



House of Representatives

General Assembly

File No. 443

February Session, 2004

House Bill No. 5554

House of Representatives, April 5, 2004

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

AN ACT ESTABLISHING A PSYCHIATRIC PRETRIAL ALTERNATIVE PLACEMENT PROGRAM.

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

1 Section 1. (NEW) (*Effective October 1, 2004*) (a) As used in this
2 section:

3 (1) "Eligible defendant" means a person found by the court to have a
4 significant psychiatric disability or a history of treatment for a
5 significant psychiatric disability and who currently is in need of and
6 would benefit from appropriate and available treatment programs;
7 and

8 (2) "Psychiatric disability" means a mental or emotional condition
9 that has substantial adverse effects on the defendant's ability to
10 function and requires the defendant to receive care and treatment, but
11 does not include an abnormality manifested primarily by repeated
12 criminal or other antisocial conduct.

13 (b) There shall be a pretrial program for alternative placement of
14 eligible defendants accused of a crime or motor vehicle violation for
15 which a sentence to a term of imprisonment may be imposed, which
16 crime or violation is not of a serious nature. Services pursuant to such
17 program may be provided by the Commissioner of Mental Health and
18 Addiction Services, by the Commissioner of Children and Families or
19 through a private provider approved by the Commissioner of Mental
20 Health and Addiction Services or the Commissioner of Children and
21 Families.

22 (c) Except as provided in subsection (d) of this section, the court
23 may, in its discretion, invoke the program for alternative placement
24 pursuant to this section on motion of the defendant or on motion of a
25 state's attorney or prosecuting attorney with respect to an eligible
26 defendant who (1) agrees to disclose to the court the existence of any
27 records of any prior cases and any pending cases concerning the
28 eligible defendant that came before the courts of probate regarding
29 such eligible defendant's mental health and the disposition of such
30 cases, and (2) can demonstrate to the satisfaction of the court the
31 benefits to be gained by invoking such program, provided (A) the
32 eligible defendant agrees to comply with the conditions of such
33 program, and (B) notice has been given by the eligible defendant, on a
34 form approved by the Office of the Chief Court Administrator, to the
35 victim or victims of such crime or motor vehicle violation, if any, by
36 registered or certified mail, and such victim or victims have an
37 opportunity to be heard thereon. In determining whether to invoke
38 such program with respect to an eligible defendant who has been
39 adjudged a youthful offender under the provisions of sections 54-76b
40 to 54-76n, inclusive, of the general statutes, as amended, more than five
41 years prior to the date of such motion, and notwithstanding the
42 provisions of section 54-76l of the general statutes, the court shall have
43 access to the youthful offender records of such eligible defendant and
44 may consider the nature and circumstances of the crime with which
45 the eligible defendant was charged as a youth.

46 (d) This section shall not apply: (1) To any person charged with a

47 class A felony, a class B felony, except a violation of section 53a-122 of
48 the general statutes that does not involve the use, attempted use or
49 threatened use of physical force against another person, or a violation
50 of section 14-227a of the general statutes, as amended, subdivision (2)
51 of subsection (a) of section 53-21 of the general statutes or section
52 53a-56b, 53a-60d, 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b
53 of the general statutes; (2) to any person charged with a crime or motor
54 vehicle violation who, as a result of the commission of such crime or
55 motor vehicle violation, causes the death of another person; or (3)
56 unless good cause is shown, to any person charged with a class C
57 felony.

58 (e) (1) Any eligible defendant who enters the program for
59 alternative placement pursuant to this section shall agree to the tolling
60 of any statute of limitations with respect to the crime or violation and
61 to a waiver of the right to a speedy trial. Such eligible defendant shall
62 appear in court and shall, under such conditions as the court shall
63 order, be released to the custody of the Court Support Services
64 Division. If the eligible defendant refuses to accept or, having
65 accepted, violates such conditions, the eligible defendant's case shall be
66 brought to trial. The period of such probation shall not exceed two
67 years.

68 (2) The court shall order that, as a condition of probation pursuant
69 to subdivision (1) of this subsection, the eligible defendant participate
70 in a treatment plan. The provider of treatment services under the
71 treatment plan shall report not less than once every ninety days to the
72 Court Support Services Division regarding the progress of the eligible
73 defendant under such plan, except, in the event of substantial
74 noncompliance with the treatment plan by the eligible defendant, such
75 report shall be made as soon as reasonably possible after such
76 noncompliance. Any eligible defendant who participates in the
77 program for alternative placement pursuant to this section shall
78 provide written consent for the furnishing of such reports to the Court
79 Support Services Division for the duration of such participation.

80 (3) The court may order that, as a condition of probation pursuant to
81 subdivision (1) of this subsection, the defendant participate in the zero-
82 tolerance drug supervision program established pursuant to section
83 53a-39d of the general statutes.

84 (4) If the eligible defendant has reached the age of sixteen years but
85 has not reached the age of eighteen years, the court may order that, as
86 a condition of probation pursuant to subdivision (1) of this subsection,
87 the eligible defendant be referred for services to a youth service bureau
88 established pursuant to section 10-19m of the general statutes,
89 provided the court finds, through an assessment by a youth service
90 bureau or its designee, that the eligible defendant is in need of and
91 likely to benefit from such services.

92 (5) When determining the conditions of probation pursuant to
93 subdivision (1) of this subsection to order for an eligible defendant
94 who was charged with a misdemeanor that did not involve the use,
95 attempted use or threatened use of physical force against another
96 person or with a motor vehicle violation, the court shall consider
97 ordering the eligible defendant to perform community service in the
98 community in which the crime or violation occurred. If the court
99 determines that community service is appropriate, such community
100 service may be implemented by a community court designated in
101 accordance with section 51-181c of the general statutes, as amended, if
102 the crime or violation occurred within the jurisdiction of the
103 community court.

104 (6) If the eligible defendant is charged with a violation of section
105 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181l of the general statutes,
106 the court may order that, as a condition of probation pursuant to
107 subdivision (1) of this subsection, the eligible defendant participate in
108 a hate crimes diversion program as provided in subsection (f) of this
109 section.

110 (f) If the court orders the eligible defendant to participate in a hate
111 crimes diversion program pursuant to subdivision (6) of subsection (e)
112 of this section, the eligible defendant shall pay to the court a

113 participation fee of four hundred twenty-five dollars. No eligible
114 defendant may be excluded from such program for inability to pay
115 such fee, provided (1) such eligible defendant files with the court an
116 affidavit of indigency or inability to pay, (2) such indigency or inability
117 to pay is confirmed by the Court Support Services Division, and (3) the
118 court enters a finding thereof. The Judicial Department shall contract
119 with service providers, develop standards and oversee appropriate
120 hate crimes diversion programs to meet the requirements of this
121 section. Any eligible defendant whose employment or residence makes
122 it unreasonable to attend a hate crimes diversion program in this state
123 may attend a program in another state that has standards substantially
124 similar to, or higher than, those of this state, subject to the approval of
125 the court and payment of the participation fee as provided in this
126 subsection. The hate crimes diversion program shall consist of an
127 educational program and supervised community service.

128 (g) If an eligible defendant released to the custody of the Court
129 Support Services Division pursuant to subdivision (1) of subsection (e)
130 of this section satisfactorily completes such eligible defendant's period
131 of probation, the eligible defendant may apply for dismissal of the
132 charges against the eligible defendant and the court, on finding such
133 satisfactory completion, shall dismiss such charges. If such eligible
134 defendant does not apply for dismissal of the charges against the
135 eligible defendant after satisfactorily completing the eligible
136 defendant's period of probation, the court, upon receipt of a report
137 submitted by the Court Support Services Division that the eligible
138 defendant satisfactorily completed the eligible defendant's period of
139 probation, may on its own motion make a finding of such satisfactory
140 completion and dismiss such charges. Upon dismissal, all records of
141 such charges shall be erased pursuant to section 54-142a of the general
142 statutes. An order of the court denying a motion to dismiss the charges
143 against an eligible defendant who has completed such eligible
144 defendant's period of probation or terminating the participation of an
145 eligible defendant in the program for alternative placement pursuant
146 to this section shall be a final judgment for purposes of appeal.

147 Sec. 2. Section 17a-486 of the general statutes is repealed and the
148 following is substituted in lieu thereof (*Effective October 1, 2004*):

149 Prior to the [arrestment] trial of a person charged [solely with the
150 commission of a misdemeanor] with a crime other than a class A
151 felony or a class B felony, except a violation of section 53a-122 that
152 does not involve the use, attempted use or threatened use of physical
153 force against another person, the Department of Mental Health and
154 Addiction Services shall, to the maximum extent possible within the
155 limits of available appropriations, with the consent of [the arrested]
156 such person, cause a clinical assessment to be performed of any such
157 person who has previously received mental health services or
158 treatment for substance abuse from the department or who would
159 reasonably benefit from such services to determine whether such
160 person should be referred for community-based mental health
161 services. If the person is determined to be in need of such services and
162 is willing to accept the services offered, the court shall be informed of
163 the result of the assessment and the recommended treatment plan for
164 consideration by the court in the disposition of the criminal case.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>

JUD *Joint Favorable*

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:

Agency Affected	Fund-Effect	FY 05 \$	FY 06 \$
Judicial Department (Probation)	GF - Cost	305,058	382,744
Comptroller Misc. Accounts (Fringe Benefits)	GF - Cost	55,306	167,022
Mental Health & Addiction Serv., Dept.	GF - Cost	1,237,500	1,650,000
Children & Families, Dept.	GF - Cost	Significant	Significant
Correction, Dept.; Judicial Department (Adult Services)	GF - Cost Avoidance	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 05 \$	FY 06 \$
Various Local Boards of Education	STATE MANDATE - Cost	Potential	Potential

Explanation

The bill's pre-trial diversion program for individuals with psychiatric disabilities would result in significant costs to the Judicial Department to expand its probation supervision and the Department of Mental Health and Addiction Services to provide various services. It would divert some offenders from incarceration in the future and reduce the number of individuals receiving contracted mental health services from the Department of Correction (DOC) and the Judicial Department's Court Support Services Division. This diversion could result in savings by reducing the prison population.

The Court Support Services Division would experience an increase in the number of individuals on probation as a result of the bill's accelerated rehabilitation program. As a result, it is anticipated that the Division would require an additional six probation officers to supervise them at an annualized cost of approximately \$550,000

(including salaries, other expenses and fringe benefits).¹ In addition, a cost of about \$18,000 would be incurred in FY 05 for equipment.

This bill expands the current pretrial clinical assessment program in the Department of Mental Health and Addiction Services. The changes in the bill represent a potential cost shift from the DOC and the Judicial Department's Court Support Services Division, which currently provide such services. It is assumed that clients served by this program would require several different levels of care. Assuming an annual caseload of 180 additional DMHAS clients, with varying service requirements, an estimated annual additional cost to DMHAS would be \$1.65 million, as detailed in the following table:

Service	Clients	Per Person	Total Cost
Supervised Housing	15	\$50,000	\$750,000
ACT Services	40	\$6,000	\$240,000
Case Management	150	\$2,000	\$300,000
Court Evaluations	180	\$2,000	\$360,000
TOTAL COST			\$1,650,000

The Department of Children and Families (DCF) will experience significant costs due to implementation of the bill, which expands the pretrial clinical assessment program. It is assumed that DCF would be financially responsible for treatment services 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, however even a small number of such clients would result in significant unbudgeted expenses. Assuming the need for residential treatment, an annual cost of approximately \$77,000 per client would result, based on an average rate of \$211 per day. The State Department

¹ The fringe benefit costs for state employees are budgeted centrally in the Miscellaneous Accounts administered by the Comptroller. The total fringe benefit reimbursement rate as a percentage of payroll is 45.82%, effective July 1, 2003. However, first year fringe benefit costs for new positions do not include pension costs lowering the rate to 20.23% in FY 05. The state's pension contribution is based

of Education, in conjunction with local boards of education, would similarly incur average special education costs of up to \$33,000 per client (\$183 per diem for 180 days) for nexus placements in a residential setting.

upon the prior year's certification by the actuary for the State Employees Retirement System.

OLR BILL ANALYSIS

HB 5554

AN ACT ESTABLISHING A PSYCHIATRIC PRETRIAL ALTERNATIVE PLACEMENT PROGRAM**SUMMARY:**

This bill gives criminal courts options for resolving less serious cases when the accused has a significant psychiatric disability by:

1. creating a new accelerated rehabilitation (AR) program for such people, and
2. expanding eligibility for an existing pretrial mental health assessment program.

It defines "psychiatric disability" as a mental or emotional condition that (1) has substantial adverse effects on the defendant's ability to function and (2) requires care and treatment. It excludes an abnormality whose main characteristic is repeated criminal or antisocial conduct.

EFFECTIVE DATE: October 1, 2004

NEW AR PROGRAM

By law, AR is a program for people charged with certain crimes "not of a serious nature" who the court finds probably will not commit another offense. The bill creates a new AR program for people with a significant psychiatric disability or a history of having been treated for one. The court must find that they currently need and would benefit from appropriate treatment and that a program is available.

Either the prosecutor or defendant can ask the court to grant AR in lieu of prosecution. The defendant must convince the court that he can benefit from participating in the program. The period of probation or supervision, or both, cannot exceed two years.

Eligibility

With the exception of people accused of nonviolent first-degree larceny (a class B felony), those charged with class A and B felonies (see BACKGROUND) are ineligible for the treatment option. The bill also excludes (1) people charged with drunk driving or a crime or motor vehicle violation in which a person was killed and (2) the following class C felonies:

1. Sexual contact with a child under age 16,
2. second-degree sexual assault,
3. second-degree manslaughter with a motor vehicle, and
4. third-degree sexual assault with a firearm.

These are the same offenses excluded under the traditional AR program. But unlike existing law, the court has discretion to allow offenders to participate in spite of prior drunk driving convictions, serious youthful offender adjudications less than five years old, or previous AR program participation. And under the bill, the judge need not find that a defendant will probably not reoffend.

Participation Requirements

Under the bill, people admitted to the program must agree to toll the running of the statute of limitations for the charged offense 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;
2. give the court access to their juvenile court records if they were adjudicated youthful offenders more than five years before their AR application; and
3. send a court-approved form to their victims by registered or certified mail, notifying them that they are seeking AR.

The judge may consider the nature and circumstances of a person's youthful offense in deciding whether to grant AR status. He must also

give victims a chance to express their views.

Release Conditions

The court must hold a hearing to order defendants approved for AR released to the custody of the Court Support Services Division (CSSD) under conditions the court sets. One condition must be participation in a treatment plan, 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 the provider written permission to make these 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 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.

Participation fees and fee waivers are the same as under the existing AR program. The departments of Mental Health and Addiction Services (DMHAS) or Children and Families may provide the mental health treatment or approve a private provider.

If the defendant refuses to accept, or accepts but later violates, the conditions of release, his case must be brought to trial.

Case Dismissals

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 dismiss on its own when CSSD reports successful program completion. Under the bill, the defendant can immediately appeal if the court denies his dismissal application or terminates his

participation in the program.

Upon dismissal, court 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 consents to this. The purpose of the assessment is to determine whether the person should be referred for community-based mental health services and to notify the court that he is willing to accept such services. Courts can take this information into account in deciding how to dispose of the case.

The current program covers only those accused of misdemeanors and requires the arrestee to give permission for the assessment before his first court appearance (i.e., arraignment). But under the bill, defendants charged with any offense other than a class A or B felony can request an assessment any time before trial. Those accused of nonviolent first-degree larceny, a class B felony, can also participate.

BACKGROUND

Felony Classifications

Felonies are punishable by imprisonment, fines, or both. The range of sanctions varies with the severity of the crime, as shown in the table below.

<i>Felony Class</i>	<i>Sentence Range (Yrs.)</i>	<i>Maximum Fine (\$)</i>
A (murder)	25 to 60	20,000
A	10 to 25	20,000
B	1 to 20	15,000
C	1 to 10	10,000
D	1 to 5	5,000

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report

Yea 39 Nay 0