

OFFICE OF LEGISLATIVE RESEARCH  
PUBLIC ACT SUMMARY



PA 13-159—sHB 6699

*Judiciary Committee*

*Appropriations Committee*

**AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS**

**SUMMARY:** This act 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, changing the treatment options that can be imposed, altering community service requirements, and increasing certain fees;
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. allowing a person charged with 2<sup>nd</sup> degree sexual assault to participate in accelerated rehabilitation (AR) when (a) there is good cause and (b) the charge involves sexual intercourse with someone between ages 13 and 16 and 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**

The act renames the pretrial drug education program the “pretrial drug education and community service program.” As with the prior program, the court suspends prosecution of participants, participants waive their right to a speedy trial and agree to a tolling of the statute of limitations, and the court dismisses charges against a participant who successfully completes the program. A participant who fails to complete the program and is not reinstated is brought to trial.

*Eligibility*

As under prior law, defendants charged with drug possession or paraphernalia crimes punishable by imprisonment can participate in this program. The act 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*

Prior law prohibited someone from participating in the program if he or she previously used the program or the community service labor program. The act instead makes a person ineligible if he or she has twice participated in the new

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program or any combination of these programs. But it allows participation for one additional time for good cause.

The act 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, prior law required the court to refer the person to the Department of Mental Health and Addiction Services (DMHAS) for evaluation. The act 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 prior law, participants were 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 act eliminates the 10-session intervention program and 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.

### *Community Service*

The act alters community service requirements for participants. Prior law tied community service requirements to the program the person was 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 act 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.

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### *Program Fees*

The act 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, and
3. reinstatement fee (for someone who is not successful in a program but is granted reinstatement) to \$250 from \$175 for the 10-session program (it retains the \$250 reinstatement fee for the 15-session program).

It imposes an additional \$100 nonrefundable fee for the substance abuse treatment program.

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

### COMMUNITY SERVICE LABOR PROGRAM

Under prior law, someone could participate in the community service labor program (1) as a diversion program where the court suspended prosecution for a drug possession or paraphernalia crime and dismissed the charge upon successful completion of the program or (2) after a plea agreement for one of these crimes that included a prison term, where the court suspended the prison sentence and made the program a condition of probation or conditional discharge. The act eliminates the pretrial diversion option, which includes drug education, and alters eligibility for participation after a plea agreement.

Under prior law, a person could participate after a plea agreement that included prison time if he or she (1) was convicted of a drug possession or paraphernalia crime, (2) did not have a prior conviction of one of these crimes or a drug sale crime, and (3) had not twice previously used the program. Instead, someone is eligible under the act 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 act also eliminates the option to use the program a second time.

The act sets the length of the program at 30 days. Prior law required at least a 14-day program for a first violation and a 30-day program for a second violation.

### ELIGIBILITY FOR ACCELERATED REHABILITATION

Prior law prohibited someone charged with 2<sup>nd</sup> degree sexual assault from participating in AR. The act makes someone charged with this crime eligible if he or she (1) is charged with the 2<sup>nd</sup> degree assault crime involving sexual intercourse with someone at least age 13 but under age 16 when the person charged is more than three years older than the victim, (2) is less than four years older than the victim, and (3) shows good cause.

A person must meet the other AR eligibility requirements in existing law.

### BACKGROUND

*AR*

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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.

A person is eligible for AR if he or she does not have a prior conviction of a crime or certain motor vehicle violations and has not been in AR before. The court has discretion to determine whether to allow an eligible defendant to participate and may allow it only if it believes the defendant will probably not offend in the future.

A person is ineligible for AR if he or she is charged with any one of a number of crimes, including any class A felony, most class B felonies, and class C felonies unless good cause is shown.

OLR Tracking: CR:KM:JKL:eh/ts