

PA 11-158

HB6639

House	6241-6256	16
Judiciary	5981-5994, 6024-6027, 6029-6031, 6106, 6108, 6454-6463	13
<u>Senate</u>	<u>6564, 6573-6578</u>	<u>7</u>
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**H – 1110**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2011**

**VOL.54  
PART 19  
6188 – 6541**

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June 1, 2011

DEPUTY SPEAKER GODFREY:

Please proceed.

REP. ORANGE (48th):

Thank you, Mr. Speaker. Mr. Speaker, I have a very, very, very dear and special friend here with me today. Jodi Thomas from Colchester is here, along with her son Dylan Thomas Crabbe and Dylan's' uncle, Carl Crabbe. He just flew in from Illinois.

And if you all recall, we did a great Bill for the clean energy and the, to delete the gas blows and we all remember that Bill, which is in the Senate.

And since Jodi can't speak on the mike, I will speak for her and Carl and Dylan and that they appreciate your vote and your support. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, madam. And welcome to the Chamber.

We'll return to the Call of the Calendar. Will the Clerk please call Calendar 419.

THE CLERK:

On Page 45, Calendar 419, Substitute for House Bill Number 6639 AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS. Favorable Report on the Committee on Finance.

DEPUTY SPEAKER GODFREY:

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The distinguished Chairman of the Judiciary Committee,  
Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker. I move for the acceptance of  
the Joint Committee's Favorable Report and passage of the  
Bill.

DEPUTY SPEAKER GODFREY:

The question is on acceptance and passage. Will you  
explain the Bill, sir.

REP. FOX (146th):

Thank you, Mr. Speaker. This Bill, the original Bill  
that was passed, I believe unanimously, out of the  
Judiciary Committee made several changes to some of our  
pretrial diversionary programs, including accelerated  
rehabilitation and the drug education program and the  
community service labor program.

It was originally in two sections and Section 2 did  
have a fiscal note. So what we have done, Mr. Speaker, is  
we've crafted an Amendment, LCO Number 7959 and I would ask  
that that be called and I be permitted to summarize.

DEPUTY SPEAKER GODFREY:

The Clerk is in possession of LCO Number 7559, which  
will be designated House Amendment Schedule "A". Mr.  
Clerk, if you'd please call the Amendment.

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THE CLERK:

LCO 7959, House "A", offered by Representative Fox.

DEPUTY SPEAKER GODFREY:

The gentleman has asked leave of the Chamber to summarize. Is there any objection? Hearing none, Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker. What this Amendment does is, it takes out the section that had a fiscal note with respect to the underlying Bill and I move adoption.

DEPUTY SPEAKER GODFREY:

The question is on adoption. Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker. What the amendment does, the Amendment is a strike all, and what it does is, it limits, or maybe if I could give a little history on the underlying Bill.

During the course of the Judiciary Committee public hearings and deliberations, and I should especially thank Representative Grogins for her efforts on this issue.

But we sought to look for areas where some of our pretrial diversionary programs may be coming out with some unintended results. And this is a very pared down version of what we had originally put together.

And what this Amendment does is, it limits it really to one change to the accelerated rehabilitation statute. And what it does is it takes out one of the provisions that currently exists that says that if one is convicted as a youthful offender, they cannot use accelerated rehabilitation for five years after that.

And the rationale behind that is that as we all know, we have raised the age with respect to our 16 and 17-year-olds, and we're in the process of raising the age, and we will no longer, very soon, no longer have youthful offenders, so this provision will really be obsolete before long.

But what happens is, some individuals who, you know, were 16 and 17 during the period when youthful offender was in effect for them, would be precluded from using accelerated rehabilitation, and what this hopefully does with this Amendment, then, would be to make it more consistent with our current law with the raise the age provisions, and I urge adoption.

\DEPUTY SPEAKER GODFREY:

The question is on adoption of House Amendment Schedule "A"? Will you remark? Will you remark?

If not, let me try your minds. All those in favor signify by saying Aye.

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REPRESENTATIVES:

Aye.

DEPUTY SPEAKER GODFREY:

Opposed, Nay. The Ayes have it. The Amendment is  
adopted. Will you remark on the Amendment? Will you  
remark on the Bill as amended? Will you remark on the Bill  
as amended? Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you, Mr. Speaker. As described by Chairman Fox,  
this does take into account the raise the age law that we  
have adopted, and with that in mind, it's probably a  
necessary accommodation to that decision, not a decision  
that everyone agreed with but it is, in fact, what we have  
to deal with.

So I'm going to support this. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. Representative Smith.

REP. SMITH (108th):

Thank you, Mr. Speaker. Just a few questions to the  
proponent, please.

DEPUTY SPEAKER GODFREY:

Proceed.

REP. SMITH (108th):

Besides the one change to the youthful offender section of the diversionary program, were there any other changes for the diversionary programs?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, with respect to the Bill as amended, this is the only change to the accelerated rehabilitation program.

DEPUTY SPEAKER GODFREY:

Representative Smith.

REP. SMITH (108th):

Thank you. And again, through you, Mr. Speaker, in terms of the other programs that are out there, drug education program, or programs that are similar to that, were there any changes to those programs?

Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Smith, perhaps if you can stay within the four corners of the Bill. I believe Representative Fox already said there are no other changes.

REP. SMITH (108th):



With all due respect, I thought he said, Mr. Speaker, that there were changes to the diversionary programs. There were no other changes to the accelerated rehabilitation programs.

DEPUTY SPEAKER GODFREY:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, and I'm happy to answer. The original proposal that we had, and there was testimony in support of the proposal from both prosecutors and defense attorneys who came before the Judiciary Committee.

But we did look at a wide range of programs, so if that's what the Representative is referring to, and amongst those were the drug education program. Community service labor program. We looked at potential other changes to the accelerated rehabilitation program.

But based on primarily cost, I could even go further. We also looked at the mediation program, which currently exists but that had a cost to it as well.

What we're dealing with now is the Bill as amended, which is a change to the accelerated rehabilitation program. It takes out the youthful offender prohibition for those who used the youthful offender program within the past five years.

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So that's the only thing in the strike-all Amendment that was just passed.

DEPUTY SPEAKER GODFREY:

Representative Smith.

REP. SMITH (108th):

Thank you for that answer. That really helped clarify, because I do recall in the Judiciary Committee we had those other discussions, so this helps greatly in clarifying that issue and I thank you and thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Thank you, sir. The gentlewoman from Bolton, Representative Sawyer.

REP. SAWYER (55th):

Mr. Speaker, good evening.

DEPUTY SPEAKER GODFREY:

Good evening.

REP. SAWYER (55th):

A question, through you to the proponent of the now adopted Amendment.

DEPUTY SPEAKER GODFREY:

Proceed.

REP. SAWYER (55th):

From listening to the discussion, at the very last line of the Amendment that is now the Bill, so the application fee of \$35. Is that true that that has not changed? Through you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, that has not changed with respect to this Bill, and I'm not aware of it having changed anywhere else.

DEPUTY SPEAKER GODFREY:

Representative Sawyer.

REP. SAWYER (55th):

I thank the gentleman for his answer.

DEPUTY SPEAKER GODFREY:

Thank you, ma'am. Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. Through you to the proponent of the Bill.

DEPUTY SPEAKER GODFREY:

Proceed.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. In the original Bill, I see a fiscal note that you said in the Amendment the fiscal note

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has been eliminated, and I see the fiscal note both in terms of losses and gains in the general fund, and into the state fund. It's quite a significant amount.

I'm glad we don't have a fiscal note. It is great news. But I'm not sure how you were able to have that magic and make the fiscal note go away, and I would love to hear that. Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, it wasn't exactly magic. I just struck out the entire section that dealt with the drug education program and community service labor programs, which were the source of the fiscal note.

DEPUTY SPEAKER GODFREY:

Representative Srinivasan. Proceed, sir.

Representative Srinivasan, hit your button please. That's it. There you go.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker. Through you to Representative Fox. So the component, which was causing the fiscal note, that component has been completely deleted.

So are we still providing these services that we anticipated originally or it has been, I know you did use

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the word a diluted version, and if you could just comment about it, I would appreciate that.

DEPUTY SPEAKER GODFREY:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, the provision, the recommendation, what was in the underlying Bill with respect to the programs I referenced, the drug education program and the community service labor program, was a provision that would have allowed those programs to be used interchangeably.

The way the law currently reads is that the drug education program has to be used first, and it generally involves arrests for possession of small amounts of marijuana, so the drug education program needs to be used first. The community service labor program has to be used second, if someone gets a second arrest.

What happens, though, unfortunately, is that either individuals representing themselves, or attorneys may not be aware of that provision. They apply for the community service labor program, and they don't take advantage or utilize the drug education program, and they have effectively taken away an option that they had.

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The proposal was to allow them to be used interchangeably. The concern from OFA was that if we did that, then the drug education program, which is a source of funding, would be lost, and that was their rationale for the fiscal note.

As a result, because it couldn't be resolved, we took out that provision, but the programs do still exist.

DEPUTY SPEAKER GODFREY:

Representative Srinivasan.

REP. SRINIVASAN (31st):

Thank you, Mr. Speaker.

DEPUTY SPEAKER GODFREY:

Representative Labriola.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker. A few questions to the Chairman of the Judiciary Committee.

DEPUTY SPEAKER GODFREY:

Please proceed, sir.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker. Is it correct to state that the provision that would have dealt with sexual assault in the second degree has been stripped from this with this strike-all Amendment? Is that correct?

Through you, Mr. Speaker.

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DEPUTY SPEAKER GODFREY:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, that is correct.

DEPUTY SPEAKER GODFREY:

Representative Labriola.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker. And is it also correct that the provision that would have dealt with a person charged with drug paraphernalia or possession of drug paraphernalia has also been stripped through the strike all?

Through you.

DEPUTY SPEAKER GODFREY:

Representative Fox.

REP. FOX (146th):

Through you, Mr. Speaker, if that's the provision I described with respect to drug education and community service labor program, then that's correct.

DEPUTY SPEAKER GODFREY:

Representative Labriola.

REP. LABRIOLA (131st):

Thank you, Mr. Speaker. I don't have any other questions of the Chairman, but just a comment.

Representative Fox, he explained how the drug education program and the community service labor program would have been allowed to be taken advantage of by a defendant interchangeably, but for this fiscal note, and I'm hoping that perhaps at a later date, perhaps next year, we can address that because it is a problem as Chairman Fox indicated in that some pro se defendants are told by prosecutors that they should take the community service labor program, which is a more onerous program than the drug education program.

And what happens is, defendants don't realize that they could have used the DEP, the drug education program. It would have been a sort of less difficult program, and yet would have provided some benefit to that person.

And then, upon another arrest, they could then take advantage of the community service labor program. As it currently stands, once they use that community service labor program, then they're precluded from using the DEP and that's a shame, because what happens is, many of these, hundreds of these defendants don't realize that they could have used the DEP first.

And it's a shame that it came up that there was a fiscal note here, and I really would like to see that solved because it's really not correct that these



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defendants are made to use the community service labor program when they have this other program they could have used first.

So I am hopeful that we can work on that program, that problem in the future, and I urge passage of this particular Amendment. Thank you.

DEPUTY SPEAKER GODFREY:

Will you remark further on the Bill as amended? Will you remark further on the Bill as amended?

If not, staff and guests please come to the Well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by Roll Call.  
Members to the Chamber.

The House is taking a Roll Call Vote. Members to the Chamber, please.

DEPUTY SPEAKER GODFREY:

Have all the Members voted? Have all the Members voted? If so, the machine will be locked. The Clerk will take a tally and the Clerk will announce the tally.

THE CLERK:

House Bill 6639 as amended by House "A".

Total Number Voting 147

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Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER GODFREY:

The Bill as amended is passed.

(Deputy Speaker Ryan in the Chair.)

DEPUTY SPEAKER RYAN:

Will the Clerk please call Calendar 215.

THE CLERK:

On Page 38, Calendar 215, Substitute for House Bill  
Number 6498 AN ACT CONCERNING IMPLEMENTATION DATES FOR  
SECONDARY SCHOOL REFORM. Favorable Report of the Committee  
Appropriations.

DEPUTY SPEAKER GODFREY:

Representative Fleischmann of the 18th, Chairman of  
the Education Committee. Please proceed, sir.

REP. FLEISCHMANN (18th):

Thank you, Mr. Speaker. May I say it's a pleasure to  
see you up there despite the inclement weather.

I move acceptance of the Joint Committee's Favorable  
Report and passage of the Bill.

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 19  
5940 – 6247**

**2011**

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rgd/mb/gbr JUDICIARY COMMITTEE

April 4, 2011  
10:00 A.M.

RONALD WICKE: Thank you.

SENATOR COLEMAN: Craig Nowac.

CRAIG NOWAC: Good morning, Senator Coleman.

SENATOR COLEMAN: Good morning.

CRAIG NOWAC: Members of the Judiciary Committee, my name is Craig Nowac. I'm here to talk on the Bill 6639, AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS. Just a little bit about my background, first, I have eleven and a half years -- or eleven years as a prosecuting attorney in the State of Connecticut at GA2 in Bridgeport. But really I'm here to talk about the veterans AR which is a part of the act.

Twenty-two years as a soldier with the Connecticut Army National Guard. Currently I'm a major and the commander of the Connecticut Trainee Center at Camp Niantic. I have two deployments under my belt so far, one to Iraq in '04 to '05, the other returning just recently to Afghanistan -- returning recently from Afghanistan in November of this year -- of 2010 and I served a year-long tour with the 1102 Infantry Battalion.

I've been in combat. I've witnessed soldiers with PTSD. I've probably even had some of the symptoms myself. I'm here to talk about all the diversionary programs and before getting into the AR for veterans, what I am here to do is also talk on behalf of the Division of Criminal Justice and Mr. Kevin Kane with regard to the act as a whole.

Now beginning -- before we get into the veterans AR, beginning with the act concerning the AR program, we do agree that AR should be

granted or should be allowed to be granted to individuals who have used the youthful offender program within the past five years.

Right now if you've used youthful offender status and you pick up another case after your 18th birthday within five years of using YO, you're not permitted to use AR. We believe that you should be able to at least apply for it. However we do not agree with these, the taking of the statute where it limits the judge -- or it grants the judges discretion on granting AR to someone who has used YO in the past five years.

I handle all the gun cases in Bridgeport and I can tell you there's some individuals out there that are engaging in some serious crimes. It still should be up to the judge whether or not the AR is granted and that judge should be able to look at the YO file if the individual used YO within the past five years.

The statute also takes out the disqualification if someone has used a CSLP or drug education program. We do have an objection to that. We do believe that at some point in time someone who has used a CSLP and the DEP, at some point they're just not getting the fact that drugs are bad they're illegal. So we do take objection to that part of the statute.

We do agree with the statute that allows an individual -- that would allow an individual to use CSLP and DEP almost interchangeably. At this point right now if an individual applies for the community service labor program and uses that program, they are precluded from using the drug education program in the future. That just doesn't make

sense. A person should be able to pick and choose whichever program they want to do first of both drug programs. The DEP actually I think is more expensive than the CSLPs. So people might -- they probably would want to do the CSLP first (inaudible).

Now if I may, getting into the veterans AR, which is what I'm really here to talk about. As I explained, I'd been to both wars and I've been in combat. I'm not opposed to the concept and the division is not opposed to the concept of the veterans AR. What I am concerned about and what the division is concerned about is the help that the veterans will receive.

Unfortunately I've seen a lot of these programs use -- such as the psych AR, psychiatric AR which also, the concept we agree with -- however, in practice that program does not work so well. Probation receives little guidance on how to implement that program and people are just pushed through the system. And people with mental health needs definitely need that help.

Also what I'm concerned about is that there's a whole other litany of programs out there that veterans will probably avail themselves of, alcohol education programs, the community service labor program, drug education program, PADA, EVOLVE which is the family -- part of the family violence program. Alcohol, drugs, family violence -- are all symptoms of PTSD and nothing in the statute or the proposed act addresses these particular other programs, which I believe and the division believes really need to be tailored to the veteran. In other words, the veteran who comes home suffering from PTSD or just suffering from the stresses of deployment, will most likely

engage in increased alcohol abuse, drug abuse or domestic violence.

If they use the alcohol education program, they're going to be placed into classes with regular citizens who don't understand or probably have never been engaged in combat or some sort of situation such as a veteran has. Veterans always try to help other veterans because we understand what we have gone through. And when somebody says I've been in combat, I've been blown up by an IED, I saw my friend get blown up by an IED, I can understand that and the other veterans too.

I think what is better to do is to look at all the programs and tailor them also to the veterans and don't have the veteran do something in addition to what is required of the average citizen, but allow that veteran to go to the vet center, to the VA to receive the alcohol classes, to receive the domestic violence classes. There are a whole litany of programs out there.

So thank you for your time today.

SENATOR COLEMAN: Are there questions?

Representative Fox and then Representative Dillon.

REP. FOX: Thank you, Mr. Chairman.

And thanks, Attorney Nowac, for being here today. And I should also mention that Representative Grogins played a role in helping to draft this bill.

I know that some of the portions of this bill did come from discussions that you were a part as well, so I thank you for that. And one of

the things that I wanted to see is an overall look at our pretrial diversionary programs to see if, you know, while in many cases they work well, but in some cases there are situations where there might be a case that you wish it was available or there might be a case where you wish it wasn't available. And that's the type of thing I wanted to take a look at and go through.

Now you mentioned the psych AR, is essentially what everyone calls it. And you said it's not really working that well. I know that that's not really part of this bill, but are there things that we could do that would help clarify how that's being implemented?

CRAIG NOWAC: Absolutely. The biggest criticism that we have when the program came out with probation officers telling us we received absolutely no guidance on what to do and how to implement the program. And going back to the veterans AR, if we're going to do -- you're going to have to educate the people that put these programs in place.

Psych AR, veterans AR, they all day with mental health issues. And that's really what you have to look at -- is giving those people the guidance that are going to implement these types of statutes. Another problem with the psych AR is that if the case is continuing the judge gets a report, which is literally one page long. And the recommendations from probation with regards to what treatment that person should get are generally three sentences.

And generally the person doing probation will say, I'm having mental health issues. I'm already seeing a counselor. And probation will say, okay. Well, that's great. The



program, you're amenable to the program. Lets just keep doing what you're doing. And my whole point is, well -- and the judge's point a lot of times is, well, wait a minute. That wasn't working in the first place (inaudible) here in criminal court. So we're just pushing the person through.

And somebody with mental health who actually needs some guidance and some special help as opposed to your larceny six or, you know, somebody who gets arrested and they just get pushed through the system, which is okay. But for the psych AR they need specific help so you're going to need a lot of education especially with the veterans program, a lot of education for the probation officers and the people treating those vets.

Representative Fox, the problem is if you put a vet into one of these programs, they're going to know right off the bat if their time is being wasted. No one in this room knows more when they're -- excuse my French -- but jerked around, is a veteran. Because from day one the soldier is constantly told what to do, what to do, what to do and there's really no break in that.

And so when you put them into that program and he's sitting there, and he's going to say, wow. This is just like being in the Army. One of those classes I had to go to just to punch the ticket, and I'm not getting anything out of it. I've actually seen that in the past. I had one soldier -- not arrested, but who was tested positive for drugs. He was told to go to substance abuse to be retained in the military.

He went to, I believe it was Southwest Regional -- one of those programs that we have

out there. He came up and he said, sir, you're wasting my time. I'm in this program with these people -- these people are drug addicts and I've got PTSD. You know, I've been deployed. And I said, my response was, hey, Sergeant, you want to stay in, you've got to punch the ticket, man, and do what you've got to do. Get your diploma and move on and that was the response I believe from the higher-ups, too.

And did that soldier get the help he needed? I don't know. He ended up leaving the National Guard. But that's -- that's what I'm concerned about. We have to have a lot of education and a lot of resources put into this.

So the point is we have a lot of these other programs out there that the vets need to be -- that they're going to use drugs, alcohol. They have to have the education on how to treat that vet properly so that that vet can get the proper help as opposed to the other, like the NCO going through, punching the tickets, getting the certificate and moving on. That could be very counterproductive.

REP. FOX: Okay. Well, thank you. And it is my hope we can do something this year on how we address these programs and I do think we may call on you again, because you have a unique perspective in that, you know, you're a prosecutor in a very busy criminal court. You also have the perspective of having served our country and dealing with veterans on these issues. So I think we will be in touch as we go forward. So thank you.

CRAIG NOWAC: Thank you very much.

SENATOR COLEMAN: Representative Dillon.

REP. FOX: Some more questions (inaudible).

REP. DILLON: Thank you. I'm sorry, Mr. Chairman. Were there are more questions from someone else? Or is it my turn?

SENATOR COLEMAN: It's your turn.

REP. DILLON: Thank you.

Thank you very much for coming today. And I guess the first thing I want to do is thank you for your concern and for taking the time to be here. And the second is, I'm reading through your testimony in real-time while you're speaking, and so I don't know if I can do justice to your concerns.

But we have -- have you worked with or looked at the program in Eastern Connecticut that's pretrial for military?

CRAIG NOWAC: As a matter of fact, I am on the state advisory board for the jail diversion program and also on the local advisory board. Obviously I have not participated as much lately because of my deployment, however my wife is also on that board as well.

REP. DILLON: Because I don't know. I mean, maybe we should all get together and try to figure out how to make these things work. I know we had a special docket bill last year that Senator Looney was suggesting.

And I work with a group that's based in New Haven to provide counsel to military and I assume you know about that group as well.

CRAIG NOWAC: Yes.

REP. DILLON: My anxiety is that, you know, even with the Eastern Connecticut program that was leveraged, we got federal money for that based on the state dollars that we put into the military support programs. And the Governor didn't fund that last year. And I don't mean Governor Malloy, although I don't know what he's going to do, but Governor Rell did not fund it.

So that we have -- we really sort of took baby steps of trying to do things that other states have not done and I'm afraid a lot of that is at risk. And I want to make sure that we're on the same page. This might fit in with what we're doing elsewhere it sounds like. Right?

CRAIG NOWAC: Well, the hardest part is identifying the veteran from the (inaudible) that's the biggest part of that program and that's one of the problems that we identified (inaudible) how does the police officer (inaudible).

And there's been some talk of putting something on the driver's license (inaudible) just to (inaudible) that that person is a vet so the police officer knows right off the bat that this person may have PTSD. And they can -- then can direct that person, start the process of directing a person to the various program at the VA or the vet center. And that's the hardest part.

The way that I find out that a vet is arrested is people will call me, because generally I am, I guess, the quasi expert in the division because of my background. Hey Craig, what do we do with this individual? We just found he's a vet.

So I -- we find out in an informal manner. The public defenders will find out, bail

commissioners. There has to be some sort of method of identifying that person right off the bat. The programs exist out there. There's a litany of veterans programs. It's just using those resources properly and educating people that don't understand the plight of some veterans to make sure that those vets are directed to that help.

REP. DILLON: Thank you. And as you know -- and you really put it very well -- especially if they're under 30, if you say, are you a veteran? They won't say yes. I mean, you have to find out if they've served in theater. And legally they may not even be vets yet, depending on what their status is with the military and given all the multiple rotations. But there's a linear relationship. The more deployments you have the more at risk you are for PTSD and for other things that you're talking about.

So finding those folks and people -- at the VA have been desperate for two years trying to get -- they can't get some of the young people in. And what DMHAS did was embed clinicians in the units before they deployed to do trust building, as you know probably.

I'd really -- I think this is really an important issue and I don't know how it's going to work out. And I really want to congratulate you and Representative Grogins for the work on this. And I don't know how this fits in with everything that's going to happen in the budget, but we should try to fix it.

CRAIG NOWAC: (Inaudible.)

SENATOR COLEMAN: Are there other questions?

I have a question. For my own clarification, am I accurately understanding your position regarding a veterans AR? Are you saying that a veterans AR may not necessarily be required, but that certainly the status of combat veterans should be identified within the context of the application process for AR or drug education programs and family violence programs and possibly psych AR programs?

CRAIG NOWAC: I believe it should to make sure that that particular veteran's needs are addressed. And as one of the problems that the state advisory board -- the local advisory board on the jail diversion program had identified was how do we identify people that are combat veterans to make sure they get the help that they need?

A lot of times, you know, young veterans will not want to speak up about that because either they fear as to what might happen to them or they're afraid that other restrictions are going to be placed on them in addition to what a normal individual who is arrested would be under. And still they tell us that there is no stigma, but some especially coming off of active duty, active-duty soldiers, there is still a stigma that's out there.

And in the Connecticut National Guard I don't see that. As a matter of fact we've been told -- and I tell my soldiers that if you don't get the help that you need, that's the stigma. So I don't really see that at all that there is a problem in the Connecticut National Guard, but some active duty soldiers have said, yeah. I don't want to bring that up. I don't want to have to go to the VAs. I don't want to go to the vet center.

And sometimes, you know, that's why you need

other veterans to help. I've been in lockup before with one individual who took a shotgun -- and he ended up getting in a program an AR program, by the way -- and his neighbors were ticking him off and he shot at some beer bottles next to them.

And the public defender grabbed me and said, hey, Craig, there's a vet downstairs. You've got to go talk to him. So I went down there, and one, identified he was a vet. He was 3rd ID, at a forward air refueling point.

And I immediately told him -- I said, hey, listen, I'm Major Nowac. I'm here. I'm a vet. I was in Iraq just after you left. And all of the sudden he just -- he calmed right down and he said, hey, sir, what do I got to do? And I said listen, man, you know, I'm going to get you a public defender and we're going to make sure that we through, through the system. And that's what we do.

You know, he did go to the VA. And I told him, you've got to make sure you take care of this problem. And sometimes that what it needs, you know, a vet might need that, that push, especially from someone like me with some authority. You know, right off the bat, yes, sir. And we go to the VA and he did exactly what I told him to do. And that's what he did. And because we like that as veterans. We like leadership. We like guidance.

SENATOR COLEMAN: Okay. So should we have a VA program specifically designated for veterans or is that not a requirement?

CRAIG NOWAC: If it's applied properly and if it's applied correctly for that veteran. And that's what the concern is. And really, I

think what you need to do is look at the resources that we already have available to us. There's a whole litany of resources and the other programs. Like I said, AEP, CSLP; what are vets going to do when they come home? They're going to drink. They're going to do drugs and they're going to get into domestic violence.

And those are the -- they're going to need drug programs, AEP and the EVOLVE or family violence programs, but there's nothing in those programs that addresses the veterans. And now they're placed into a program now and they're sitting there and they're listening to other people's problems. And they have -- these other people have problems, but then they get to the vet and they say, all right. What's the problem?

I was in an IED attack and I saw my friend get his leg blown off and that happened at the 102nd. And if he can't relate to them, they can't relate to him and it becomes counterproductive. Because that vet, sometimes he'll come out -- and I've seen it -- he'll come out of that room and say, that was a joke, sir. I don't -- why am I there? I've got problems. And, you know, I don't want to have to say that response again to -- just hey, we've all been there. Punch a ticket. Get the cert and you're out the door and that, that's not helping anything.

So really look at the programs that we have available and then put a part of that program for veterans, the AEP program, you know, don't force the vet to go to the out -- the ten sessions. Okay. He might have to go to some of them because they might be generic to everybody, but also have him go to the vet center if he has PTSD. Have him go to the VA



instead of going to those other five sessions or -- he'll get more benefit out of that. I would say don't make him do more than the average citizen because then you're penalizing the person. But look at those resources that we already have available to us and using them, also the programs that are out there.

SENATOR COLEMAN: Okay. Thank you.

Are there other questions for Attorney Nowac? Representative Adinolfi.

REP. ADINOLFI: Yes. Thank you for coming. You mentioned something about identifying vets sometimes for a problem. There is a bill -- I'm on the Veterans Committee and there is a bill that we put out where veterans on their -- trying to get where they can get an identification card with their picture or. We might even be putting it on their license and there will be one of two things.

Just a veteran or veteran in a wartime era. You know, we have certain needs that have different benefits and that would be on your driver's license also or if you don't have the driver's license it will go on a separate ID card and that's going through the Legislature right now. So (inaudible) take care of.

CRAIG NOWAC: Great. Thank you.

REP. ADINOLFI: Thank you.

SENATOR COLEMAN: Other questions? Seeing none, thank you, Attorney Nowac.

CRAIG NOWAC: Thank you very much.

SENATOR COLEMAN: Ellen Hillman.

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SENATOR COLEMAN: Are there other questions?  
Seeing none, thank you very much.

KIMBERLY SHELLMAN: Thank you.

SENATOR COLEMAN: Jennifer Zito.

JENNIFER ZITO: Good afternoon, Chairman Coleman, Chairman Fox, distinguished members of the Judiciary Committee. My name is Jennifer Zito and I'm the president of the Connecticut Criminal Defense Lawyers Association and I'm testifying on behalf of that organization in support of Raised Bill 6639, AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS.

As you know, this bills seek revisions to the exhilarated rehabilitation programs statutes which we call AR, the drug education program, the creation of a pretrial diversionary program for veterans with PTSD and/or traumatic brain injury, and expansion of the criminal mediation provisions available to make them available to all of the GA courts for low-level offenses.

We think this is particularly important relative to the AR statute because it removes the ineligibility provisions if used -- if a youth has used the youthful offender program within the preceding five years. That's one of the collateral consequences of being a youthful offender, that if should you need to avail yourself of the AR program within five years after you've been adjudicated it -- YO offender, you're ineligible.

I think this is particularly ripe given the fact that raise the age implementation was delayed from 2010 to 2012, and hopefully not 2014 as proposed for 17 year olds. We want to protect their records. And I think it's

SB1236  
SB1033

notable that the State has no objection to this. I think given what we know about brain development I think it's important and consistent with the support for raise the age legislation that we rid the AR statute of the preclusion if within the five-year look back period for YOs.

I also would like to bring to your attention removing the absolute exclusion for sexual assault in the second degree charges in the proposed bill. We think this is important because in situations particularly where you might have a sophomore who is involved in a relationship with a senior. Even though our new sex assault statute has been revised to make it a three-year differential in age, sometimes it's three years and two months or three years and three months and you might have two kids who are involved in a relationship where the older actor and is charged with sexual assault in the second degree.

By making this particular offense eligible for AR with a good cause showing we leave it to the court's discretion to hear the facts of a particular case. And particularly in situations where there's no objection from the victim or the victim's family, I think it's appropriate in those instances to try to protect our youth from having a felony conviction.

And with this particular statute, sex assault in the second degree, they not only get a felony conviction they get a nine-month mandatory minimum sentence and sexual offender registration which sticks to them for the rest of their lives. So I think it's particularly important that we look at that.

One thing I would like to bring to your attention however is given that particular scenario I just raised with the 15 year old and the 18 year old, the sophomore and the senior in high school, this bill I think needs to be clear -- clarified because that is a B felony under our statute. And AR is generally not applicable to A or B felonies, only C felonies for good cause shown.

So if you want to exclude sex assault in the second degree, which I think is a good idea to do so, to make it an applicable offense for an AR application you're going to need to clarify that even though it's a B felony you intend to exclude it for good cause shown.

I would also like to indicate that relative to the drug education program modifications that are being offered it's necessary to protect pro se applicants in this case because what we're trying to do in this proposed bill is make the drug education programs similar to the community service labor program, in that if you've previously used the community service labor program you're not ineligible automatically for the drug education program.

Right now as the law stands if some -- an applicant has used the community service labor program before, they cannot apply for the drug education program. However if you use the drug education program first you're still eligible for the community service labor program. And I would submit to you that we need to make these more consistent because oftentimes pro se defendants will come before the court and they won't know better. And oftentimes frankly, there are lawyers who don't know better, that you need to apply for the drug education program first.

And it's very frustrating for the court, for judges, for prosecutors when the drug education would be an appropriate remedy for that particular situation, but the applicant is barred because they previously used the community service labor program. You know, whereas had they used the drug education program initially they would have been eligible for the other community service labor program.

It should be noted I think by this committee that 90 percent of the folks that come before the court have drug involvement in some way or another. These are not -- these programs are not eligible or available for dealers and they're not for people with a prior conviction. They are the purpose of educating people and putting in some kind of punitive remedy where folks are required to do a substantial and significant amount of community service as well as substance abuse treatment and education. And I think it behooves the State of Connecticut to make these programs both available to applicants.

Lastly, we just wanted to show our support for the veterans pretrial diversionary program. We think that's a great idea and making mediation available throughout the GA the courts statewide.

At my last point I would like to just raise briefly is opposition by CCDLA to the Raised Bill 1236, AN ACT CONCERNING THE PENALTY FOR THE SEXUAL ASSAULT OF A MINOR. And I would only like to say that in this bill it already contains mandatory minimum sentences for a first offense of 25 years and a second offense of 50 years. And to make the penalty life without the possibility of parole we feel is inappropriate. We feel those sentences are

for sexual assault?

JENNIFER ZITO: I believe so. That there, presently the statute of limitations had been extended in cases of sexual assault or abuse of minor victims. And I believe that Representative Shaban was correct in stating that it's 30 years, but I believe it's after the victim has attained the age of 18.

So if memory serves me, sir, and I haven't reviewed that statute prior to today, so you'll have to excuse me, but if memory serves me, I believe it's a 48-year statute overall, 30 years from the time the victim reaches the age of 80.

SENATOR MEYER: Okay. Thank you.

SENATOR COLEMAN: Are there other questions?

Which way does it work? Does the community service labor program -- use of the community service labor program pursue participation in AEP or is it the other way around?

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JENNIFER ZITO: It's the other way around. The DEP preclude -- you're precluded from using it if you've previously used the community service labor program. But not the other way around with the community service labor program. You're not precluded if you previously used the DEP.

SENATOR COLEMAN: Not that you should remember, but do you recall the rationale that we as a Legislature used in enacting that prohibition.

JENNIFER ZITO: I do not, sir, and I've always wondered what the rationale was. And I was unable to find it for today unfortunately.

I think the DEP is a far more comprehensive program that, as drafted, looks much more like the AR program. It allows the file to be sealed. It's a much more expensive program. It calls for an evaluation of the applicant with 10 or 15 sessions for drug intervention or substance abuse treatment.

It also now requires community service of 40 hours in some instances or 80 hours in other instances, depending on the evaluation. The file is sealed and then once you successfully complete it there is a dismissal of the charge and the case is continued for up to a year.

However in my experience the drug education program and the community service labor program are used almost interchangeably. And as a practical matter you can often have a defendant who's arrested twice within a very short period of time and has never had the benefit of either program. And as a way to resolve it and to get the defendant help and treatment and also to make them get back to the community, prosecutors will offer that you use both programs.

So it's very useful to be able to use both and really I think a lot of the frustration comes from the courts where, you know, people who have used the community service labor program are allowed to use DEP, but in a situation where somebody burned the -- pardon me, where somebody used the DEP, would be eligible for the community service labor program, but not the other way around. So defendants are being treated differently. And with so many pro se defendants these days that becomes very problematic.

SENATOR COLEMAN: And refresh my recollection. Can you use either of those programs more than one

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time?

JENNIFER ZITO: The community service labor program -- you may not with the drug education program, but with the community service labor program, if you apply for it for a second time there must be a conviction and a suspended sentence is offered in conjunction with the treatment program being given. So there's a conviction, but the judge can suspend the sentence and order you to do the community service labor program for a second time.

SENATOR COLEMAN: Thank you.

Are there other questions? If not thank you very much.

JENNIFER ZITO: Thank you.

SENATOR COLEMAN: Georgette Yaindl.

GEORGETTE YAINDL: Is it afternoon? Good afternoon, Senator Coleman, Representative Fox and members of the Judiciary Committee. My name is Georgette Yaindl. I'm executive director of Bike Walk Connecticut, a statewide not-for-profit membership based organization committed to increasing opportunities for more and better bicycling throughout our state.

We come here in support of land use -- Recreational Land Use Act reform. Whether or not this particular bill, 6557 is the perfect one, as you know, is the big question right now. We are very heartened that at the start of this legislative session 13 bills in addition to this one were introduced by some 42 individual Senators and Representatives here in the State of Connecticut, crossing all party lines, all persuasions. And we're very optimistic that that should send a very strong



different than the state sovereign immunity where the claims commissioner tries to say, if this person would have a case then the usual court of law will move forward, but the municipal does have access to the superior court -- so a student in a public school. So thank you very much.

Thank you, Mr. Chairman.

SENATOR COLEMAN: Are there questions? Seeing none, thank you, Mr. Cullhane.

MICHAEL CULLHANE: Senator, thank you very much.

SENATOR COLEMAN: David McGuire.

DAVID MCGUIRE: Good afternoon, Senator Coleman and members of the Judiciary Committee. My name is David McGuire. As a staff attorney for the ACLU of Connecticut I am here to support Raised Bill 6642, AN ACT CONCERNING THE RECOMMENDATIONS OF THE NATIONAL PRISON RAPE ELIMINATION COMMISSION.

This bill makes a clear statement that rape is a crime, not a punishment. Current Connecticut prison regulations forbid any sexual contact between prisoners or prisoners and guards. Despite this risk -- rape pervades the prison system. In 2007 the Bureau of Justice Statistics special report found that 60,500 prisoners had experienced sexual abuse in the past year. Even more frightening is the fact that in 2008 the bureau found that 12 percent of incarcerated juveniles experienced some type of sexual abuse. It's also important to note that these numbers are definitely under -- underreported.

HB6639

We can no longer tolerate these indignities perpetrated against people in our state

reasonable steps to protect an inmate from sexual assault the State may be liable for failing to protect those inmates. The passage of this bill is sound public policy. It protects all people from rape and sexual assault and minimizes financial risk for the State. The ACLU of Connecticut urges you to pass Raised Bill 6642.

The ACLU also urges this committee to support House Bill 6639, AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS. It's been shown that these programs, mediation programs do work and they take strain off of overtaxed courts and overcrowded jails and prisons.

I'm happy to answer questions about either of those bills. Thank you.

SENATOR COLEMAN: Are there questions?

Seeing none, thanks for your testimony.

Oh, hold on.

Senator Meyer.

SENATOR MEYER: Thanks, Mr. Chairman.

Do you know what -- have you estimated what the cost of this bill would be particularly in terms of the large amount of training that the bill implies?

DAVID MCGUIRE: Of the bill on the rape elimination?

SENATOR MEYER: Yes. I'm sorry. Yes.

DAVID MCGUIRE: I understand that there would be some costs. Commissioner Arnone has said that a lot of this is -- they're already in

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 20  
6248 – 6487**

**2011**



**STATE OF CONNECTICUT**  
 DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES  
*A Healthcare Service Agency*

Dannel P. Malloy  
 Governor

Patricia A. Rehmer, MSN  
 Commissioner

TO: Judiciary Committee

FROM: Patricia Rehmer, MSN  
 Commissioner

DATE: April 4, 2011

SUBJECT: **HB 6639 AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS**

Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee we are writing to you today to express our concerns with sections 2 and 3 of **HB 6639 AN ACT CONCERNING PRETRIAL DIVERSIONARY PROGRAMS**.

**Section 2**

Section 2 removes the prohibition for participation in the Pretrial Drug Education Program (PDEP) related to previous participation in the Community Service labor Program (CSLP). Since the CSLP program is less expensive, we can expect defendants to now choose CSLP for their first offense, and then keep open their option for PDEP for a subsequent offense. CSLP participants are referred to PDEP groups. DMHAS has to pay for the PDEP groups, but no court fees are paid into the CSLP by defendants. Thus, DMHAS would either not be able to afford to provide the programs, or it would have to take money from other needs to finance this court-directed option, or it would require additional resources added to its budget. Thus, there are serious fiscal implications for this change. Currently, the prohibition related to prior CSLP use forces defendants to enter PDEP programs and pay the fee into the pretrial account, from which DMHAS pays private providers to deliver the educational programs, which keeps these programs solvent.

- SFY10 DMHAS paid for 5,331 evaluations and 4,151 group participants. The overwhelming majority were referred through the PDEP statute and their court fees (\$1,001,760) were deposited in the Pretrial Account (CGS 54-56k) to support the program.
- If this section is passed we can expect that most of these defendants would choose the CSLP option for diversion and their fees would go to CSSD; DMHAS would not receive any funding for PDEP for these defendants.
- CSLP fee is \$205 and they are referred to the 15-week, 22.5 hour PDEP group.
- PDEP fee is \$700 for application, evaluation, and 15-week, 22.5 hour PDEP group. The fee for the group, \$500, may be waived if the court finds the defendant to be indigent.

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[www.dmhas.state.ct.us](http://www.dmhas.state.ct.us)  
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**Section 3**

Section 3 duplicates for veterans the existing Supervised Diversionary Program under CGS 54-561 – from which veterans are in no way currently excluded. DMHAS is already engaged in a pilot program for veterans in the Norwich and New London court system and recently received OPM approval for 2 additional JD positions for Community Mental Health Center (CMHC) to expand the pilot to the New Haven court. The pilot in Norwich and New London is funded by the federal government and is targeting Veterans returning from Iraq and Afghanistan. One of the goals of this program is to derive outcome data on the utility and efficacy of this veteran-specific programming. Before the outcomes of this pilot program are evaluated, it would be imprudent of DMHAS to set standards for veteran-specific programming.

- The bill requires DMHAS involvement in placing a defendant in a program. The bill seems to be directed at recently serving vets and very few of these have an SMI. Many will be treated outside the DMHAS system for Traumatic Brain Injuries (TBI) and/or PTSD. Jail Diversion (JD) staff generally do not have experience with treaters outside of the DMHAS system so placement may require significant time to identify providers and arrange placement.
- The JD program is designed to target defendants with Serious Mental Illness (SMI). While JD staff statewide serve a significant number on non-SMI defendants (including some recent vets), JD in the busiest courts do not have time to take on additional non-SMI clients.
- So DMHAS involvement as required by this bill will require additional staff.

Thank you for your time and attention to this matter.

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State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

*In opposition to:*

H.B. No. 6639 (RAISED):  
An Act Concerning Pretrial Diversionary Programs

*April 4, 2011*

The Division of Criminal Justice would respectfully recommend the Committee's Joint Favorable Substitute Report for H.B. No. 6639, An Act Concerning Pretrial Diversionary Programs. While the Division fully understands and supports the underlying intent of pretrial diversionary programs, we are concerned that these programs may no longer be serving that intent and are, in fact, becoming simply a means for quickly disposing of business. We would respectfully recommend that the Committee consider some form of a comprehensive study to examine these programs and whether they are serving their intended purpose.

With regard to the specific provisions of H.B. No. 6639, the Division would recommend revisions to section 1 (b) of the bill. The original and longstanding intent of the pretrial Accelerated Rehabilitation (AR) program has been to provide an avenue to allow a second chance for those charged with less serious crimes. A key component of this program has always been a finding by the court that the individual is not likely to offend again. Section 1 (b) of the bill would erase these longstanding requirements in total for those granted Youthful Offender status. The bill would eliminate the current prohibition on granting AR to anyone who has been adjudged to a Youthful Offender within the five years prior to applying for AR.

While the Division would not oppose this change, we would recommend the Committee amend the bill to delete the language that would eliminate the ability of the court to make a substantive determination of whether the individual is likely to offend again. The bill would deny the court access to the records of the Youthful Offender case or cases thus prohibiting the court from considering the facts and circumstances of those crimes in considering a subsequent application for AR as an adult. Such Youthful Offender records would contain critical information needed by the court to make the determination of whether the person is likely to offend again and to determine what, if any, conditions should be ordered if AR is granted.

The Division opposes section 1 (c) (4) of the bill, which would extend eligibility for AR to an individual who is eligible for or has previously taken advantage of the pretrial drug

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education program under section 54-56i of the general statutes. Diversionary programs should be considered as giving an individual a second chance, and should not become a revolving door.

The Division fully supports the concept behind Section 3 of the bill, that being to address the special needs and problems that can confront veterans. However, we are not convinced that establishing a new program as proposed in Section 3 is necessary, particularly at a time when resources are so hard to come by to fund any new initiatives. There are also practical concerns, such as who would make the required finding that a veteran is suffering from a service-related traumatic brain injury or post-traumatic stress disorder (the bill does not specify how this determination would be made). Rather than establish a new program, a better approach would be to focus on the many diversionary and treatment programs that are already in place and to utilize those programs with a special emphasis on the needs of the veteran. The Veterans Administration (VA) and other state and private sector agencies already provide a wide range of services to veterans. The courts need to better coordinate the disposition of cases with these existing resources to best serve the individual veteran. As such the need may be for additional training for all involved in the system - judges, court support personnel, prosecutors, public defenders and private defense counsel - on the need for more attention on handling cases involving veterans with the specific needs of veterans in mind. The Division would be happy to work with the General Assembly and other agencies to facilitate such training.

In conclusion, the Division thanks the Committee for its attention to these important matters. The Division would be happy to provide any additional information the Committee might require or to answer any questions that you might have.



STATE OF CONNECTICUT  
JUDICIAL BRANCH

**EXTERNAL AFFAIRS DIVISION**

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Testimony of Deborah J. Fuller  
Judiciary Committee Public Hearing  
April 4, 2011

**House Bill 6639, An Act Concerning Pretrial Diversionary Programs**

Thank you for the opportunity to submit testimony on House Bill 6629, An Act Concerning Pretrial Diversionary Programs. The Judicial Branch is concerned that sections 3 and 4 of the bill would require additional resources.

Section 3 would create a specialized diversionary program for veterans. This program would be very similar to the Supervised Diversionary Program for persons with psychiatric disabilities, which began operation on October 1, 2008. The FY 08-09 state budget provided funding for the program -- the Judicial Branch received approximately \$900,000.00 in three-quarter year funding to implement it. We anticipate that the new program would require comparable additional resources for the Judicial Branch. I would also point out that there is likely to be significant overlap between the new program and Supervised Diversionary Program, which does not exclude veterans.

Additional resources would also be required to implement section 4 of the bill, which would require that mediation in criminal cases be available in all twenty Geographical Area courts. Mediation in criminal cases is currently provided in five locations through contracts that the Judicial Branch has entered into with providers, at a total annual cost of \$560,000.00. While we view mediation as a valuable service that may result in future cost-avoidance, we cannot expand our current program without additional resources.

Thank you for your consideration.





State of Connecticut

## DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of  
**Michael Alevy, Senior Assistant Public Defender**  
**Office of Chief Public Defender**

*Raised Bill No. 6639*  
**An Act Concerning Pretrial Diversionary Programs**

**Judiciary Committee Public Hearing**  
**April 4, 2011**

The Office of Chief Public Defender supports passage of *Raised Bill No. 6639, An Act Concerning Pretrial Diversionary Programs.*

**Section 1** of this raised bill makes several changes to subsections (a) to (c) inclusive, of C.G.S. 54-56e, the Accelerated Pretrial Rehabilitation program (AR). The first change found in section one removes the prohibition on program eligibility to persons who have been adjudged a youthful offender within the five year period preceding the application. This Office supports this change. The existing prohibition severely limits judicial discretion and impedes a court's ability to arrive at appropriate resolutions in cases involving young offenders. The defendants in the cases affected are exclusively teenagers and young adults in their early twenties. Limiting access to diversionary programs for appropriate young offenders creates significant adverse consequences for these, most vulnerable, at-risk members of our communities. Young adults with criminal convictions, even for the most minor offenses, are at a significant disadvantage as they seek to find employment, achieve educational success and move forward in life. Removing this limitation to AR eligibility will help these individuals achieve the goals that the diversionary program aims to foster in cases determined to be appropriate by the court.

The second change found in section one also expands eligibility to those charged with minor drug offenses. Currently, persons who are eligible for the Drug Education Program or who have previously used that program are not eligible to use the AR. This Office supports this expansion

of AR eligibility. Allowing persons charged with minor drug offenses to use AR will expand the opportunities for those individuals to receive appropriate educational and therapeutic services to address underlying substance abuse problems. The AR program, a form of conditional pretrial probation enables courts to impose and monitor a wide range of conditions in exchange for participation in the program.

**Section 2** of the raised bill amends C.G.S. 54-56i, the Pretrial Drug Education Program by expanding program eligibility to persons that have previously used the pretrial community service labor program. For reasons similar to those discussed regarding **Section 1**, this Office supports this bill. Courts should have the ability to exercise their discretion in permitting utilization of diversionary programs. The appropriate exercise of this discretion will further the goals and policies that such diversionary programs seek to achieve.

**Section 3** of the raised bill provides for the creation of a new diversionary program for veterans of the armed services charged with crimes and certain motor vehicle offenses. The new program would be available to any veteran who demonstrates that they suffer from service-related traumatic brain injury or post-traumatic stress disorder. Eligibility criteria mirror those currently found in existing diversionary programs. This new program recognizes the unique circumstances and challenges faced by veterans of our armed forces as the return to civilian life. The language of the bill calls on the Department of Mental Health and Addiction Service and the Department of Veterans' Affairs to find programs and resources that address veterans' unique needs. The Office of Chief Public Defender strongly supports this section of the bill.

**Section 4** of the raised bill amends C.G.S. 54-56m, Mediation Programs. The raised bill expands the number of mediation programs operating in the geographical area courts (GA). Currently, mediation programs are established in only selected locations. The new bill would allow the Judicial Branch to expand mediation programs to all GA courts. Existing mediation programs provide a valuable resource to courts. Courts refer selected cases to mediation which permits the parties involved to meet and work towards a resolution to the underlying dispute. If mediation is successful the prosecutor may nolle the case and terminate the prosecution.

This Office strongly supports the expansion of the mediation programs. Our experience with the existing programs demonstrates that the mediation process is an important and effective means of resolving cases in a non-adversarial process that satisfies the interest of all the parties involved. In addition to diverting certain cases from regular dockets this Office believes that in some cases the parties involved also gain insights into alternative means of dispute resolution that will assist them in the future and perhaps reduce recidivism.

The Office of Chief Public Defender thanks the Committee for raising this important issue and urges a favorable report on the bill.



# STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE  
505 HUDSON STREET, HARTFORD, CONNECTICUT 06106

Michelle S. Cruz, Esq.  
State Victim Advocate

Testimony of Michelle Cruz, Esq., State Victim Advocate  
Submitted to the Judiciary Committee  
Monday, April 4, 2011

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

**Raised House Bill No. 6639**, *An Act Concerning Pretrial Diversionary Programs*  
(Proposed amendment to Section 1; Strike Section 2; Proposed amendment to Section 4)

The Office of the Victim Advocate (OVA) supports the effort to rehabilitate first time offenders through certain diversionary opportunities when limited to non-violent offenses. The alcohol education program, the family violence education program, the pretrial drug education program, pretrial supervised diversionary program for persons with psychiatric disabilities, the pretrial community service labor program, the animal cruelty prevention and education program, the hate crimes diversion program, the list seems almost endless. Section 1 of Raised House Bill No. 6639 seeks to expand the availability of the pretrial accelerated rehabilitation program (A/R) for offenders charged with certain drug offenses even though the offender had previously participated in the pretrial drug education program and had the benefit of a dismissal. Diversionary programs are created for the first time offender, amendable to treatment.

The concept behind diversion is that because of the offender's lack of criminal history, the offender, having no record, should not be saddled with a criminal record, but for the commission of a minor non-violence offense. In screening offenders, it is important to take into account the offender's entire history with the criminal justice system. Diversion should not be utilized to enable offenders to continue along the criminal path with little or no consequences. By allowing multiple opportunities to participate in diversionary programs, the Connecticut Criminal Justice System encourages the "revolving door" pattern, and the individual offenders gain little or no insight as to how to rehabilitate themselves, but rather, learn how to manipulate the system.

Diversion opportunities are designed to allow first time offenders an opportunity to learn from their mistake and benefit from a dismissal of the criminal case as long as the program is completed successfully. Diversionary programs should not be utilized as a tool to "move" and "dismiss" cases to control caseloads. To avoid misuse of diversion programs and deter future criminal conduct, offenders must understand that continued criminal behavior will result in stiffer penalties, not another diversion.

Plea bargains resolve more than ninety-five percent of criminal cases. Or in other words, the state of Connecticut only litigates approximately 1 - 2% of its criminal cases. In practice, this means that the remaining cases are often diverted, reduced for lesser charges or outright

nolled. In the aftermath of Cheshire, many around the state wondered how two individuals with lengthy records and numerous criminal cases spanning over a number of years, were free. I would suggest it is a combination of diversion, plea bargains, and diluted charges to encourage pleas. The continued enabling of offenders in the name of "rehabilitation" does no one any good. The Courts of Connecticut cannot simply operate from a "lets move files" mentality, but rather, must look at public safety, justice for crime victims and offender accountability. If the criminal justice system doesn't take the prosecution of crimes seriously, how can we then ask the offenders to do so? **The OVA urges the Committee to, on line 47, remove the open bracket (D) and on line 50, remove the close bracket (J) and to strike Section 2 in its entirety.**

Additionally, Section 1 of Raised House Bill No. 6639 expands the eligibility for A/R to those charged with sexual assault second degree, when good cause is shown. This proposal seems to come from the common misconception that sexual assault second degree only involves statutory rape between teenagers. Public Act No. 07-143 changed the sexual assault second degree statute regarding the age difference between the actor and victim to three years to allow for the so-called "teenage relationships" situations. For that reason, this proposal is troubling at best. It is common knowledge that crimes involving sexual assault are often not reported to law enforcement. Of the victims of sexual assault crimes who do gather the courage to report the crime to the police, many of these cases never result in an arrest and prosecution. Moreover, as stated above, the majority of criminal cases are resolved through the plea bargain process. Sexual assault cases are often plea bargained for a myriad of reasons, including, to avoid trials, to benefit offenders from registry requirements, etc... Therefore, it can be reasonably concluded that, when a sexual assault case has survived through the report to the police and results in a prosecution, there is no room for diversion.

Allow me to summarize two recent cases of sexual assault second degree and you decide whether A/R is an appropriate resolution, including a dismissal of the charges.

On August 12, 2010, Joseph Marino, 42, was arrested and charged with two counts of sexual assault second degree. Defendant Marino was a teacher at Conard High School and had a "relationship" with a student that lasted several months, dating back to February 27, 2010. On August 27, 2010, Defendant Marino was again arrested for reckless endangerment first degree and coercion. As a result of a plea bargain, on February 14, 2011, Defendant Marino was given a suspended sentence and placed on probation for three years. Defendant Marino is also listed on CT's Sex Offender Registry.

**Eligible for A/R upon a showing of good cause?**

On March 2, 2011, Jeffrey Sepa was arrested and charged with two counts of sexual assault second degree, dating back to August 1, 2010. According to police, Defendant Sepa is the co-owner and instructor of a dance studio and the charges involve one of his students. Defendant Sepa was released on a \$50,000 bond and is due to appear in court on April 18, 2011.

**Eligible for A/R upon a showing of good cause?**

Good cause is defined as representing adequate or substantial grounds or reason to take a certain action or to fail to take an action prescribed by law. Good cause has not been consistently established throughout the courts in our state and is rarely reflected on the record. Additionally, as demonstrated in the first example, sexual assault cases are rarely prosecuted, as the plea bargain process is utilized to resolve most criminal cases. However, in cases of sexual assault, diversion should never be an option. The offering of diversion in a sexual assault case sends the wrong message. Essentially, diversion of sexual assaults cases allows for an offender to interpret the crime was a minor one and that no one was harmed. Additionally, the opportunity to penalize the offender for sexually assaulting the victim is removed through diversion. **I strongly urge the Committee to reject Section 1 & 2 of the proposal and send the message that diversion is a one-time opportunity and not to be abused.**

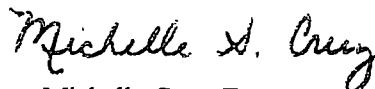
Section 4 of Raised House Bill No. 6639 expands programs of mediation to all geographical area courts. The OVA respectfully requests that the proposal be further amended to exclude availability of the mediation program in criminal cases involving the use, attempted use or threatened use of physical violence. "Mediation means the process where two or more persons to a dispute agree to meet with an impartial third party to work toward a resolution of the dispute...", lines 189-193. This process is not at all appropriate for criminal offenses involving the use, attempted use or threatened use of physical violence and will only be abused, just as the diversion program process has become.

The OVA assisted a victim of harassment that received notification from the Hartford Community Court that the pending criminal case was being referred for mediation. The victim, who was afraid of the offender, objected and the case proceeded without the mediation program. To ask a victim of a crime, involving the use, attempted use or threatened use of physical violence, to engage in a "mediation program" suggests that somehow the victim is responsible for some aspect of the criminal conduct.

Furthermore, mediating cases involving the use, attempted use or threatened use of physical violence allows the offender access to the victim, using the Courts as a conduit, to continue the harassment and/or abuse and places the victim and court staff in unnecessary danger. Victims have a constitutional right to be treated with fairness and respect and to be reasonably protected from the accused. Subjecting a victim, of certain crimes, to the mediation process is offensive and a violation of their constitutional rights. There are simply just some cases that should not be mediated. **I strongly urge the Committee to amend the proposal to include language excluding any crime involving the use, attempted use or threatened use of physical violence.**

Thank you for consideration of my testimony.

Respectfully submitted,



Michelle Cruz, Esq.  
State Victim Advocate

**S - 632**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2011**

**VOL. 54  
PART 21  
6546-6914**

mhr/cd/gbr  
SENATE

511  
June 7, 2011

Thank you, Madam President.

Continuing calendar page 27, Calendar 602,

House Bill Number 6438.

Madam President, move to place this item on the  
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

An additional item: calendar page 27, Calendar  
604, House Bill Number 6639.

Madam President, move to place this item on the  
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

Thank you, Madam President.

Moving to calendar page 28, Calendar 605, House  
Bill Number 6526.

Madam President, move to place the item on the  
Consent Calendar.

THE CHAIR:

So ordered.

SENATOR LOONEY:

mhr/cd/gbr  
SENATE

520  
June 7, 2011

Mr. Clerk.

THE CLERK:

Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber. Immediate roll call's been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CLERK:

Madam President, the items placed...

THE CHAIR:

I would ask the Chamber to be quiet please so we can hear the call of the Calendar for the Consent Calendar.

Thank you.

Please proceed, Mr. Clerk

THE CLERK:

Madam President, the items placed on the first Consent Calendar begin on calendar page 5, Calendar 336, House Bill 5697.

Calendar page 7, Calendar 421, Substitute for House Bill 6126.

Calendar page 8, Calendar 449, Senate Bill 1149.



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Calendar page 10, Calendar 470, Substitute for House Bill 5340. Calendar 474, Substitute for House Bill 6274. Calendar 476, House Bill 6635.

Calendar page 12, Calendar 499, Substitute for House Bill 6638. Calendar 500, House Bill 6614. Calendar 508, House Bill 6222.

Calendar page 13, Calendar 511, House Bill 6356. Calendar 512, Substitute for House Bill 6422. Calendar 514, House Bill 6590. Calendar 515, House Bill 6221. Calendar 516, House Bill 6455.

Calendar page 14, Calendar 517, House Bill 6350. Calendar 519, House Bill 5437. Calendar 522, House Bill 6303.

Calendar page 15, Calendar 523, Substitute for House Bill 6499. Calendar 524, House Bill 6490. Calendar 525, House Bill 5780. Calendar 526, House Bill 6513. Calendar 527, Substitute for House Bill 6532.

Calendar page 16, Calendar 528, House Bill 6561. Calendar 529, Substitute for House Bill 6312. Calendar 530, Substitute for House Bill 5032. Calendar 532, House Bill 6338.

Calendar page 17, Calendar 533, Substitute for House Bill 6325. Calendar 534, House Bill 6352.

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Calendar 536, House Bill 5300. Calendar 537, House  
Bill 5482.

calendar page 18, Calendar 543, House Bill 6508.

Calendar 544, House Bill 6412. Calendar 546,  
Substitute for House Bill 6538. Calendar 547,  
Substitute for House Bill 6440. Calendar 548,  
Substitute for House Bill 6471.

Calendar page 19, Calendar 550, Substitute for  
House Bill 5802. Calendar 551, House Bill 6433.  
Calendar 552, House Bill 6413. Calendar 553,  
Substitute for House Bill 6227.

Calendar page 20, Calendar 554, Substitute for  
House Bill 5415. Calendar 557, Substitute for House  
Bill 6318. Calendar 558, Substitute for House Bill  
6565.

Calendar page 21, Calendar 559, Substitute for  
House Bill 6636.

Calendar page 22, Calendar 563, Substitute for  
House Bill 6600. Calendar 564, Substitute for House  
Bill 6598. Calendar 566, House Bill 5585.

Calendar page 23, Calendar 568, Substitute for  
House Bill 6103. Calendar 570, Substitute for House  
Bill 6336. Calendar 573, Substitute for House Bill  
6434.

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Calendar page 24, Calendar 577, Substitute for  
House Bill 5795.

Calendar page 25, Calendar 581, House Bill  
6354.

Calendar page 26, Calendar 596, Substitute for  
House Bill 6282. Calendar 598, Substitute for House  
Bill 6629.

Calendar page 27, Calendar 600, House Bill  
6314. Calendar 601, Substitute for House Bill 6529.  
Calendar 602, Substitute for House Bill 6438.  
Calendar 604, Substitute for House Bill 6639.

Calendar page 28, Calendar 605, Substitute for  
House Bill 6526. Calendar 608, House Bill 6284.

Calendar page 30, Calendar number 615,  
Substitute for House Bill 6485. Calendar 616,  
Substitute for House Bill 6498.

Calendar page 31, Calendar 619, Substitute for  
House Bill 6634. Calendar 627, Substitute for House  
Bill 6596.

Calendar page 32, Calendar 629, House Bill  
5634. Calendar 630, Substitute for House Bill 6631.  
Calendar 631, Substitute for House Bill 6357.  
Calendar 632, House Bill 6642.

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Calendar page 33, Calendar 634, Substitute for  
House Bill 5431. Calendar 636, Substitute for  
House, correction, House Bill 6100.

Page 34, Calendar 638, Substitute for House  
Bill 6525.

Calendar page 48, Calendar 399, Substitute for  
Senate Bill 1043.

Calendar page 49, Calendar 409, Substitute for  
House Bill 6233. Calendar 412, House Bill 5178.  
Calendar 422, Substitute for House Bill 6448.

Calendar page 52, Calendar 521, Substitute for  
House Bill 6113.

Madam President, that completes the item placed  
on the first Consent Calendar.

THE CHAIR:

Thank you, sir.

We call for another roll call vote. And the  
machine will be open for Consent Calendar number 1.

THE CLERK:

The Senate is now voting by roll on the Consent  
Calendar. Will all Senators please return to the  
Chamber. The Senate is now voting by roll on the  
Consent Calendar, will all Senators please return to  
the Chamber.

mhr/cd/gbr  
SENATE

525  
June 7, 2011

Senator Cassano, would you vote, please, sir.

Thank you.

Well, all members have voted. All members have voted. The machine will be closed, and Mr. Clerk, will you call the tally?

THE CLERK:

Motion is on option Consent Calendar Number 1.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 1 has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

We might stand at ease for just a moment as we prepare the next item..

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)