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Judiciary Committee Public Hearing – March 31, 2014

Raised Bill No. 5594, An Act Concerning Diversionary Programs

The Office of Chief Public Defender (OCPD) supports *Raised Bill No. 5594, An Act Concerning Diversionary Programs*. The changes proposed in this bill will ensure equal access to existing diversionary programs for qualified and appropriate applicants, enhance diversionary program outcomes and provide judge’s discretion to grant certain additional diversionary opportunities when appropriate.

The proposed bill achieves these goals by providing for: (1) the waiver of diversionary program fees, probation and probationary programs fees for public defender and other indigent clients; (2) the prohibition on the imposition of community service in lieu of waived fees; (3) the sealing of the clerk’s (court) file, as to the public only, for any case once the program application had been accepted by the court; and, (4) creation of a “look back” period that would allow the court discretion to grant a second use of the Accelerated Rehabilitation program once a specified time period had passed. Attached to this testimony is a chart which shows the *relevant elements* for the diversionary programs addressed in this bill.

FEE WAIVERS and COMMUNITY SERVICE REQUIREMENTS

Sections 1 and 10 of the proposed bill address this agency’s concerns with respect to the mandate of community service in lieu of fee payments. As shown in the attached chart, there are a variety of fees associated with almost each diversionary program. These are referred to in statute as either “application”, “evaluation” or “program” fees. As shown in the attached chart, all of the diversionary programs contain statutory provisions that permit fee waivers in the case of an indigent applicant. As a result, courts routinely waive these fees for public defender clients but will then mandate that the applicant perform a significant period amount of community service hours in lieu of payment of the waived fees.

When community service is required in lieu of payment of fees, courts generally require that the mandated community service be completed prior to granting the indigent defendant entry into the diversionary program. The result of this process, however, is that an indigent defendant’s entry into the diversionary program is delayed. Consequently there is also a delay to

any access to critical treatment, services and supervision. (Anecdotally, courts will generally credit indigent defendants at the rate of \$10 per hour for community service work.) Even if an indigent defendant can complete the mandated community service in a short period of time, due to docket considerations, courts may continue these cases for many weeks. As a result, the delay associated with mandated community service adds to the already heavy dockets throughout the state. More importantly, the delays disproportionately impact indigent defendant's access to needed services. The changes proposed in this bill will help rectify the disparity in program access that exists in the current diversionary program statutory scheme.

The Office of Chief Public Defender urges the Committee to consider the changes proposed in Sections 1 and 10 of the bill and report favorably.

FILES SEALED AS TO THE PUBLIC

In Sections 3, 7 and 9, the Office of Chief Public Defender proposes language that would require the court file be "sealed as to the public" once the court accepts an application from a defendant. As shown in the attached chart, such sealing is already statutorily required for three diversionary programs. The intent of this bill is to create consistency across all diversionary programs by requiring all court files to be, "sealed as to the public", once a defendant makes an application in open court. It is important to note that even when the court file is "sealed as to the public" the existence of the pending case is still ascertainable to the public on the judicial branch web site although the specific charges pending are not displayed. Currently, in an unsealed case wherein a defendant is participating in a diversionary case, the public has access to the specific charges pending and the name of the diversionary program being utilized. In both sealed and unsealed cases the defendant's name, year of birth and next court date are displayed.

The ability of the public to access this case information, particularly where the cases may be continued for up to 2 years, often has a significant negative impact on defendants who have been found by the court to merit diversionary status. Defendants granted these diversionary programs are generally required to complete various forms of treatment, community service and/or make court ordered restitution. The public availability of the fact that charges are merely pending often undermines a defendant's ability to successfully comply with the court ordered conditions which can include seeking and maintaining employment and the payment of restitution.

LOOK BACKS

In Section 3 of the bill the Office of Chief Public Defender proposes that a "look back" period be created to allow a defendant to apply for the Accelerated Rehabilitation (AR) program, (C.G.S. §54-56e), for a second time after a period of 10 years has passed. The language proposed in this bill is similar to that found in current law regarding AR eligibility for veterans of the armed forces and mirrors the "look back" provision found in the eligibility requirements of the Pre-Trial Alcohol Education program, which also contains a 10 year look back. This proposal is also in line with the Drug Education and Community Service program that permits more than one opportunity to participate in treatment.

The creation of a "look back" period is of real importance in regard to the Accelerated Rehabilitation program and anyone with minimal contact with the criminal justice system. In

criminal practice, across the state, it is not uncommon to see clients, many 40 or 50 years of age, and sometimes older, who have been charged with minor offenses who are not AR eligible due to their having used the program in the distant past. Often their initial use of the AR program occurred 10, 20 or more years in the past. Since that time they have essentially lived their lives with no other contact with the criminal justice system. Additionally, in many cases we discover that these clients were unrepresented by counsel when first applying for diversion and had little or no understanding of the consequences of their decisions to use diversion.

The Office of Chief Public Defender proposes, that in these cases, a defendant be allowed to apply for Accelerated Rehabilitation and that the court be given the discretion to grant the program a second time, only after a period of 10 years has passed since the date of the dismissal of the earlier case. We believe it is critical, at a minimum, to consider giving a “second chance” to anyone who has no criminal history and who has minimal contacts with the system. In all cases the courts would continue to retain discretion as to whether to grant the application.

In conclusion, the Office of Chief Public Defender respectfully requests that the Committee vote favorably on this bill. Thank you for your consideration.

CONNECTICUT DIVERSIONARY PROGRAMS -2014

Program	Eligibility/Description	Fees and Costs	File Sealed to Public
C.G.S. §54-56e Accelerated Rehabilitation	No prior convictions. Crime not of serious nature. Finding of “not likely to offend again.” Up to 2 years of supervision.	Application = \$35 Program = \$100 Statutory waiver provision.	No
C.G.S. §54-56g Alcohol Education	No DUI convictions. No use of program w/i 10 years.	Application = \$100 Evaluation = \$100 Program = \$350/\$500 Statutory waiver upon court determination of indigence.	Yes, upon application.
C.G.S. §54-56i Drug Education and Community Service	Drug or Paraphernalia possession. May use 2 times. 3 rd use for good cause only.	Application = \$100 Evaluation = \$150 Program = \$600/\$150 Community Service. Statutory waiver upon court determination of indigence.	Yes, upon application
C.G.S. §46b-38c Family Violence Education	No prior family violence crime convictions.	Application = \$100 Program = \$300 Statutory waiver upon court determination of indigence.	No
C.G.S. §54-56l Supervised Diversion Psychiatric Disability	Crime not of serious nature. Has psychiatric disability. Amenable to treatment. May use 2 times.	No fees.	No
C.G.S. §54-56j School Violence Prevention	Secondary school student.	Program dependant. Statutory waiver upon court determination of indigence.	Yes, upon application.
C.G.S. §17a-696 Suspended Prosecution Treatment for Alcohol or Drug Dependency	Drug or Alcohol dependant. Will benefit from treatment. Not charged with A,B or C felony	No fees.	No

Prepared by Michael Alevy, Senior Assistant Public Defender
Office of Chief Public Defender
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