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TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER
Raised Bill No. 1165, An Act Concerning Diversionary Programs
Judiciary Committee Public Hearing - April 15, 2013

The Office of Chief Public Defender supports passage of ***Raised Bill No. 1165, An Act Concerning Diversionary Programs***. This bill would make important changes to a number of the State's pretrial diversionary programs.

At the outset, it should be noted that the Office of Chief Public Defender has also submitted written testimony in support of another, related bill that appears on the Committee's agenda today. That bill, ***Raised Bill 6699, An Act Concerning Pretrial Diversionary Programs and Solicitation of Clients in Criminal Matters*** proposes a significant overhaul of the two diversionary programs associated with drug offenses.

As currently proposed, ***Raised Bill 1165*** proposes to create consistency among the numerous pretrial diversionary programs currently in use in criminal courts across the state. Such changes include: (1) the waiver of diversionary program fees for indigent defendants represented by a public defender attorney, (2) precludes the imposition of community service in lieu of fee payments (3) the sealing, as to the public, of the court file for any case once the diversionary program application had been made to the court and (4) the creation of a "look back" period that would allow a person to seek participation in a diversionary program a second time, once a specified time period had passed.

With respect to the issues raised by this bill the Office of Chief Public Defender believes that all court files should be "sealed as to the public" once a defendant makes an application for a diversionary program in open court. As shown in the chart below, such provisions are currently in place only for the Drug Education Program (DEP), Alcohol Education Program (AEP) and Supervised Diversionary Programs (SDP). In these cases, the existence of the pending case is still ascertainable to the public on the Judicial Branch web site but the specific charges pending are not displayed. In an unsealed case, the general public has access to the specific charges pending and the name of the diversionary program being utilized. In both sealed and unsealed cases the defendant's name, year of birth and next court date are displayed.

While the Office of Chief Public Defender believes that all cases diverted by the court through these programs should be sealed as to the public, we also believe that any public access to information related to these pending cases should also not be accessible. The ability of the public to access this case information, particularly where the cases may be continued for up to 2 years, often has a significant negative impact on defendants who have been found by the court to merit diversionary

status. Defendants granted these programs are generally required to complete various forms of treatment, community service and/or make court ordered restitution. The public availability of the fact that charges are merely pending often undermines a defendant's ability to successfully comply with the court ordered conditions which can include seeking and maintaining employment.

Our Office supports the creation of a "look back" period to allow the use of diversionary programs more than one time in the case of Accelerated Rehabilitation (AR), Drug Education Program (DEP) and the Community Service Labor Program (CSLP). The "look back" provisions proposed in this bill mirror what currently exists in the Alcohol Education Program (AEP).

We strongly believe that the creation of a "look back" period is of critical importance in the AR program. In criminal practice it is not unusual to have clients 30 or 40 years of age who have been charged with minor offenses who are not AR eligible due to past use of the program, use that may have occurred ten, twenty or even more years in the past. This bill would allow a defendant to apply for AR and give the court the discretion to grant AR again to such a defendant, only after a period of ten years has passed since the date of the dismissal of the earlier case for which the defendant received AR.

The proposals in this bill will enhance the efficacy and coherence of our diversionary statutes. Once a court determines that a defendant merits the benefit of participation in such a program, the structure of such a statutory scheme should promote the best opportunities for participants to succeed. This bill is an important step in achieving that goal. The Office of Chief Public Defender urges this Committee to favorably report on this raised bill. The **current status** of the relevant diversionary programs are shown below:

C.G.S. §54-56e - Accelerated Rehabilitation (AR)

File sealed – NO; Look back - NO - (exception for military veteran)

C.G.S. §54-56i - Pretrial drug education program (DEP)

Filed sealed – YES; Look back - NO – one time use only

C.G.S. §53a-39 - Community service labor program (CSLP)

File seal – NO; Look back – NO

C.G.S. §54-56g - Pretrial alcohol education program (AEP)

File sealed – YES; Look back – YES, 10 years

C.G.S. §54-56l - Pretrial supervised diversionary program for persons with psychiatric disabilities (SDP)

File sealed – YES; May use 2 times.

C.G.S. §54-56j - Pretrial school violence prevention program (SVP)

Filed sealed – YES; Look back - NO

C.G.S. §29-33 - The Suspended Prosecution for Illegal Sale, Delivery or Transfer of Pistols or Revolvers

File sealed – NO; Look back - NO

C.G.S §17a-696 - Order for suspension of prosecution and treatment for alcohol or drug dependency

File sealed – NO, Look back - NO