



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

H.B. NO. 7049 (RAISED) AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS

JOINT COMMITTEE ON JUDICIARY

April 1, 2015

The Division of Criminal Justice supports H.B. No. 7049, An Act Concerning Pretrial Diversionary Programs, and respectfully requests the Committee's JOINT FAVORABLE SUBSTITUTE REPORT to correct a drafting error and omission. This bill is offered to the Judiciary Committee as part of the Division's 2015 Legislative Recommendations to the 2015 General Assembly.

The guiding principle behind this legislation is to make seemingly minor yet significant changes to various pretrial diversionary programs to provide for more appropriate utilization of those programs. At the outset, the Division would respectfully reiterate its previously stated contention that a comprehensive study of all pretrial diversionary programs is not only appropriate but likely overdue. This is particularly apt in light of the Governor's "Second Chance" initiatives. Since many of the diversionary programs do, in fact, provide a second – and in many instances, additional – chance it would seem that a detailed study to determine the effectiveness of these programs is not only in order, but imperative.

Nevertheless and notwithstanding the need for such a study, the Division offers H.B. No. 7049 with the goal of addressing immediate issues with various diversionary programs as they now exist:

Section 1 of the bill would effectively ban pretrial accelerated rehabilitation (AR – General Statutes Section 54-56e) for vendors who defraud the Medicaid program. It must be stressed that this would not apply to Medicaid recipients, but only to health care providers and other vendors charged with Medicaid fraud. Medicaid fraud is a serious crime that involves the theft of tax dollars allocated to provide for the health care needs of low-income state residents. The General Assembly has recognized the seriousness of such fraud in designating larceny "by defrauding a public community" as either a class B felony (Section 53a-122(a)(4) or class C felony (Section 53a-123(a)(4). Such crimes are serious offenses and as such should not be included eligible for A/R. Further, the granting of A/R in and of itself hampers the ability of our Medicaid Fraud

Control Unit (MFCU) and federal authorities to combat Medicaid fraud by prohibiting those convicted of fraud from continued participation in the Medicaid program. Federal regulations only allow for decertification upon conviction, and there is no conviction if the offender is granted and successfully completes A/R. The Division will submit to the Committee language to correct an apparent drafting error in the current language.

Section 2 of the bill deals with the pretrial alcohol education program (AEP) as codified in Section 54-56g of the General Statutes. Under our current AEP statute, the availability of the alcohol diversionary program differs depending on whether the defendant is charged with impaired driving or impaired boating. For example, in the case of impaired driving, a defendant charged with an impaired driving death – Manslaughter in the Second Degree with a Motor Vehicle – is rightly not eligible to participate in diversion; the offense is too serious. However, the statute currently permits a defendant charged with an impaired boating manslaughter to participate in diversion. This offense, like its impaired driving counterpart, however, is too serious for diversion and the statute should bar it. Similarly, a defendant charged with causing serious physical injury during an impaired driving offense – Assault in the Second Degree with a Motor Vehicle – is barred from participating in diversion. Again, the same is not true in the case of impaired boating.

Another example of the disparity between the handling of impaired driving offenses and impaired boating offenses, can be found in the provisions governing the AEP application process. Currently, before a defendant charged with impaired driving can be considered for diversion, the defendant must affirm that he or she has not previously used the AEP program within the past ten years, that he or she has not previously been convicted of impaired driving in Connecticut, and that he or she has not been convicted of a similar offense in another state. The same is not true, however, for defendants charged with impaired boating. In fact, there are currently no limitations, whatsoever, on a defendant's ability to repeatedly use AEP for impaired boating related offenses, even after conviction.

Consequently, the aim of the Division of Criminal Justice's recommendations in H.B. No. 7049 is to create a consistent statutory scheme whereby impaired driving offenders and impaired boating offenders are bound by the same rights and responsibilities when it comes to diversionary program access and participation. To that end, the Division advocates deleting from the AEP statute the provision that permits defendants charged with impaired boating manslaughter (Section 15-132a), from participating in alcohol diversion. Similarly, the Division advocates deleting from the AEP statute the provision that permits defendants charged with reckless impaired boating that results in serious physical injury (Section 15-140i), from participating in diversion. Finally, the Division advocates imposing the same application restrictions on defendants charged with impaired boating as currently exist for defendants charged with impaired driving; applicants must affirm that they have not previously used the AEP program within ten years, applicants must not previously have been convicted of an impaired boating offense in Connecticut, and must not previously have been convicted of a similar impaired boating offense in another state. Adoption of these recommendations will more reasonably balance the desire to provide education and rehabilitation to first-time impaired operators while at the same time recognizing the seriousness of impaired operation offenses.

The Division would further request that the Committee amend Section 54-56g to replace the word “accident” with “incident” throughout the appropriate sections. This would make the language consistent with the language found in S.B. No. 1073, An Act Concerning Driving While Under the Influence of Intoxicating Liquor or Any Drug, which was favorably reported by the Joint Committee on Public Safety and Security. The rationale is that DUI is a crime. It is either a misdemeanor if prosecuted as a first-time offense or a felony when prosecuted as a subsequent offense. The word “accident” connotes lack of fault or responsibility and is inconsistent with criminal responsibility and liability. Use of the word “incident” more accurately implies an illegal action. Even though successful completion of the AEP program permits the defendant to avoid criminal liability, the program is only available to those charged with the criminal offense of DUI. Thus, use of the word “incident” within the statute remains appropriate.

Section 3 of the bill makes essentially a technical change, stating that a participant in the drug education program (Section 54-56i) is required to take fifteen *sessions* and not only to participate for fifteen *weeks*. The section also clarifies that the drug education diversionary program is a pretrial diversionary program.

Section 4 of the bill revises the pretrial diversionary program for persons with psychiatric disabilities (General Statutes Section 54-56l, commonly referred to as “psychiatric A/R”) to expand eligibility for the program to certain individuals where such participation is the most appropriate disposition of a case. This would apply to a relatively very small percentage of cases where very specific circumstances apply. As the law now stands, a person cannot participate in the psychiatric A/R program if that person would not be eligible to participate in the general A/R program (Section 54-56e(c)). Anyone charged in a domestic violence case is precluded from participating in A/R, and thus by extension from participating in the psychiatric A/R program even though psychiatric treatment may be the best route for the offender. This bill would allow the option of psychiatric A/R for this small percentage of cases where it would be the most appropriate disposition.

In conclusion, the Division of Criminal Justice expresses its appreciation to the Judiciary Committee for your consideration of this legislation, and we would respectfully request the Committee’s JOINT FAVORABLE SUBSTITUTE REPORT to correct the aforementioned drafting error. We would be happy to provide any additional information or answer any questions the Committee might have.