



House of Representatives

General Assembly

File No. 683

January Session, 2011

Substitute House Bill No. 6639

House of Representatives, May 2, 2011

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS.

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

1 Section 1. Subsections (a) to (c), inclusive, of section 54-56e of the
2 general statutes are repealed and the following is substituted in lieu
3 thereof (*Effective October 1, 2011*):

4 (a) There shall be a pretrial program for accelerated rehabilitation of
5 persons accused of a crime or crimes or a motor vehicle violation or
6 violations for which a sentence to a term of imprisonment may be
7 imposed, which crimes or violations are not of a serious nature.

8 (b) The court may, in its discretion, invoke such program on motion
9 of the defendant or on motion of a state's attorney or prosecuting
10 attorney with respect to a defendant (1) who, the court believes, will
11 probably not offend in the future, (2) who has no previous record of
12 conviction of a crime or of a violation of section 14-196, subsection (c)
13 of section 14-215, section 14-222a, subsection (a) of section 14-224 or
14 section 14-227a, [(3) who has not been adjudged a youthful offender

15 within the preceding five years under the provisions of sections 54-76b
16 to 54-76n, inclusive,] and [(4)] (3) who states under oath, in open court
17 or before any person designated by the clerk and duly authorized to
18 administer oaths, under the penalties of perjury that the defendant has
19 never had such program invoked in the defendant's behalf, provided
20 the defendant shall agree thereto and provided notice has been given
21 by the defendant, on a form approved by rule of court, to the victim or
22 victims of such crime or motor vehicle violation, if any, by registered
23 or certified mail and such victim or victims have an opportunity to be
24 heard thereon. [In determining whether to grant an application under
25 this section with respect to a person who has been adjudged a youthful
26 offender under the provisions of sections 54-76b to 54-76n, inclusive,
27 more than five years prior to the date of such application, and
28 notwithstanding the provisions of section 54-76l, the court shall have
29 access to the youthful offender records of such person and may
30 consider the nature and circumstances of the crime with which such
31 person was charged as a youth.] Any defendant who makes
32 application for participation in such program shall pay to the court an
33 application fee of thirty-five dollars.

34 (c) This section shall not be applicable: (1) To any person charged
35 with a class A felony, a class B felony, except a violation of section 53a-
36 122 that does not involve the use, attempted use or threatened use of
37 physical force against another person, or a violation of section 14-227a,
38 subdivision (2) of subsection (a) of section 53-21, section 53a-56b, 53a-
39 60d, 53a-70, 53a-70a, 53a-70b, 53a-71, except subdivision (1) of
40 subsection (a) of said section, 53a-72a, 53a-72b, 53a-90a, 53a-196e or
41 53a-196f, (2) to any person charged with a crime or motor vehicle
42 violation who, as a result of the commission of such crime or motor
43 vehicle violation, causes the death of another person, (3) to any person
44 accused of a family violence crime as defined in section 46b-38a who
45 (A) is eligible for the pretrial family violence education program
46 established under section 46b-38c, or (B) has previously had the
47 pretrial family violence education program invoked in such person's
48 behalf, (4) [to any person charged with a violation of section 21a-267 or
49 21a-279 who (A) is eligible for the pretrial drug education program

50 established under section 54-56i, or (B) has previously had the pretrial
 51 drug education program invoked in such person's behalf, (5)] unless
 52 good cause is shown, to any person charged with a class C felony or a
 53 violation of subdivision (1) of subsection (a) of section 53a-71, or [(6)]
 54 (5) to any person charged with a violation of section 9-359 or 9-359a.

55 Sec. 2. Subsection (b) of section 54-56i of the general statutes is
 56 repealed and the following is substituted in lieu thereof (*Effective*
 57 *October 1, 2011*):

58 (b) Upon application by any such person for participation in such
 59 program and payment to the court of an application fee of one
 60 hundred dollars and a nonrefundable evaluation fee of one hundred
 61 dollars, the court shall, but only as to the public, order the court file
 62 sealed provided such person states under oath, in open court or before
 63 any person designated by the clerk and duly authorized to administer
 64 oaths, under penalties of perjury, that such person has never had such
 65 program invoked in such person's behalf. A person shall be ineligible
 66 for participation in such pretrial drug education program if such
 67 person has previously participated in the eight-session, ten-session or
 68 fifteen-session drug education program, or substance abuse treatment
 69 program established under this section, [or the pretrial community
 70 service labor program established under section 53a-39c.] The
 71 evaluation and application fee imposed by this subsection shall be
 72 credited to the pretrial account established under section 54-56k.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2011</i>	54-56e(a) to (c)
Sec. 2	<i>October 1, 2011</i>	54-56i(b)

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Mental Health & Addiction Serv., Dept.	SF - Revenue Loss	up to 842,600	up to 1.1 million
Judicial Dept.	GF - Revenue Gain	up to 307,500	up to 410,000

Note: SF=Special Fund (Non-appropriated); GF=General Fund

Municipal Impact: None

Explanation

Section 1 of the bill expands eligibility for the pretrial accelerated rehabilitation and pretrial drug education programs. It is expected that 2,100 offenders who are currently on regular probation would become eligible for these programs. As these offenders are already receiving services of comparable cost under regular probation, there are no additional costs to the Judicial Department associated with shifting them to accelerated rehabilitation.

Section 2 of the bill will result in a revenue loss to the Pre-Trial account and a revenue gain to the General Fund. The impact is associated with removing the bar for participation in the pretrial drug education program (PDEP) for people who previously participated in the pretrial community service labor program (CSLP).

It is anticipated that the provisions of the bill will result in individuals choosing CSLP for their first offense as it is less costly (fee of approximately \$205, while the PDEP fee ranges from \$550-\$700). Based on FY 11 data, if all individuals chose CSLP instead of PDEP, the Pre-Trial account would experience a revenue loss of approximately

\$842,600 in FY 12 (effective date of 10/1/11) and \$1.1 million in FY 13.¹ The same provisions of the bill would result in a corresponding revenue gain of \$307,500 in FY 12 and \$410,000 in FY 13 to the General Fund.²

The Out Years

The annualized ongoing revenue impact identified above would remain constant into the future since program fee amounts are set by statute.

Sources: Judicial Branch 2010 Financial Statements

¹ In FY 11, PDEP fees are estimated to result in revenue of \$1,122,108 to the Pre-Trial account.

² This estimate assumes 2,000 additional people would participate in and pay a program fee of \$205 for the community service labor program.

OLR Bill Analysis**sHB 6639*****AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS.*****SUMMARY:**

This bill expands eligibility for the pretrial accelerated rehabilitation (AR) and pretrial drug education programs.

The bill removes the bar on participation in the AR program for a person:

1. adjudged a youthful offender in the past five years;
2. charged with 2nd degree sexual assault involving sexual intercourse with someone between ages 13 and 16 when the actor is more than three years older, but only if there is good cause; or
3. charged with a drug paraphernalia or possession crime when the person (a) is eligible for the pretrial drug education program or (b) had that program invoked on his or her behalf before.

A person must meet the other AR eligibility requirements in current law. This means he or she must not have prior convictions of a crime or certain motor vehicle violations and cannot have been in AR before. The law gives the court discretion whether to allow an eligible defendant to participate and may allow it if the court believes the defendant will probably not offend in the future. The bill eliminates the court's access to youthful offender records of someone adjudged a youthful offender more than five years ago, which current law allows the court to consider in determining whether to grant participation.

The bill also removes a bar to participation in the pretrial drug education program for people who previously participated in the

pretrial community service labor program. The pretrial drug education program is for people charged with drug paraphernalia or possession crimes. By law, someone cannot participate in this program if he or she previously participated the drug education program.

EFFECTIVE DATE: October 1, 2011

ELIGIBILITY FOR AR

Under current law, someone charged with 2nd degree sexual assault is ineligible for AR. The bill makes someone charged with this crime eligible if there is good cause and the charge involves sexual intercourse with someone between ages 13 and 16 and the actor is more than three years older.

Current law also bars participation by someone charged with drug paraphernalia or possession crimes if the person (1) is eligible for the pretrial drug education program or (2) has had that program invoked on his or her behalf before. The bill allows someone charged with one of these crimes to participate regardless of eligibility or participation in the drug education program.

As under current law, a person is ineligible for AR if he or she is charged with one of the following crimes:

1. a class A felony;
2. a class B felony other than 1st degree larceny when the crime did not involve the use or threatened use of physical force against a person;
3. a class C felony unless good cause is shown;
4. a crime or motor vehicle violation that caused someone's death;
5. operating under the influence of alcohol or drugs;
6. risk of injury to a minor involving sex;
7. 2nd degree assault with a motor vehicle;

8. 2nd degree manslaughter with a motor vehicle;
9. 1st or 3rd degree sexual assault;
10. 2nd degree sexual assault (except for the charge the bill makes eligible for AR on a showing of good cause);
11. 1st degree aggravated sexual assault;
12. sexual assault in a spousal or cohabiting relationship;
13. 3rd degree sexual assault with a firearm;
14. enticing a minor;
15. 2nd or 3rd degree possession of child pornography;
16. a family violence crime when he or she is eligible for the pretrial family violence education program or has had that program invoked on his or her behalf before; or
17. certain absentee ballot and false statement in absentee ballot crimes.

BACKGROUND

AR

AR participants waive their right to a speedy trial and agree to a tolling of the statute of limitations. The court places them under the supervision of the Court Support Services Division for up to two years under whatever conditions it orders. If the defendant successfully completes the program, the court dismisses the charges and the record is erased. If the defendant violates a condition of the program, he or she is brought to trial on the original charges.

Pretrial Drug Education Program

Courts can refer someone charged with possession of drugs or drug paraphernalia to this program. Participants waive their right to a speedy trial and agree to a tolling of the statute of limitations. The court suspends prosecution and assigns the person to a drug

intervention or substance abuse treatment program. The court dismisses the charges against someone who successfully completes the program. A person who fails the program or is not amenable to treatment and is not reinstated is brought to trial.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/14/2011)