



General Assembly

**Substitute Bill No. 5516**

*February Session, 2002*

**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2 repealed and the following is substituted in lieu thereof (*Effective*  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	October 1, 2002
Sec. 7	October 1, 2002

**JUD**      *Joint Favorable Subst.*

**HS**        *Joint Favorable*

**PH**        *Joint Favorable*

**ED**        *Joint Favorable*

**APP**      *Joint Favorable*