
OLR Bill Analysis

sHB 5555

AN ACT CONCERNING DIVERSIONARY PROGRAMS.

SUMMARY:

This bill makes a number of changes to diversionary programs including:

1. renaming the pretrial drug education program the “pretrial drug education and community service program,” expanding eligibility for the program, increasing certain fees, changing the treatment options that can be imposed, and altering community service requirements;
2. eliminating the pretrial diversion option of the community service labor program, which includes drug education, and altering eligibility for participation after a plea agreement;
3. removing the bar on participation in accelerated rehabilitation (AR) for a person charged with 2nd degree sexual assault when there is good cause and the charge involves sexual intercourse with someone between ages 13 and 16 when the person charged is more than three years older and under age 21;
4. expanding the criminal mediation program by requiring it in each Superior Court geographical area (GA) instead of two specified GAs and others designated by the chief court administrator; and
5. allowing the court, when disposing of a criminal or motor vehicle case, or prosecutor when entering a nolle prosequi (declining to prosecute), to consider a defendant’s monetary contribution to nonprofit charities or organizations (existing law allows consideration of a monetary contribution to the criminal injuries compensation fund or contribution of community

service to a private nonprofit charity or organization).

EFFECTIVE DATE: October 1, 2012

PRETRIAL DRUG EDUCATION AND COMMUNITY SERVICE PROGRAM

By law, participants in this program waive their right to a speedy trial and agree to a tolling of the statute of limitations. The court suspends prosecution and dismisses the charges upon successful completion of the program. A person who fails the program or is not amenable to treatment and is not reinstated is brought to trial.

Eligibility

Under current law, defendants charged with drug possession or paraphernalia crimes can participate in the pretrial drug education program. The bill also allows participation by someone charged for a third violation of possession of less than 0.5 ounces of marijuana. The law already requires referral of someone convicted of a third violation of this marijuana possession offense for participation in a drug education program at the person's expense.

Prior Participation

Currently, someone cannot participate in the program if he or she previously used the program or the community service labor program. The bill instead makes a person ineligible if he or she has twice participated in any combination of these programs and allows participation one additional time for good cause.

The bill eliminates a requirement that, in order to seal the court file, the person state under oath in open court or before a designated person under penalty of perjury that he or she has never used the program before.

Evaluations

When the court grants an application for the program, current law requires the court to refer the person to the Department of Mental Health and Addiction Services (DMHAS) for evaluation. The bill instead requires referral to:

1. DMHAS on a person's first or second application for evaluation and determination of an appropriate drug education or substance abuse treatment program and
2. a state licensed substance abuse treatment program on a person's third application for evaluation and determination of an appropriate substance abuse treatment program.

Treatment Programs

Under current law, participants are assigned to a 10- or 15-session drug intervention program or substance abuse treatment program as recommended by the evaluation and ordered by the court. The bill instead requires someone participating for the:

1. first time to participate in a 15-week drug education program,
2. second time to participate in either a 15-week drug education program or substance abuse treatment program as ordered by the court based on the evaluation and determination, and
3. third time to be referred to a state licensed substance abuse program for evaluation and participation in a course of treatment as ordered by the court based on the evaluation and determination above.

The bill eliminates the 10-session intervention program as an option and requires at least 15 sessions in the substance abuse treatment program.

Community Service

The bill alters community service requirements for participants. Current law ties community service requirements to the program the person is assigned to, requiring (1) at least five days participation in the community service program if assigned to the 10-session program or substance abuse treatment program and (2) at least 10 days if assigned to the 15-session program.

The bill instead ties community service requirements to the number

of times the person has used the pretrial program. It requires participation in the community service labor program for (1) five days for a first time participant, (2) 15 days for a second time participant, and (3) 30 days for those participating for a third or subsequent time.

Program Fees

The bill increases the nonrefundable:

1. evaluation fee from \$100 to \$150.
2. program fee to \$600 from (a) \$350 for the 10-session program and (b) \$500 for the 15-session program.

It imposes a \$100 nonrefundable fee for the substance abuse treatment program. As under existing law, participants in this program must also pay its costs but cannot be excluded from it due to inability to pay.

By law, a person must also pay a \$100 application fee.

Currently, all program fees are credited to the pretrial account, which funds the pretrial alcohol and drug education programs. Under the bill, (1) all reinstatement fees are credited to the pretrial account and (2) 85% of all other fees are credited to the pretrial account and the remaining 15% to the alternative incarceration program account.

COMMUNITY SERVICE LABOR PROGRAM

Under current law, someone can participate in the community service labor program (1) as a diversion program where the court suspends prosecution and dismisses the charges upon successful completion of the program or (2) after a plea agreement with a prison term, where the court suspends the prison sentence and makes the program a condition of probation or conditional discharge. The bill eliminates the pretrial diversion option, which includes drug education, and alters eligibility for participation after a plea agreement.

Under current law, a person can participate after a plea agreement if

he or she (1) is charged with drug possession or paraphernalia crimes, (2) does not have prior convictions of these crimes or drug sale crimes, and (3) has not twice previously used the program. Instead, someone is eligible under the bill if he or she (1) is convicted of a first violation of a drug possession or paraphernalia crime and (2) has not previously been convicted of drug sale crimes. The bill also eliminates the option to use the program a second time.

The bill sets the length of the program at 30 days. Currently it is at least 14 days for a first violation and 30 days for a second violation involving a guilty plea.

ELIGIBILITY FOR ACCELERATED REHABILITATION

Under current law, someone charged with 2nd degree sexual assault is ineligible for AR. The bill makes someone charged with this crime eligible if he or she shows good cause and the charge involves sexual intercourse with someone between ages 13 and 16 when the defendant is (1) more than three years older and (2) under age 21.

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.

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

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. drug paraphernalia or possession crimes when he or she is

eligible for the pretrial drug education program or has had that program invoked on his or her behalf;

5. 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;
6. certain absentee ballot and false statement in absentee ballot crimes; or
7. certain other specified 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.

Criminal Mediation Program

By law, the court can refer a criminal prosecution for mediation which may result in a nolle and the defendant's release from custody.

The program is required in the GA for (1) Berlin, New Britain, Newington, Rocky Hill, and Wethersfield and (2) Bethlehem, Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Watertown, Wolcott, and Woodbury. The chief court administrator can establish the program in other GAs.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/02/2012)