept.	-	-	7,800,000

Note: GF=General Fund

**Municipal Impact:**

Effect	Municipalities	Current FY \$	FY 03 \$	FY 04 \$
STATE MANDATE - Cost	Various Local Boards of Education	-	Potential	Potential

The bill results in significant costs to various social services agencies and the judicial branch by expanding pretrial clinical assessments, and providing for additional placements for mental health treatment and court supervision. It also results in significant savings to the state by reducing the prison population.

**Department of Mental Health and Addiction Services**

This bill makes two primary changes that result in increased costs to the Department of Mental Health and Addiction Services (DMHAS). First, the bill allows the courts to place a person in a substance abuse or mental health treatment program under DMHAS. It is estimated that the resultant increase in caseload to the department due to this change will necessitate an additional four to five clinical social workers. The annual cost to DMHAS for these additional positions is estimated to be

from \$191,000 to \$239,000.

Second, section 6 of the bill expands the current pretrial clinical assessment program in DMHAS, resulting in a potentially significant cost to the department. The changes in the bill represent a potential cost shift from the Department of Correction (DOC) and the Judicial Department's Court Support Services Division (CSSD), which currently provide such services, to DMHAS. It is not known how many clients who currently may receive services through DOC or CSSD would be referred to services offered under DMHAS. The service intensity of such clients is also not known. Therefore the additional increased costs to DMHAS cannot be determined.

### **Department of Children and Families**

Provisions contained within Sections 1 - 5 of the bill will enhance treatment options available to the Department of Children and Families (DCF) in cases involving a youth placed under the agency's care and custody by the superior court when found legally incompetent to stand trial. A small number of such clients are placed in Riverview Hospital each year for terms of up to eighteen months. Any diversion of clients from Riverview will result in no savings as the facility has a significant waiting list. Correspondingly, it is assumed that alternate placements will be pursued by the agency only if its resources allow.

The agency will experience significant costs, however, due to implementation of Section 6 of the bill which creates a new pretrial clinical assessment program. It is assumed that DCF would be financially responsible for treatment provided to youth as deemed "appropriate and available" by the court. The number of potential clients who may be ordered into DCF-funded services cannot be determined at this time. Residential costs could range from \$225 - \$400 per day (\$82,125 - \$146,000 a year), based on current agency rates. The State Department of Education and local boards of education would similarly incur additional special education costs of \$27,000 on average for nexus placements.

**Department of Mental Retardation**

This bill may increase the number of Involuntary Placements of persons with mental retardation who are defendants before the court to determine competency. Previously, these individuals while receiving restoration training (training to help in the restoration of competency) were not involuntarily placed. This bill could result in an additional demand on residential service resources of the Department of Mental Retardation (DMR) clients. As a response to the placement of these clients in a treatment setting by DMR, seeking Involuntary Placement of persons with mental retardation who otherwise would not have required such placement at that time would result in an increased cost to the department. If these placements were not accommodated with additional funding, a re-allocation of existing resources and further strain on those individuals waiting for department residential services would result.

**Department of Correction / Judicial Department**

The accelerated rehabilitation program established in Section 6 of the bill is expected to reduce the prison population by about 240. This would result in a savings to the DOC of approximately \$7.8 million annually.<sup>1</sup> The Judicial Department would experience a corresponding increase in the number of individuals on probation, and would require an additional seven probation officers to supervise these individuals, with an estimated annual cost of \$515,000 (including salary, fringe benefits<sup>2</sup> and associated expenses). The FY 03 cost would be reduced by one-quarter, to \$386,000, because the bill is effective October 1, 2002. It is anticipated that the Judicial Department's CSSD could monitor defendants under the diversionary program established in Sections 1 and 2 of the bill within available resources.

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<sup>1</sup> Calculated as follows: 243 individuals \* \$32,120 (the annual cost to incarcerate someone with a significant psychiatric disability).

<sup>2</sup> Fringe benefits are included in the Miscellaneous Appropriations to the Comptroller not individual agencies.

**OLR Bill Analysis**

sHB 5516

**AN ACT CONCERNING ALTERNATIVES TO INCARCERATION FOR PERSONS WITH PSYCHIATRIC DISABILITIES****SUMMARY:**

This bill expands the options criminal courts have to resolve less serious cases when the accused has a mental illness or, in some cases, mental retardation. It creates a mechanism allowing the court to send a person who is incompetent to stand trial to a treatment program rather than to Connecticut Valley Hospital's (CVH) restoration unit or the Department of Mental Retardation's (DMR) restoration training program.

The bill also creates a new accelerated rehabilitation (AR) program for people with significant mental illnesses. Under this program, judges must dismiss the charges, or approve a prosecutor's motion not to prosecute, after a participant successfully completes a court-supervised treatment program.

The bill expands an existing pretrial clinical assessment program, permitting more arrestees to undergo mental health assessments and have recommended treatment plans submitted to judges for consideration in case dispositions.

Finally, the bill authorizes a court to order periodic examinations of incompetent people charged with crimes that resulted in death or serious physical injury who it places with DMR, the Department of Mental Health and Addiction Services (DMHAS), or the Department of Children and Families (DCF). Under existing law, such examinations are explicitly permitted when a court releases a person from custody. They may continue until the court finds that the defendant is competent or the statute of limitations for prosecuting the offense expires, whichever occurs first.

EFFECTIVE DATE: October 1, 2002

**CIVIL COMMITMENT PROGRAM**

By law, courts must order competency examinations when there is a question about a criminal defendant's ability to understand the proceedings or assist in his defense. A team of mental health professionals conducts the examinations and submits court reports. Currently, reports must indicate whether there is a substantial probability that, if treated, an incompetent defendant will regain competency to stand trial within the time he can be held (the maximum jail sentence that could be imposed for the crimes charged, or 18 months, whichever is shorter). Under the bill, reports must also state whether an incompetent defendant appears to be eligible for civil commitment with monitoring by the Judicial Department's Court Support Services Division (CSSD).

As under current law, courts must hold hearings within 10 days of receiving the clinical team's report. But instead of limiting judges to order restoration placement for incompetent defendants whom the panel has indicated may become competent, the bill gives judges the option of placing them in a treatment facility pending civil commitment proceedings.

The new option permits DMHAS, DMR, or DCF to seek a probate court's civil commitment order for certain individuals who the judge determines are likely to become competent during the period that the agency can lawfully hold them for competency restoration. Currently, civil commitment is available only if the allowable restoration period expires or the court determines that there is no substantial probability that the defendant will attain competency within the allowable restoration period.

The court may consider this new option on its own initiative or when either the defendant or prosecutor requests it. Participating defendants are ordered into the custody of the DMHAS, DCF, or DMR commissioners, and the designated agency determines which treatment facility to use. The court's placement order must include provisions:

1. authorizing the appropriate commissioner to bring involuntary civil commitment proceedings in the probate court;
  2. permitting the defendant to agree to participate voluntarily in a treatment plan the agency devises and requiring him to comply;
- and

3. requiring the person in charge of the treatment facility, or his designee, to give the court a written progress report if (a) the probate court denies the commitment application, (b) the custodial agency decides not to pursue commitment, or (c) a defendant who agreed to comply with a treatment plan stops doing so.

By law, when the court receives a progress report, it must hold a hearing. If it determines that the person is competent, it must bring him to trial.

Under the bill, treatment costs are allocated among agencies the same way as under the existing civil commitment law. The CSSD must monitor the defendant's compliance with the court's order. At the end of the specified period, the court must approve the entry of a nolle prosequi or dismiss the charges, so long as the defendant complied with the treatment plan and other conditions the court imposed.

### ***Excluded Crimes***

With the exception of people committing nonviolent first-degree larceny, those charged with class A and B felonies (the most serious crimes in the penal code) are ineligible for the treatment option. The bill also excludes people charged with drunk driving or a crime or motor vehicle violation in which another person was killed and the following class C felonies: (1) sexual contact with a child under age 16, (2) second-degree sexual assault, and (3) manslaughter. Those charged with other class C felonies can participate if they can show good cause for doing so. Finally, the bill excludes people charged with third-degree sexual assault and second-degree assault with a motor vehicle.

### **NEW AR PROGRAM**

By law, AR is available to people charged with crimes "not of a serious nature" which carry jail sentences. The bill creates a new AR program for people the court finds to have a significant psychiatric disability or a history of treatment for such a disability who currently need and would benefit from appropriate and available treatment programs. The bill defines "psychiatric disability" as a mental or emotional condition that has substantial adverse effects on the defendant's ability to function and requires the defendant to receive care and treatment. It excludes an abnormality whose main characteristic is repeated criminal or antisocial conduct. The prosecutor or defendant may ask

the court to consider this option.

### ***Exclusions***

The program excludes people charged with the same crimes as are excluded from the bill's commitment program, described above. But unlike current law, the new program may be used, at the court's discretion, by people with prior criminal drunk driving convictions or serious youthful offender adjudications less than five years old, as well as by those who have already participated in an AR program. And under the bill, the judge need not find that a defendant will probably not reoffend, which is a requirement under current law.

### ***Participation Requirements***

Under the bill, people admitted to the program must agree to the tolling of any statute of limitations for the charged offenses and waive their speedy trial rights. They must also (1) agree to disclose to the court the existence of records of prior and pending probate court cases concerning their mental health and each case disposition and (2) demonstrate to the satisfaction of the court the benefits to be gained by using the program. They must also notify crime victims by registered or certified mail, and the judge must give victims an opportunity to express their opinions.

Defendants who were adjudicated youthful offenders more than five years before they apply for AR must give the court access to their confidential juvenile court records. The court may consider the nature and circumstances of a person's youthful offense in deciding whether to permit him to participate in AR.

### ***Release Conditions***

The court must order defendants approved for AR released to the custody of CSSD under conditions it orders. One condition must be participation in a treatment program, with the provider giving CSSD progress reports every 90 days. The provider must report to CSSD as soon as reasonably possible when there is "substantial noncompliance" with the treatment plan. Participating defendants must give written permission for such reports as long as they are in the program.

As under current AR program rules, the court may also order the defendant to:

1. participate in a zero tolerance drug supervision or appropriate youth service bureau program;
2. perform community service under community court supervision if charged with a nonviolent misdemeanor or motor vehicle violation; or
3. enter a hate crimes diversion program if accused of specified crimes motivated by bigotry or bias.

The program's treatment services may be provided by DMHAS or DCF or through a private provider if the state and defendant agree to this.

Participation fees and waivers, probation department implementation of the hate crimes diversion program, and the authority of judges to send appropriate community service cases to local community courts for supervision are the same as under the existing AR program.

The period of probation or supervision, or both, cannot exceed two years. If the defendant refuses to accept, or accepts but later violates the conditions of release, his case must be brought to trial.

The court must dismiss the charges if the defendant satisfactorily completes the AR program. The defendant may apply for the dismissal or the court can do so on its own authority when CSSD reports successful completion. Under the bill, the defendant can immediately appeal if the court denies his motion to dismiss the charges.

Upon dismissal, records of the charges are erased.

### **EXPANDED CLINICAL ASSESSMENT PROGRAM**

The bill expands the current voluntary clinical assessment program, which requires DMHAS, to the maximum extent possible within appropriations, to have a clinical assessment done and make a treatment recommendation to the court when an arrestee who has previously received DMHAS services or would benefit from them requests this. The current law covers only those accused of misdemeanors and limits requests to those made before arraignment

(i.e., before the person's first court appearance after arrest). Under the bill, defendants charged with any offense other than a class A or B felony can request an assessment any time before their trial begins. Those accused of nonviolent first-degree larceny can also participate.

## **BACKGROUND**

### ***Competency Restoration***

CVH's restoration program provides inpatient services for patients ordered into its custody after being found not competent to stand trial. A clinical treatment team must determine whether the patient is competent to stand trial, not yet competent but restorable, or not restorable.

***Involuntary Medication Under Restoration Standards.*** By law, restorable people in the program who are unable or unwilling to give consent cannot be forced to take psychiatric medication unless a court finds by clear and convincing evidence that:

1. to a reasonable degree of medical certainty, involuntary medication of the defendant will render him competent to stand trial;
2. an adjudication of guilt or innocence cannot be made using less intrusive means;
3. the proposed treatment plan is narrowly tailored to minimize intrusion on the defendant's liberty and privacy;
4. the proposed drug regime will not unnecessarily risk the defendant's health; and
5. the seriousness of the alleged crime is such that the state's interest in fairly and accurately determining the defendant's guilt or innocence overrides the defendant's interest in self-determination.

### ***Civil Commitment***

The standard for involuntary civil commitment is proof by clear and convincing evidence that the person has psychiatric disabilities and (1) is dangerous to himself or others or (2) as a result of mental or emotional impairment, (a) is in danger of serious harm as a result of an inability or failure to provide for his own basic needs, (b) is mentally incapable of determining whether or not to accept treatment because of his mental impairment, and (c) hospital treatment is necessary and available.

***Involuntary Medication Under Civil Commitment Standards.*** Once civilly committed, a person charged with a crime must be treated in the same way as any other patient. This means that a probate court judge can appoint a conservator to make health care decisions for him if he is incompetent or, if competent but refusing medication, a hospital can force him to do so under its internal rules after giving him notice, representation, and a hearing.

The standards for involuntary medication under the civil commitment law focus on (1) the necessity of medication to the patient's treatment (when he is incompetent) or (2) whether there is a substantial probability that without medication, the patient's condition will rapidly deteriorate (when competent, but refusing medication).

### ***Accelerated Rehabilitation***

AR is a program for people accused of crimes "not of a serious nature" who the court finds are not likely to reoffend. The court has discretion whether to allow a defendant to use the program. But people are ineligible if they (1) were previously convicted of a crime or certain motor vehicle violations, (2) used the program before, (3) were adjudged a youthful offender during the past five years, (4) have been charged with certain drug offenses and are eligible for the pretrial drug education program or have used it twice before, (5) have been charged with a family violence crime and are eligible for the pretrial family education program or used it before, or (6) are accused of certain serious offenses.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 37    Nay 0