
OLR Bill Analysis

sHB 6699 (as amended by House "A")*

AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS.

SUMMARY:

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

1. renaming the pretrial drug education program the "pretrial drug education and community service program," expanding program eligibility, 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; and
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 but less than four years older.

*House Amendment "A" restores existing law which credits all pretrial drug education fees to the pretrial account, instead of crediting 15% of these fees to the alternative incarceration program account.

EFFECTIVE DATE: October 1, 2013

PRETRIAL DRUG EDUCATION AND COMMUNITY SERVICE PROGRAM

As under current 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, which cannot exceed one year. A person who fails to complete the program or is not amenable to treatment and is not reinstated in the program 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 with possession of less than 0.5 ounce of marijuana (which is punishable by only a fine). The law already requires referral of someone convicted of a third violation of this marijuana possession offense to 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 the new program or 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.

By law, the court can refer a veteran to the state or federal Department of Veterans Affairs (DVA) for evaluation instead.

Treatment Programs

Under current law, participants are assigned to a 10- or 15-session drug intervention program or substance abuse treatment program of unspecified duration 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 consisting of at least 15 sessions 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.

By law, the court can refer a veteran to the state or federal DVA for similar services.

The bill eliminates the 10-session intervention 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 and
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.

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 for a drug possession or paraphernalia crime and dismisses the charge upon successful completion of the program or (2) after a plea agreement for one of these crimes that includes 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 more than three but less than four years older.

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 on whether to allow an eligible defendant to participate and the court may allow it if the court believes the defendant will probably not offend in the future.

As under existing 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; or
6. 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.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 0 (04/19/2013)

Appropriations Committee

Joint Favorable

Yea 32 Nay 8 (05/16/2013)