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## **OLR Bill Analysis**

### **sHB 5594**

#### ***AN ACT CONCERNING DIVERSIONARY PROGRAMS.***

#### **SUMMARY:**

This bill makes a number of changes regarding eligibility for diversion programs (which allow a defendant to avoid prosecution by successfully completing a program); waiving fees for probation, programs, and other court fees; and limiting access to files in certain diversion programs.

Regarding eligibility for diversion programs, the bill:

1. allows someone to participate in accelerated rehabilitation (AR) or the school violence prevention program a second or additional time under certain circumstances,
2. expands eligibility for AR and the pretrial alcohol education program, and
3. expands the supervised diversionary program for people with psychiatric disabilities or veterans to include people with a developmental disability.

Regarding waiver of fees, the bill:

1. requires the court to waive probation fees, including program fees, for an adult, juvenile, or youthful offender sentenced to probation who the court determines is indigent and is eligible for a public defender;
2. prohibits the court from requiring community service as a condition of waiving a fee in a civil or criminal matter, if the person is indigent and eligible for a public defender; and
3. requires the court to waive all application and program fees for

various diversion programs when the defendant is indigent and eligible for a public defender.

Finally, the bill requires the court to seal a person's file as to the public when he or she applies for participation in AR, the community service labor program, the pretrial family violence education program, or alcohol or drug dependency treatment.

EFFECTIVE DATE: Upon passage

### **ACCELERATED REHABILITATION (AR)**

Under current law, a person is eligible for AR if he or she is charged with certain crimes, does not have a prior conviction of a crime or certain motor vehicle violations, and has not been in AR before or twice before if he or she is a veteran.

The bill allows someone to participate in AR additional times if he or she is otherwise eligible and it is at least 10 years since the court dismissed the charges that were the subject of the person's prior AR participation.

By law, a person is ineligible for AR if he or she is charged with any of a number of crimes, including any class A felony, most class B felonies, and class C felonies unless good cause is shown. Current law allows someone charged with the class B felony of 1<sup>st</sup> degree larceny to participate. The bill prohibits participation if a person is charged with the portion of 1<sup>st</sup> degree larceny involving defrauding a public community of more than \$2,000.

By law, 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.

### **SCHOOL VIOLENCE PREVENTION PROGRAM**

The bill allows someone to participate in this program an additional time if he or she is otherwise eligible and it is at least two years since the court dismissed the charges that were the subject of the person's prior participation in this program. If a person participates for a

second or subsequent time, the bill allows the court to order the person to perform up to 25 hours of community service.

By law, this program is for public or private secondary school students charged with crimes involving the use or threatened use of physical violence in school, on elementary or secondary school property, or at a school-sponsored activity. To be eligible, the student and his or her parent or guardian, must certify that they do not possess any firearms, dangerous weapons, drugs, or other property or materials that are illegal for them to possess.

### **PRETRIAL ALCOHOL EDUCATION PROGRAM**

The bill allows a person charged with driving under the influence (DUI) who has a commercial drivers' license (CDL) or instruction permit to participate in this program if he or she was driving a vehicle that can be driven without a CDL at the time he or she allegedly drove under the influence. Such a person must meet the other existing eligibility requirements. He or she must be charged with DUI or crimes related to driving or boating under the influence and must not:

1. have used the program (a) in the past 10 years for a DUI violation if he or she is currently charged with DUI or (b) anytime for a DUI violation if he or she is currently charged with DUI while under age 21;
2. have a prior conviction of DUI or crimes involving driving under the influence such as 2<sup>nd</sup> degree manslaughter; or
3. be charged with DUI while operating a commercial vehicle.

The court places program participants in an alcohol intervention or state-licensed substance abuse treatment program after an evaluation.

### **SUPERVISED DIVERSIONARY PROGRAM FOR PEOPLE WITH PSYCHIATRIC DISABILITIES OR VETERANS**

The bill expands this program to include people with a developmental disability. Currently, this program is for criminal defendants with psychiatric disabilities and veterans with mental

health conditions amenable to treatment who have been charged with relatively minor crimes and motor vehicle offenses.

The bill defines developmental disability as a severe, chronic disability that (1) is attributable to a mental or physical impairment or combination of the two, (2) is manifested before age 22, (3) is likely to continue indefinitely, (4) results in substantial functional limitations in certain areas of the person's life, and (5) requires lifelong or long-duration services or assistance that are individually planned and coordinated. It must also (1) have a substantial adverse affect on the person's ability to function and (2) require care and treatment.

By law, a defendant is eligible for the program if he or she (1) meets the eligibility requirements for AR and (2) has not participated in this program twice before.

#### **WAIVER OF PROGRAM FEES**

The law prohibits the court from excluding someone from participating in the following programs due to an inability to pay:

1. community service labor program,
2. hate crimes diversion program component of AR,
3. pretrial family violence education program,
4. school violence prevention program (for this program, the prohibition is based on the parent's or guardian's inability to pay),
5. pretrial alcohol education program, and
6. pretrial drug education and community service program.

Current law generally requires the person to submit an affidavit and the court to confirm the person's indigency. Alternatively, the bill requires the court to waive all application and program fees for an indigent who is eligible for a public defender.

For alcohol and drug dependency treatment, the bill requires the Department of Mental Health and Addiction Services to waive fees for a court-ordered examination if the person is indigent and eligible for a public defender. The bill also requires the court to waive all application and program fees for such a person entering treatment. By law, a person must pay the costs of this treatment.

For the pretrial alcohol education program, the law prohibits the court from waiving reinstatement fees except for good cause. It is unclear how the bill's requirement to waive fees applies to these fees.

## **BACKGROUND**

### ***Eligibility for Public Defender Services***

By law, a person is indigent and eligible for a public defender's services if he or she is charged with a crime punishable by imprisonment and does not have the financial ability to secure competent legal representation and provide for its necessary expenses.

The law allows a public defender to investigate a person's financial status, require the person to complete a written financial statement under oath, and require written authorization to obtain otherwise confidential records that are relevant to determining indigency (CGS § 51-297).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 33      Nay 7      (04/02/2014)