



# House of Representatives

General Assembly

**File No. 742**

January Session, 2013

Substitute House Bill No. 6699

*House of Representatives, May 6, 2013*

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. Section 54-56i of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2013*):

3 (a) There is established a pretrial drug education and community  
4 service program for persons charged with a violation of section  
5 21a-267, [or] 21a-279 or 21a-279a. The drug education and community  
6 service program shall include a [ten-session drug intervention] fifteen-  
7 week drug education program, a fifteen-session drug intervention  
8 program and a substance abuse treatment program of not less than  
9 fifteen sessions, and the performance of community service.

10 (b) Upon application by any such person for participation in such  
11 program and payment to the court of an application fee of one  
12 hundred dollars and a nonrefundable evaluation fee of one hundred  
13 fifty dollars, the court shall, but only as to the public, order the court  
14 file sealed. [provided such person states under oath, in open court or

15 before any person designated by the clerk and duly authorized to  
16 administer oaths, under penalties of perjury, that such person has  
17 never had such program invoked in such person's behalf.] A person  
18 shall be ineligible for participation in such pretrial drug education and  
19 community service program if such person has twice previously  
20 participated in (1) the [eight-session, ten-session or fifteen-session]  
21 pretrial drug education program [, or substance abuse treatment  
22 program] established under the provisions of this section [or] in effect  
23 prior to October 1, 2013, (2) the [pretrial] community service labor  
24 program established under section 53a-39c, as amended by this act, (3)  
25 the drug education and community service program established under  
26 this section, or (4) any of such programs, except that the court may  
27 allow a person who has twice previously participated in such  
28 programs to participate in the pretrial drug education and community  
29 service program one additional time, for good cause shown. The  
30 evaluation and application fee imposed [by] under this subsection  
31 shall be credited to the pretrial account established under section 54-  
32 56k.

33 (c) The court, after consideration of the recommendation of the  
34 state's attorney, assistant state's attorney or deputy assistant state's  
35 attorney in charge of the case, may, in its discretion, grant such  
36 application. If the court grants such application, the court shall refer  
37 such person (1) to the Court Support Services Division for  
38 confirmation of the eligibility of the applicant, [and] (2) to the  
39 Department of Mental Health and Addiction Services for evaluation  
40 and determination of an appropriate drug education or substance  
41 abuse treatment program for the first or second time such application  
42 is granted, and (3) to a state licensed substance abuse treatment  
43 program for evaluation and determination of an appropriate substance  
44 abuse treatment program for the third time such application is  
45 granted, except that, if such person is a veteran, the court may refer  
46 such person to the Department of Veterans' Affairs or the United States  
47 Department of Veterans Affairs, as applicable, for any such evaluation.  
48 For the purposes of this subsection and subsection (d) of this section,  
49 "veteran" means a person who is (A) a veteran, as defined in

50 subsection (a) of section 27-103, or (B) eligible to receive services from  
51 the United States Department of Veterans Affairs pursuant to Title 38  
52 of the United States Code.

53 (d) (1) (A) Upon confirmation of eligibility and receipt of the  
54 evaluation and determination required [pursuant to] under subsection  
55 (c) of this section, such person shall be placed in the drug education  
56 and community service program and referred by the Court Support  
57 Services Division for the purpose of receiving appropriate drug  
58 intervention services or substance abuse treatment program services,  
59 as recommended by the evaluation conducted pursuant to subsection  
60 (c) of this section and ordered by the court, to the Department of  
61 Mental Health and Addiction Services or to a state licensed substance  
62 abuse treatment program for placement in the appropriate drug  
63 education or substance abuse treatment program, except that, if such  
64 person is a veteran, the division may refer such person to the  
65 Department of Veterans' Affairs or the United States Department of  
66 Veterans Affairs, subject to the provisions of subdivision (2) of this  
67 subsection.

68 (B) Persons who have been granted entry into the drug education  
69 and community service program for the first time shall participate in a  
70 fifteen-week drug education program. Persons who have been granted  
71 entry into the drug education and community service program for the  
72 second time shall participate in either a fifteen-week drug education  
73 program or a substance abuse treatment program of not less than  
74 fifteen sessions, as ordered by the court based on the evaluation and  
75 determination required under subsection (c) of this section. Persons  
76 who have been granted entry into the drug education and community  
77 service program for a third time shall be referred to a state licensed  
78 substance abuse program for evaluation and participation in a course  
79 of treatment as ordered by the court based on the evaluation and  
80 determination required under subsection (c) of this section.

81 (C) Persons who have been granted entry into the drug education  
82 and community service program shall also participate in a community

83 service program administered by the Court Support Services Division  
84 pursuant to section 53a-39c, as amended by this act. Persons who have  
85 been granted entry into the drug education and community service  
86 program for the first time shall participate in the community service  
87 program for a period of five days. Persons who have been granted  
88 entry into the drug education and community service program for the  
89 second time shall participate in the community service program for a  
90 period of fifteen days. Persons who have been granted entry into the  
91 drug education and community service program for a third or  
92 additional time shall participate in the community service program for  
93 a period of thirty days.

94 (D) Placement in the drug education and community service  
95 program pursuant to this section shall not exceed one year. Persons  
96 receiving substance abuse treatment program services in accordance  
97 with the provisions of this section shall only receive such services at  
98 state licensed substance abuse treatment program facilities that are in  
99 compliance with all state standards governing the operation of such  
100 facilities, except that, if such person is a veteran, such person may  
101 receive services from facilities under the supervision of the  
102 Department of Veterans' Affairs or the United States Department of  
103 Veterans Affairs, subject to the provisions of subdivision (2) of this  
104 subsection.

105 (E) Any person who enters the drug education and community  
106 service program shall agree: [(A)] (i) To the tolling of the statute of  
107 limitations with respect to such crime; [(B)] (ii) to a waiver of such  
108 person's right to a speedy trial; [(C)] (iii) to complete participation in  
109 the [ten-session drug intervention program, fifteen-session drug  
110 intervention program or substance abuse treatment program, as  
111 recommended by the evaluation conducted pursuant to subsection (c)  
112 of this section, and] drug education and community service program,  
113 as ordered by the court; [(D)] (iv) to commence participation in the  
114 drug education and community service program not later than ninety  
115 days after the date of entry of the court order unless granted a delayed  
116 entry into the program by the court; and [(E)] (v) upon completion of

117 participation in the [pretrial] drug education and community service  
118 program, to accept [(i)] (I) placement in a treatment program upon the  
119 recommendation of a provider under contract with the Department of  
120 Mental Health and Addiction Services or a provider under the  
121 supervision of the Department of Veterans' Affairs or the United States  
122 Department of Veterans Affairs, or [(ii)] (II) placement in a treatment  
123 program that has standards substantially similar to, or higher than, a  
124 program of a provider under contract with the Department of Mental  
125 Health and Addiction Services, if the Court Support Services Division  
126 deems it appropriate. [The Court Support Services Division shall  
127 require as a condition of participation in the drug education program  
128 that any person participating in the ten-session drug intervention  
129 program or the substance abuse treatment program also participate in  
130 the community service labor program, established pursuant to section  
131 53a-39c, for not less than five days; and that any person participating  
132 in the fifteen-session drug intervention program also participate in  
133 said community service labor program, for not less than ten days.]

134 (2) The Court Support Services Division may only refer a veteran to  
135 the Department of Veterans' Affairs or the United States Department of  
136 Veterans Affairs for the receipt of services under the program if (A) the  
137 division determines that such services will be provided in a timely  
138 manner under standards substantially similar to, or higher than,  
139 standards for services provided by the Department of Mental Health  
140 and Addiction Services under the program, and (B) the applicable  
141 department agrees to submit timely program participation and  
142 completion reports to the division in the manner required by the  
143 division.

144 (e) If the Court Support Services Division informs the court that  
145 such person is ineligible for the program and the court makes a  
146 determination of ineligibility or if the program provider certifies to the  
147 court that such person did not successfully complete the assigned  
148 program and such person did not request, or the court denied,  
149 reinstatement in the program under subsection (i) of this section, the  
150 court shall order the court file to be unsealed, enter a plea of not guilty

151 for such person and immediately place the case on the trial list.

152 (f) If such person satisfactorily completes the assigned program,  
153 such person may apply for dismissal of the charges against such  
154 person and the court, on reviewing the record of such person's  
155 participation in such program submitted by the Court Support  
156 Services Division and on finding such satisfactory completion, shall  
157 dismiss the charges. If such person does not apply for dismissal of the  
158 charges against such person after satisfactorily completing the  
159 assigned program, the court, upon receipt of the record of such  
160 person's participation in such program submitted by the Court  
161 Support Services Division, may on its own motion make a finding of  
162 such satisfactory completion and dismiss the charges. Upon motion of  
163 such person and a showing of good cause, the court may extend the  
164 placement period for a reasonable period [for] of time to allow such  
165 person to complete the assigned program. A record of participation in  
166 such program shall be retained by the Court Support Services Division  
167 for a period of ten years from the date the court grants the application  
168 for participation in the program.

169 (g) At the time the court grants the application for participation in  
170 the pretrial drug education and community service program, [such]  
171 any person ordered to participate in the drug education program shall  
172 pay to the court a nonrefundable program fee of [three hundred fifty  
173 dollars if such person is ordered to participate in the ten-session drug  
174 intervention program or five hundred dollars if such person is ordered  
175 to participate in the fifteen-session drug intervention program] six  
176 hundred dollars. If the court orders participation in a substance abuse  
177 treatment program, such person shall pay to the court a nonrefundable  
178 program fee of one hundred dollars and shall be responsible for the  
179 costs associated with such program. No person may be excluded from  
180 any such program for inability to pay such fee or cost, provided (1)  
181 such person files with the court an affidavit of indigency or inability to  
182 pay, (2) such indigency or inability to pay is confirmed by the Court  
183 Support Services Division, and (3) the court enters a finding thereof.  
184 The court may waive all or any portion of such fee depending on such

185 person's ability to pay. If the court finds that a person is indigent or  
186 unable to pay for a substance abuse treatment program, the costs of  
187 such program shall be paid from the pretrial account established under  
188 section 54-56k. If the court denies the application, such person shall not  
189 be required to pay the program fee. If the court grants the application,  
190 and such person is later determined to be ineligible for participation in  
191 such pretrial drug education and community service program or fails  
192 to complete the assigned program, the program fee shall not be  
193 refunded. [All program fees] Eighty-five per cent of each program fee  
194 paid shall be credited to the pretrial account established under section  
195 54-56k and fifteen per cent of each program fee paid shall be credited  
196 to the alternative incarceration program account.

197 (h) If a person returns to court with certification from a program  
198 provider that such person did not successfully complete the assigned  
199 program or is no longer amenable to treatment, the provider, to the  
200 extent practicable, shall include a recommendation to the court as to  
201 whether placement in a [ten-session drug intervention program, a  
202 fifteen-session drug intervention] drug education program or  
203 placement in a substance abuse treatment program would best serve  
204 such person's needs. The provider shall also indicate whether the  
205 current program referral was an initial referral or a reinstatement to  
206 the program.

207 (i) When a person subsequently requests reinstatement into a drug  
208 [intervention] education program or a substance abuse treatment  
209 program and the Court Support Services Division verifies that such  
210 person is eligible for reinstatement into such program and thereafter  
211 the court favorably acts on such request, [such] any person reinstated  
212 into the drug education program shall pay a nonrefundable program  
213 fee of [one hundred seventy-five dollars if ordered to complete a ten-  
214 session drug intervention program or] two hundred fifty dollars, [if  
215 ordered to complete a fifteen-session drug intervention program, as  
216 the case may be] and any person reinstated into a substance abuse  
217 treatment program shall be responsible for the costs, if any, associated  
218 with being reinstated into the treatment program. Unless good cause is

219 shown, such [fees] program fee shall not be waived. [If the court grants  
220 a person's request to be reinstated into a substance abuse treatment  
221 program, such person shall be responsible for the costs, if any,  
222 associated with being reinstated into the treatment program.] All  
223 program fees collected in connection with a reinstatement to a drug  
224 [intervention] education program shall be credited to the pretrial  
225 account established under section 54-56k. No person shall be permitted  
226 more than two program reinstatements pursuant to this subsection.

227 (j) The Department of Mental Health and Addiction Services shall  
228 develop standards and oversee appropriate drug education programs  
229 that it administers to meet the requirements of this section and may  
230 contract with service providers to provide such programs. The  
231 department shall adopt regulations, in accordance with chapter 54, to  
232 establish standards for such drug education programs.

233 (k) Any person whose employment or residence or schooling makes  
234 it unreasonable to attend a drug [intervention] education program or  
235 substance abuse treatment program in this state may attend a program  
236 in another state that has standards similar to, or higher than, those of  
237 this state, subject to the approval of the court and payment of the  
238 program fee or costs as provided in this section.

239 Sec. 2. Section 53a-39c of the general statutes is repealed and the  
240 following is substituted in lieu thereof (*Effective October 1, 2013*):

241 (a) There is established, within available appropriations, a  
242 community service labor program for persons [charged with a]  
243 convicted of a first violation of section 21a-267 or 21a-279 who have not  
244 previously been convicted of a violation of section [21a-267,] 21a-277 [,  
245 or 21a-278, [or 21a-279.] Upon application by any such person for  
246 participation in such program the court may grant such application  
247 and, [(1) if such person has not previously been placed in the  
248 community service labor program, the court may either suspend  
249 prosecution and place such person in such program or, upon a plea of  
250 guilty without trial where a term of imprisonment is part of a stated  
251 plea agreement, suspend any sentence of imprisonment and make

252 participation in such program a condition of probation or conditional  
253 discharge in accordance with section 53a-30; or (2) if such person has  
254 previously been placed in such program, the court may,] upon a plea  
255 of guilty without trial where a term of imprisonment is part of a stated  
256 plea agreement, suspend any sentence of imprisonment and make  
257 participation in such program a condition of probation or conditional  
258 discharge in accordance with [said] section 53a-30. No person may be  
259 placed in such program who has [twice] previously been placed in  
260 such program.

261 (b) Any person who enters such program shall pay to the court a  
262 participation fee of two hundred five dollars, except that no person  
263 may be excluded from such program for inability to pay such fee,  
264 provided (1) such person files with the court an affidavit of indigency  
265 or inability to pay, (2) such indigency is confirmed by the Court  
266 Support Services Division, and (3) the court enters a finding thereof.  
267 All program fees collected under this subsection shall be deposited  
268 into the alternative incarceration program account.

269 (c) The period of participation in the community service labor  
270 program shall be thirty days.

271 [(c) Any person for whom prosecution is suspended and who is  
272 placed in the community service labor program pursuant to subsection  
273 (a) of this section shall agree to the tolling of the statute of limitations  
274 with respect to such crime and to a waiver of such person's right to a  
275 speedy trial. A pretrial community service labor program established  
276 under this section for persons for whom prosecution is suspended  
277 shall include a drug education component. If such person satisfactorily  
278 completes the program of community service labor to which such  
279 person was assigned, such person may apply for dismissal of the  
280 charges against such person and the court, on reviewing the record of  
281 such person's participation in such program and on finding such  
282 satisfactory completion, shall dismiss the charges. If the program  
283 provider certifies to the court that such person did not successfully  
284 complete the program of community service labor to which such

285 person was assigned or is no longer amenable to participation in such  
286 program, the court shall enter a plea of not guilty for such person and  
287 immediately place the case on the trial list.

288 (d) The period of participation in a community service labor  
289 program shall be a minimum of fourteen days for a first violation and  
290 thirty days for a second violation involving a plea of guilty and  
291 conviction.]

292 Sec. 3. Subsection (c) of section 54-56e of the general statutes is  
293 repealed and the following is substituted in lieu thereof (*Effective*  
294 *October 1, 2013*):

295 (c) This section shall not be applicable: (1) To any person charged  
296 with a class A felony, a class B felony, except a violation of section 53a-  
297 122 that does not involve the use, attempted use or threatened use of  
298 physical force against another person, or a violation of section 14-227a,  
299 subdivision (2) of subsection (a) of section 53-21, section 53a-56b, 53a-  
300 60d, 53a-70, 53a-70a, 53a-70b, 53a-71, except as provided in subdivision  
301 (5) of this subsection, 53a-72a, 53a-72b, 53a-90a, 53a-196e or 53a-196f,  
302 (2) to any person charged with a crime or motor vehicle violation who,  
303 as a result of the commission of such crime or motor vehicle violation,  
304 causes the death of another person, (3) to any person accused of a  
305 family violence crime as defined in section 46b-38a who (A) is eligible  
306 for the pretrial family violence education program established under  
307 section 46b-38c, or (B) has previously had the pretrial family violence  
308 education program invoked in such person's behalf, (4) to any person  
309 charged with a violation of section 21a-267 or 21a-279 who (A) is  
310 eligible for the pretrial drug education and community service  
311 program established under section 54-56i, as amended by this act, or  
312 (B) has previously had the pretrial drug education program or the  
313 pretrial drug education and community service program invoked [in]  
314 on such person's behalf, (5) unless good cause is shown, to (A) any  
315 person charged with a class C felony, or (B) any person charged with  
316 committing a violation of subdivision (1) of subsection (a) of section  
317 53a-71 while such person was less than four years older than the other

318 person, or (6) to any person charged with a violation of section 9-359 or  
319 9-359a.

320 Sec. 4. Section 54-66a of the general statutes is repealed and the  
321 following is substituted in lieu thereof (*Effective October 1, 2013*):

322 Any bail bond posted in any criminal proceeding in this state shall  
323 be automatically terminated and released whenever the defendant: (1)  
324 Is granted accelerated rehabilitation pursuant to section 54-56e, as  
325 amended by this act; (2) is granted admission to the pretrial alcohol  
326 education program pursuant to section 54-56g; (3) is granted  
327 admission to the pretrial family violence education program pursuant  
328 to section 46b-38c; (4) is granted admission to the community service  
329 labor program pursuant to section 53a-39c, as amended by this act; (5)  
330 is granted admission to the pretrial drug education and community  
331 service program pursuant to section 54-56i, as amended by this act; (6)  
332 has the complaint or information filed against such defendant  
333 dismissed; (7) is acquitted; (8) is sentenced by the court; (9) is granted  
334 admission to the pretrial school violence prevention program pursuant  
335 to section 54-56j; (10) is charged with a violation of section 29-33 and  
336 prosecution has been suspended pursuant to subsection (h) of section  
337 29-33; or (11) is granted admission to the supervised diversionary  
338 program for persons with psychiatric disabilities pursuant to section  
339 54-56l.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	54-56i
Sec. 2	<i>October 1, 2013</i>	53a-39c
Sec. 3	<i>October 1, 2013</i>	54-56e(c)
Sec. 4	<i>October 1, 2013</i>	54-66a

**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:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 14 \$</b>	<b>FY 15 \$</b>
Mental Health & Addiction Serv., Dept.	SF - Cost	See Below	See Below
Mental Health & Addiction Serv., Dept.; Judicial Dept.	SF - Revenue Gain	See Below	See Below

**Municipal Impact:** None

**Explanation**

The bill makes changes to the Department of Mental Health and Addiction Services (DMHAS) pretrial education programs, resulting in a revenue gain to the pretrial account under DMHAS and the Alternative Incarceration Program account under the Judicial Department. The fee increase and the increase in program participants will result in a revenue gain. The bill will also result in a cost to DMHAS.

Based on 2012 data, approximately 7,000 additional participants would be eligible for the Pretrial program. While the fees for the program increase under the bill, it is likely that the average amount paid per participant (based on current trends) will be more than 70% lower at an estimated \$210.<sup>1</sup> The cost of the program to DMHAS per participant is \$338, resulting in a net loss of approximately \$128 per person or \$896,000 annually.

The table below shows the activity of the Pretrial account over the past five years. While the ending balance has been consistently

<sup>1</sup>Fees are reduced or waived for individuals who are considered indigent.

decreasing, the difference between the cost of the program and the average cost paid will cause the balance to decrease more quickly than it otherwise would have.

### Pretrial Account Activity over the Past Five Fiscal Years

	FY 12 \$	FY 11 \$	FY 10 \$	FY 09 \$	FY 08 \$
Beginning Balance	2,090,997	3,742,455	5,245,356	7,339,807	6,647,782
Revenues	3,264,048	3,606,483	3,626,921	2,169,813	4,577,216
Total Available	5,355,045	7,348,938	8,872,277	9,509,620	11,224,998
Expenditures	3,917,023	5,257,941	5,129,822	4,264,264	3,885,191
<b>Ending Balance</b>	<b>1,438,022</b>	<b>2,090,997</b>	<b>3,742,455</b>	<b>5,245,356</b>	<b>7,339,807</b>

Source: Annual Report of the State Comptroller, Budgetary Basis 2008 - 2012.

The bill requires that a portion of the fees collected be credited to the alternative incarceration program account at the Judicial Department instead of all fees credited to the pretrial account as is current law.

The bill makes various other programmatic changes that have minimal fiscal impact.

There is no fiscal impact associated with expanding the eligibility for the pretrial accelerated rehabilitation program. 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.

### **The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 6699****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 2<sup>nd</sup> 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.

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.

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 (a person who does not successfully complete the program can apply for reinstatement) 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 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 2<sup>nd</sup> 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 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 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 1<sup>st</sup> 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)