



CONNECTICUT SENTENCING COMMISSION

**REPORT TO THE GOVERNOR AND THE  
GENERAL ASSEMBLY ON  
PRETRIAL DIVERSIONARY PROGRAMS**

2020



# **Report to the Governor and the General Assembly on Pretrial Diversionary Programs**

Prepared by

**The Connecticut Sentencing Commission**

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**December 16, 2020**

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## **ACKNOWLEDGEMENTS**

The Sentencing Commission would like to thank the Judicial Branch Court Support Services Division (CSSD) for its support in the development and execution of this study. In particular, the Commission thanks Bryan Sperry of CSSD's Research, Program Analysis & Quality Improvement unit for his assistance in obtaining and analyzing the program administration data used in this report. The Commission would also like thank Judge Strackbein and the subcommittee on diversionary programs that developed this study's scope and methodology.

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## EXECUTIVE SUMMARY AND KEY FINDINGS

In the State of Connecticut, numerous “pretrial diversionary programs” are offered to defendants at arraignment as an alternative to conventional criminal case processing. Through voluntary participation in these programs, defendants who successfully complete program requirements have their charges dismissed and avoid facing the disruptive penalties of criminal conviction and sentencing. In 2015, Governor Dannel P. Malloy asked the Sentencing Commission to study Connecticut’s pretrial diversionary programs and explore possible improvements. This report provides a foundation in this effort with background on the history and utilization of Connecticut’s current diversionary programs.

State statute establishes nine diversionary programs: Accelerated Rehabilitation; the Alcohol Education Program; the Drug Education and Community Service Program; the Family Violence Education Program; the School Violence Prevention Program; the Supervised Diversionary Program; the Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers Program; Suspended Prosecution and Treatment for Alcohol or Drug Dependency; and the Pretrial Diversionary Program for Underage Defendants of Motor Vehicle Violations and Crimes Related to Underage Drinking. These nine programs vary based on the types of offenses for which they can be used, the cost (if any) of using them, the number of times the program may be used, the eligibility criteria defendants must meet, and the specific program requirements defendants must complete in order to have charges dismissed. The specific details of each program are described in section II of this report.

For all of these programs, the Judicial Branch Court Support Services Division (CSSD) plays a role in coordinating programming, verifying defendant eligibility, and administering case management. The Department of Mental Health and Addiction Services (DHMAS) also plays a role in establishing the standards for many of the programs targeted toward addressing mental health or substance abuse issues.

The Commission analyzed CSSD’s administrative data for eight of these nine statutory diversionary programs over a 10-year period. During this period, there were 211,699 enrollments in diversionary programs. Accelerated Rehabilitation and the Alcohol Education Program were the most commonly used, collectively constituting nearly 70% of the enrollments. Men made up more than two-thirds of participants, and over half of participants were between 16 and 30 years old. 63% of participants were white, 17% were Black, and 17% were Hispanic. Further research is required to determine the extent to which these demographic statistics might reflect disparities in diversionary program enrollment.

During the period studied, 87% of participants used just one diversionary program, one time. 11% used two different diversionary programs or used one diversionary program twice. Just 2% used diversionary programs three or more times.

A prior record of arrest or conviction does not immediately disqualify individuals from using diversionary programs for subsequent offenses. In the data used for this report, 41% of program participants had a prior arrest record, and 18% had a prior conviction.

Success and failure rates varied among the different diversionary programs. Overall, 91.4% of diversionary program enrollments successfully diverted the referred defendant from criminal case processing and resulted in all charges being dismissed or *nolled*. Accelerated Rehabilitation had the highest success rate at 93%, while Suspended Prosecution and Treatment for Alcohol or Dependency has the lowest success rate at 73%. The demographic breakdown of successful completions shows that Asian participants had the highest success rates (96%), followed by white participants (92%), Hispanic participants (90%), and black participants (89%). Females had higher success rates (93%) than males (91%).

Of all diversionary program enrollments, 8.4% resulted in failure, and the participant was ultimately convicted of at least one offense. Less than one percent (0.2%) of enrollments resulted in some other nongUILTY outcome for the defendant.

Several diversionary programs require that defendants pay a fee to participate, though courts may waive this fee for indigent defendants. In 36% of enrollments, the courts waived some or all program fees. Black defendants were most likely (53%) to have a portion of their fees waived, followed by Hispanic defendants (38%), white defendants (31%), and Asian defendants (18%).

While these programs differ substantially in terms of program requirements and eligibility, each program ultimately serves an important role in enabling low-risk defendants to avoid the negative consequences of criminal conviction.



## I. INTRODUCTION & BACKGROUND

*Pretrial diversion programs* are a type of voluntary programming offered to eligible defendants at arraignment as an alternative to conventional criminal case processing. Upon successful completion of these programs, the charges against defendants are dismissed, diverting these individuals from criminal conviction and sentencing. When successful, pretrial diversion programs can reduce recidivism among lower-risk individuals while better serving defendants who would otherwise be subject to the disruptive and negative impacts of conventional criminal case processing.

In Connecticut, several diversionary programs are available for defendants who are accused of certain types of offenses and meet specific eligibility criteria. These programs vary in (1) the eligibility criteria for defendants, (2) the focus and types of services provided, and (3) the requirements for program completion.

Eligibility criteria for pretrial programs differ, though most have at least one requirement related to (1) prior criminal history, (2) the pending charge(s), (3) substance abuse history, (4) mental health history, (5) victim approval of participation in the program, or (6) a restitution payment. Additionally, most programs only allow defendants to enroll and divert charges a limited number of times, usually once or twice. A defendant who is later charged for a subsequent offense must apply for a different program or face criminal prosecution.

Most pretrial diversion programs have a specific purpose or focus that is related to the pending charge (i.e., drug testing and education for substance abuse programs, counseling for mental health programs). Defendants are referred to a specific pretrial diversion program based on their eligibility for the program and the relevance of the program to the defendant's background and pending charges.

Once enrolled, defendants must participate in programming, such as educational sessions or community service, and meet program-specific conditions, such as refraining from drug use, to maintain their diversion. Upon successful completion of the program, a defendant's charges are dismissed by the court, and the record of the case is destroyed. Should defendants fail to complete the program, conventional case proceedings (i.e., plea negotiations or a criminal trial) may resume.

For this study, the Connecticut Sentencing Commission focused on the nine pretrial diversion programs that are available and established by Connecticut State statutes. Additional non-statutory diversionary programs are available to defendants but are outside the scope of this analysis.

Below, Section II provides detailed descriptions of each program's legislative history, eligibility criteria, program requirements. Section III analyzes program utilization and success rates for eight of the nine programs studied. Section IV concludes the report.

## II. PROGRAM DESCRIPTIONS

### Accelerated Rehabilitation

#### **Program Overview**

The accelerated pretrial rehabilitation program (AR) is established by Connecticut General Statute (CGS) § 54-56e and is designed for individuals accused of certain non-serious crimes, violations, or motor vehicle violations. Individuals admitted into the program are subject to up to two years of supervision during which prosecution is suspended. If a person satisfactorily completes this probation period, the court may dismiss the charges and erase all record of their existence. Individuals who wish to participate in the program must meet eligibility requirements and apply to the court. The Judicial Branch Court Support Services Division (CSSD) is responsible for investigating applicant eligibility, supervising program participants, and reporting on successful completion.

AR was first established in Connecticut in 1973 (PA 73-641, effective June 12, 1973) to reduce caseloads and provide an opportunity for rehabilitation to first-time offenders. The bill *An Act Providing for Accelerated Rehabilitative Disposition of Criminal Cases* was drafted and enacted with an extremely limited scope to provide a supervised period of rehabilitation for eligible individuals. Representative Freedman described the program as a form of “pretrial probation” designed for “crimes which are not of a serious nature...” (House of Representatives Proceedings, May 9, 1973, p. 5713). The bill passed unanimously in both the House and the Senate.

Although the original bill gave the prosecutor the discretion to invoke the program on a defendant’s behalf; this discretion was transferred to the court in 1974 (PA 74-38). In addition to transferring authority to invoke the program, the 1974 amendment allowed both the prosecuting attorney and the defense attorney to make a motion requesting that the court invoke the program on the defendant’s behalf. When enacted, the program was operated by the Office of Adult Probation, which became the Bail Commission in 1985, which was transferred to CSSD in 2002.

For over more than 40 years, the Connecticut General Assembly has made a number of additional changes to the AR statute including changes to eligibility and fee requirements and the addition of the Hate Crimes Diversion Program.

#### Hate Crimes Diversion Program

The hate crimes diversionary program is a subset of AR that the court may impose as a condition of probation. The program consists of an educational program and supervised community service.

In 2000, PA 00-72, *An Act Concerning Intimidation Based on Bigotry or Bias* added the hate crimes diversionary program to the AR statute. This act was primarily a response to an increase in hate crimes and hate-related vandalism in the state and an increase in press coverage of hate crimes nationally. The hate crimes diversion program was designed in part to

rehabilitate youth engaged in hate-related vandalism (see Judiciary Committee Public Hearing Transcript, February 28, 2000).

### **Current Eligibility Requirements**

For a defendant to be eligible for the accelerated rehabilitation program, (1) the applicant must not have used the program two times previously, (2) the trial court must believe that the applicant will probably not offend in the future, and (3) the applicant must not have previously been convicted of a crime or certain motor vehicle violations. The applicant must also state under oath either (1) he or she has never used the program before or (2) ten years or more have passed since he or she last used program and the charges dismissed through the program were only misdemeanors or motor vehicle violations for which the maximum term of imprisonment was a year or less. If the applicant is a veteran, he or she need only state under oath that he or she has not participated in the program more than once previously.

The applicant must notify the victim(s) of the alleged offense of their AR application using a form prescribed by the Office of the Chief Court Administrator (JD-CR 10).

An individual is not eligible for this program if charged with:

1. a class A felony;
2. a class B felony (except most larceny 1 type offenses as long as they do not involve the use of force § 53a-122(a)(1-3) or a state or municipal employee or public official if charged with § 53a-122(a)(4));
3. operating a motor vehicle while under the influence or (on or after October 1, 1985) with a .08 blood alcohol level (§ 14-227a);
4. operating a motor vehicle with a child passenger (§ 14-227m) or operating a school bus or student transportation vehicle with or without a child passenger (Sec. 14-227n(a)(1) or (2)) under the influence or with a .08 blood alcohol level;
5. the sexual activity-related provisions of risk of injury to a minor (§ 53-21(a)(2));
6. manslaughter in the second degree with a motor vehicle while under the influence (§ 53a-56b);
7. assault in the second degree with a motor vehicle while under the influence (§ 53a-60d);
8. sexual assault in the first degree (§ 53a-70), aggravated sexual assault in the first degree (§ 53a-70a), and sexual assault in a spousal or cohabiting relationship (§ 53a-70b);
9. sexual assault in the second degree (§ 53a-71);
10. sexual assault in the third degree (§ 53a-72a) and sexual assault in the third degree with a firearm (§ 53a-72b);
11. enticing a minor (§ 53a-90a);
12. possession of child pornography in the second degree (§ 53a-196e) and possession of child pornography in the third degree (§ 53a-196f);
13. a crime or motor vehicle violation that caused the death of another person;

14. a family violence crime (§ 46b-38a) and is eligible for the pretrial family violence program (§ 46b-38c) or has previously entered into the pretrial family violence program;
15. illegal possession of a controlled substance (§ 21a-279) or use, possession, or delivery of drug paraphernalia (§ 21a-267) and is eligible for the pretrial drug education and community service program (§ 54-56i) or has previously entered into the pretrial drug education and community service program or pretrial drug education program;
16. an absentee ballot related offense (§ 9-359 and § 9-359a);
17. a motor vehicle violation while operating a commercial vehicle or while holding a commercial driver's license or commercial driver's instruction permit;
18. assault in the second degree with intent to cause serious physical injury to another person by rendering such other person unconscious, and without provocation by such other person, the actor causes such injury to such other person by striking such other person on the head (§ 53a-60(a)(6)); or
19. larceny in the first degree (§ 53a-122) or larceny in the second degree (specifically § 53a-123(a)(4)) while operating as a health care provider or vendor participating in the state's Medicaid program.

Additionally, a person is ineligible for AR, except for good cause, if charged with (1) a class C felony or (2) sexual assault in the second degree with a minor between the ages of 13 and 16 while such person was more than three but less than four years older than the other person.

The trial court retains discretion for granting AR, even if applicants meet all the criteria above.

#### Hate Crimes Diversion Program

An applicant is eligible for the hate crimes component of AR if they meet the above criteria and are charged with:

1. discriminatory deprivation of rights, desecration of property, cross burning, or placement of a noose with intent to discriminate (§ 46a-58);
2. deprivation of a person's civil rights by person wearing mask or hood (§ 53-37a);
3. intimidation based on bigotry or bias in the first degree (§ 53a-181j);
4. intimidation based on bigotry or bias in the second degree (§ 53a-181k); or
5. intimidation based on bigotry or bias in the third degree (§ 53a-181ℓ).

#### **Process**

Interested individuals must apply to participate in the program by filling out and submitting the Judicial Branch's Application for Accelerated Pretrial Rehabilitation and Notice of Application for Pretrial Rehabilitation forms.

Upon submitting an application, the defendant usually appears in open court and takes the required oath. The court then continues the applicant's case for a court hearing date; refers

the application to CSSD's Intake, Assessment and Referral Specialists (IAR) for an assessment and eligibility determination; and, as required by statute, orders the applicant's court file sealed to the public. Once IAR has completed its review of the application, it transmits its report to the clerk who adds it to the applicant's file. The court then reviews the applicant's file; makes a determination in open court; and, if the application is granted, orders conditions as deemed necessary. Even if IAR determines that the applicant is eligible, the court retains the discretion to deny an application.

CSSD, through its adult and bail services unit, is the state agency primarily responsible for administering AR and must assess and determine eligibility, oversee applicant probation, and report on completion status.

### *Hate Crimes Diversion Program*

As with other provisions of AR, CSSD is the state agency responsible for administering the hate crimes diversion program and must contract with service providers and develop program standards. Contracted programs must be state-licensed and meet regulatory standards established by the Department of Mental Health and Addiction Services. With the court's approval, a defendant may attend a substantially similar program in another state.

### **Conditions**

A participant in AR must agree to the tolling of the statute of limitations with respect to his or her crime and a waiver of the right to a speedy trial.

The participant may also be subject to any of the following conditions as ordered by the court:

1. referral for services to a youth services bureau (if court finds the defendant in need and between the ages of 16 and 18),
2. performance of community service where the offense or violation allegedly occurred,
3. participation in the hate crimes diversion program (if eligible),
4. psychiatric or psychological counseling or participation in an animal cruelty prevention and education program (if charged with cruelty to animals § 53-247),
5. a period of probation and/or supervision for a period up to two years, or
6. any other conditions ordered by the court.

### **Fees**

Fees for AR are shown below in Table 1. If ordered to take part in the Hate Crimes Diversion Program, the applicant is not required to pay the regular \$100 program fee.

The program fee may be waived if the defendant is found to be indigent or unable to pay. For the court to waive fees and costs, the defendant must file an affidavit of indigence or inability to pay, which must be confirmed by CSSD.

Similarly, no one can be excluded from the hate crimes diversion program because of an inability to pay a fee or cost if the defendant files an affidavit of indigence or inability to pay that is confirmed by CSSD and found by the court.

**Table 1: Accelerated Rehabilitation Program**

<i><b>Fee</b></i>	<i><b>Amount</b></i>
Application	\$35
Program	\$100
Hate Crimes Diversionary Program	\$425

### **Program Completion**

When a defendant satisfactorily completes the program, the defendant can apply to have the charges dismissed and the court must dismiss them if on review it finds successful compliance.

Even if the defendant does not apply for dismissal, the court can do so on its own motion when it receives notification of successful program completion. Once dismissed, the court is required to erase all records of the charges.

## **Alcohol Education Program**

### **Overview**

Under the pretrial Alcohol Education Program (AEP), authorized under and prescribed by CGS § 54-56g, certain defendants can participate in an alcohol education or substance abuse treatment program instead of going to trial. Defendants charged with specific violations who want to take part in AEP must meet eligibility requirements and apply to the court. The Department of Mental Health and Addiction Services (DMHAS) develops standards for these programs, oversees alcohol treatment programs, and contracts with program providers. The Judicial Branch Court Support Services Division is responsible for investigating and reporting on applicant eligibility.

A “pretrial alcohol education system” was established in Connecticut in 1981 (PA 81-446, effective October 1, 1981) in response to the increasing problem of drunk driving accidents and fatalities. Representative Richard Tulisano described the alcohol education program as providing offenders the “opportunity to receive a retraining as to the consequences and dangers of their actions” (House Proceedings, June 1, 1981, p. 8821). House members passed the bill by a vote of 131-11; the Senate passed the bill in concurrence with the House on June 2, 1981 by a vote of 32-3.

As originally enacted, the law allowed eligible defendants charged with operating a motor vehicle while under the influence of alcohol to enter an assigned program and have charges dismissed upon successful completion. When enacted, the program was operated by the Connecticut Alcohol and Drug Abuse Commission (CADAC), whose responsibilities eventually were transferred to DMHAS. The court referred defendants to the Office of Adult Probation, which became the Bail Commission in 1985, which was transferred to CSSD in 2002. CADAC administered the system with assistance from 17 for-profit and not-for-profit service providers.

Over time, the legislature has made many changes to the pretrial alcohol education system (referred to as a “program” beginning in 2004 (PA 04-250)), including changes in eligibility criteria and fee requirements. However, the overall operation and intent of the program has been largely unchanged.

Currently, participants’ program assignments are based on the Research Institute on Addictions Self Inventory or the Addiction Severity Index assessment instruments. Based on this evaluation, defendants are assigned to attend 10 or 15 weekly group sessions of one and a half hours each. DMHAS contracts with outside providers to provide the needed services.

## Current Eligibility Requirements

To be eligible for the Pretrial Alcohol Education Program, a defendant must meet statutory criteria based on current charges and prior convictions. A person is eligible for this program if he or she has not used this program within the past 10 years and is charged with:

1. operating under the influence (OUI) of intoxicating liquor or any drug or both (CGS § 14-227a);
2. operating under the influence by a person under age 21 (CGS § 14-227g);
3. operating a motor vehicle with a child passenger (§ 14-227m) or operating a school bus or student transportation vehicle with or without a child passenger (Sec. 14-227n(a)(1) or (2)) under the influence or with a .08 blood alcohol level;
4. operating a vessel while under the influence of liquor or drugs (CGS § 15-133(d)); or
5. reckless operation of a vessel in the second degree while under the influence (CGS § 15-140n).

An additional eligibility condition applies where the alleged violation causes serious physical injury to another. If such an injury occurred, the defendant must use a form prescribed by the chief court administrator to notify any victims who sustained serious physical injury caused by the alleged violation that (1) he or she is applying to participate in AEP and (2) the victim has an opportunity to be heard by the court on the application.

An individual is not eligible for this program if previously convicted for a violation of:

1. manslaughter in the second degree with a motor vehicle while under the influence (CGS § 53a-56b);
2. assault in the second degree with a motor vehicle while under the influence (CGS § 53a-60d);
3. operating under the influence (CGS § 14-227a (a) (1) or (2));
4. operating a motor vehicle with a child passenger (§ 14-227m) or operating a school bus or student transportation vehicle with or without a child passenger (Sec. 14-227n(a)(1) or (2)) under the influence or with a .08 blood alcohol level;
5. operating under the influence by a person under age 21 (CGS § 14-227g);
6. manslaughter in the second degree with a vessel while under the influence (CGS § 15-132a);
7. drunken boating (CGS § 15-133(d));
8. reckless operation of a vessel in the first or second degree while under the influence (CGS §§ 15-140ℓ and -140n, respectively); or
9. a substantially similar crime as the above in any other state, except for driving under the influence by a person under age 21.

Also, under the law, a person is ineligible, except for good cause, if he or she (1) is charged with (a) operating under the influence (OUI), (b) OUI while under age 21, or (c) drunken boating; and (2) the conduct caused serious physical injury to another. A person is also ineligible if charged with OUI while operating a commercial vehicle or while holding a



commercial driver's license or instruction permit at the time of the violation. This applies to the new crime of operating a school bus under the influence or with an elevated BAC, since these drivers must have a commercial driver's license (§ 14-227n).

### **Process**

The court has the discretion to approve an application and grant the program after considering the recommendation of the prosecutor. If the court grants an application, it refers the person to CSSD, which assesses and confirms the person's eligibility for the program. The referral also goes to DMHAS for an evaluation. Once CSSD confirms the defendant's eligibility, and if the court grants the program, it refers the person to DMHAS for placement in (1) an appropriate one-year alcohol intervention program (in a 10-session or 15-session intervention program) or (2) a state-licensed substance abuse treatment program (with at least 12 sessions).

DMHAS is the state agency responsible for administering AEP and must contract with service providers, develop standards, and oversee the intervention and treatment programs. Programs must be state-licensed and meet regulatory standards established by DMHAS. With the court's approval, a defendant may attend a substantially similar program as approved by DMHAS in another state.

### **Conditions**

A participant in the AEP must agree to:

1. the tolling of the statute of limitations with respect to his or her crime;
2. a waiver of the right to a speedy trial;
3. begin participation in the designated program within 90 days after the date of the court order, unless there is a court-approved delay;
4. complete the 10 or 15 counseling sessions in an alcohol intervention program or at least 12 substance abuse treatment program sessions;
5. accept placement in another program after completing the first if recommended by the program provider or deemed appropriate by CSSD; and
6. participate in at least one victim impact panel, if ordered by the court.

A defendant's driver's license is suspended during the program period unless the person opts to begin the program after the suspension is complete. A person can, for good cause, apply for and receive a reasonable extension to complete a program from the court.

### **Fees**

Fees for AEP and their disposition are shown in Table 2. In addition, if a person who completes AEP is subsequently ordered to participate in a substance abuse treatment program, he or she is then responsible for paying the costs of that program.

No one can be excluded from AEP because of an inability to pay a fee or cost if the defendant files an affidavit of indigency that is confirmed by CSSD and found by the court. The victim impact panel participation fee may also be waived.

Many of the fees are deposited in the Pretrial Account, a separate, non-lapsing account in the General Fund for alcohol and drug education diversionary program evaluation and program fees. The funds in this account are used to pay program costs.

**Table 2: Pretrial Alcohol Education Program**

<i><b>Fee</b></i>	<i><b>Amount</b></i>	<i><b>Disposition</b></i>
Application	\$100	Criminal Injuries Compensation Fund
Evaluation	\$100, nonrefundable	Pretrial Account
Program	\$350 (for 10-session program) \$500 (for 15-session program), nonrefundable	Pretrial Account
Reinstatement	\$175 (for 10-session program) \$250 (for 15-session program), nonrefundable	Pretrial Account
Victim impact panel program (if required by the court)	Up to \$75	

## **Outcomes**

### *Successful Program Completion*

When a defendant satisfactorily completes the assigned program, the defendant can apply to have the charges dismissed and the court must dismiss them upon finding successful compliance. Even if the defendant does not apply for dismissal, the court can do so on its own motion when it receives notification of successful program completion.

CSSD keeps a record of program participation for 10 years and sends the records to the Department of Motor Vehicles, which must keep the participation record on the person's driving record for 10 years. Likewise, CSSD sends program completion records to the Department of Energy and Environmental Protection (DEEP) for defendants charged with drunken boating or 2<sup>nd</sup> degree reckless operation of a vessel under the influence. DEEP keeps the participation record as part of the person's boater certification record for 10 years.

### *Program Noncompletion*

If the program provider informs the court that a defendant either did not successfully complete a program or no longer agrees to the treatment, and the court has not reinstated the program, the court must (1) order the defendant's file to be unsealed, (2) enter a not guilty plea, and (3) immediately place the case on the trial list.

### *Reinstatement*

The law permits up to two reinstatements of AEP for defendants who fail to complete the program. The reinstatement can take the form of a readmission into either the alcohol intervention or a substance abuse treatment program. A defendant must apply for

reinstatement, and CSSD must verify the defendant's eligibility. If the court approves reinstatement, the defendant may be required to pay the reinstatement fees shown in Table 2.

## **Drug Education and Community Service Program**

### **Overview**

The pretrial Drug Education and Community Service Program (DECSP) allows individuals charged with violating certain drug use, possession, or drug paraphernalia laws to participate in substance abuse education or treatment programs and perform community service, rather than be subject to prosecution (CGS § 54-56i). When an individual applies for the program, his or her court record is sealed. The Court Support Services Division (CSSD) is responsible for determining an applicant's eligibility. The Department of Mental Health and Addiction Services (DMHAS) develops program standards, oversees drug education programs, and contracts with service providers.

This program was first established in 1997 (PA 97-248) and was modeled on the state's alcohol education program. The original act required DMHAS to establish the program for people charged with possession of drugs or drug paraphernalia. Eligibility for those charged with possession of a small amount of marijuana (which became a separate offense in 2011) was added in 2013 (PA 13-159). The 2013 act also added the community service component to the existing drug education program. As articulated in the House of Representatives debate, Representative Gerald M. Fox, III, then-chair of the Judiciary Committee, declared:

...the State of Connecticut has had a policy ...with respect to individuals and their own individual drug use to favor treatment over incarceration or criminal penalties. And what this [program] would do is give these individuals an opportunity to take a course in—to educate them of the dangers of drugs, to go through some community service which would also hopefully make them less likely to go through that type of circumstance again, allow them to become drug free and also to allow them to if successful in their use of the program to come out of it without a permanent criminal record (House of Representatives Proceedings, May 23, 2013).

Eligible individuals may participate in the program for up to one year, during which they receive program services from a state-licensed substance abuse treatment facility. A veteran of the armed forces may go to the state or federal Department of Veterans Affairs for evaluation and treatment services if CSSD determines that the services will be provided in a timely manner and meet DMHAS standards, and if the veterans agency agrees to report back to CSSD. Participants' program assignments are based on the Drug Abuse Screening Test (DAST) and Addiction Severity Index (ASI) assessment instruments. Referred defendants attend 15 one and a half-hour group sessions.

### **Current Eligibility Requirements**

A person is eligible for this program who has been charged with possession or use of drugs (CGS § 21a-279), drug paraphernalia (CGS § 21a-267), or less than half an ounce of marijuana (CGS § 21a-279a).

An individual is generally ineligible for this program if he or she has twice previously participated in (1) this program or its predecessor program in effect before October 1, 2013 or (2) the community service labor program (a program for individuals convicted of a first-time drug offense). However, the court may allow participation for a third time for good cause.

### **Process**

The process for participation in the Pretrial Drug Education and Community Service Program is prescribed by law. The court has the discretion to approve the application after considering the recommendation of the prosecutor. If the court grants an application, it must refer that person to:

1. CSSD to confirm the person's eligibility for the program and
2. DMHAS for evaluation and determination of an appropriate drug education or substance abuse treatment program for a first or second application.

If the applicant is applying for his or her third time in the program, the court granting the application must also refer that individual to a state-licensed substance abuse treatment program for evaluation and determination of an appropriate program.

Depending on the outcome of the evaluation, participants who are in the program for the first or second time must attend either a drug education program of 15 sessions or a substance abuse program of at least 15 sessions. Those participating in the program for a third time must follow a substance abuse treatment program based on the state-licensed provider's evaluation and determination.

Anyone approved for the Pretrial Drug Education and Community Service Program must participate in community service. The drug education program law requires a period of community service as follows for:

- first time participants – 5 days
- second time participants – 15 days
- a third or subsequent time participants – 30 days

### **Conditions**

A participant in the DECSP must agree to:

1. the tolling of the statute of limitations with respect to his or her crime;
2. a waiver of the right to a speedy trial;
3. begin participation in the designated programs within 90 days after the date of the court order, unless there is a court-approved delay;
4. complete the program as ordered by the court; and
5. accept placement in another program after completing the first if recommended by the program provider or deemed appropriate by CSSD.

## Fees

Fees for the Pretrial Drug Education and Community Service Program are shown in Table 3. In addition to fees, if the court orders a defendant to participate in a substance abuse treatment program, he or she is responsible for paying the costs of that program. All evaluation and program fees are deposited in the pretrial account, a separate, non-lapsing account in the General Fund. The funds in this account are used to fund program costs.

No one can be excluded from this program because of an inability to pay a fee if the defendant files an affidavit of indigency or inability to pay that is confirmed by CSSD and found by the court. In these cases, the court may waive all or a portion of the fee, and program costs are paid from the pretrial account. No fee waivers are allowed for reinstatements, unless good cause is shown.

**Table 3: Pretrial Drug Education and Community Service Program**

<i><b>Fee</b></i>	<i><b>Amount</b></i>
Application	\$100
Evaluation	\$150, nonrefundable
Program	<i>Drug Education: \$600, nonrefundable Substance Abuse Treatment: \$100, nonrefundable plus program costs</i>
Reinstatement	<i>Drug Education: \$250, nonrefundable Substance Abuse Treatment: program costs</i>

Additionally, the Community Service Labor Program referenced in this diversionary program (CGS § 53a-39c) includes a \$250 participation fee (which can be waived for indigency) that is deposited in an account used to fund alternative incarceration programs.

## Outcomes

### Successful Program Completion

When an individual successfully completes this program, he or she may apply to have the charges dismissed and the court must dismiss them if it finds successful completion. Even if the program participant does not apply for dismissal, the court may do so on its own motion when it receives notification from CSSD of successful program completion. A defendant may request additional time to complete a program and the court may grant a reasonable extension if the participant demonstrates good cause.

CSSD must retain a record of each individual's program participation for a period of at least 10 years from the date the application was granted.

### Program Noncompletion

If a program provider informs the court that a defendant did not successfully complete a program and did not request or was not approved for reinstatement, the court must (1) order

the defendant's file to be unsealed, (2) enter a not guilty plea, and (3) immediately place the case on the trial list.

### Reinstatement

The law permits up to two reinstatements into the DECSP for defendants who fail to complete the program. A defendant must apply for reinstatement, and CSSD must verify the defendant's eligibility. If the court approves reinstatement, the defendant may be required to pay the reinstatement fees shown in Table 3.

## **Family Violence Education Program**

### **Overview**

The pretrial Family Violence Education Program (FVEP), enacted in 1986 (PA 86-337, codified as CGS § 46b-38c(h)), allows an eligible individual charged with certain family violence crimes to apply to participate in family violence education programming and be subject to supervision in lieu of prosecution. FVEP is a cognitive intervention program focused on educating individuals regarding the impact of violence on relationships. The FVEP is intended to provide individuals with the interpersonal skills needed to develop violence-free relationships and an understanding of power and control dynamics. At a minimum, the program must inform participants of the basic elements of family violence law and applicable penalties. Participants attend 90-minute sessions, once a week, for nine weeks.

The General Assembly established this program in 1986 with the passage of “An Act Concerning Family Violence Prevention and Response” in response to a 1983 incident of domestic violence that garnered national attention. On June 10, 1983, Torrington resident Tracey Thurman was stabbed repeatedly and severely beaten by her estranged husband resulting in permanent injury. Mrs. Thurman sued the City of Torrington for failing to respond to numerous death threats and assaults and failing to enforce a court’s restraining order leading up to the attack. The U.S. District Court (D. Conn., October 23, 1984, 595 F. Supp. 1521) sustained her complaint that the local police department violated her equal protection rights. This landmark case focused attention nationwide on the victims of spousal abuse and the issues surrounding law enforcement’s response to domestic violence.

In mid-1984, in response to the Thurman case and the perceived growth in family violence incidents in the state, Governor William A. O’Neill directed the Office of Policy and Management (OPM) to study the prevalence of family violence and ways to address it. OPM’s Justice Planning Division commissioned a research study to document and develop a methodology to measure the extent of family violence in the state. Additionally, Governor O’Neill appointed a 13-member Task Force on Family Violence to produce a plan to reduce the number of such incidents. The task force’s final report was issued in January 1986 and included a recommendation to adopt legislation creating a comprehensive Family Violence Prevention and Response Program.

The law was passed later that year and provided directives and guidelines to police and the courts on how to handle family violence cases; required training programs for police, judges, and court personnel; created family violence response and intervention units in all the geographical area courts; and created requirements for data collection on family violence matters. It also established this pretrial family violence education program for individuals charged with a misdemeanor or, with “good cause shown,” a class D felony.

By law, CSSD, in accordance with an agreement with the Chief State’s Attorney’s Office and the Judicial Branch, must establish and oversee a local family violence intervention unit in each Superior Court geographical area. Each unit is responsible for:

1. accepting a judge’s or prosecutor’s family violence case referral,



2. preparing reports for the court on each case,
3. providing or arranging services for victims and offenders,
4. administering the contracts to provide such services, and
5. establishing centralized reporting procedures.

In 1993, the legislature increased the fee for the FVEP from \$100 to \$200. This fee was increased again to \$300 in 2011, and a \$100 nonrefundable application fee was instituted. In 2012, the law established the disqualification from the FVEP for any defendant whose offense involved inflicting serious physical injury (CGS § 46b-38c(i)).

### **Current Eligibility Requirements**

To be eligible to participate in the program, an individual must meet statutory criteria based on current charges, prior participation, and prior convictions. A person is eligible for this program only if he or she has been charged with certain family violence crimes. A “family violence crime” is a felony or misdemeanor, other than a “delinquent act,” that contains an element of an act of family violence (such as physical harm, bodily injury, or assault or threatened violence) to a family or household member (CGS § 46b-38a (1) and (3)).

The law prevents participation in this program by anyone who has:

1. been previously convicted of a family violence crime that occurred on or after October 1, 1986;
2. used this program before or the Accelerated Rehabilitation (AR) program (see above) for a family violence crime committed on or after October 1, 1986;
3. been charged with (a) a class A, B, C, or unclassified felony carrying a term of more than 10 years in prison or (b) unless good cause is shown, a class D felony or unclassified offense with a possible term of more than five years in prison, or an offense involving the infliction of serious physical injury.

Defendants who invoked or accepted AR before October 1, 1986 remain eligible to participate in the FVEP.

### **Process**

By law, an eligible applicant must make a motion to invoke the program for his or her application to be considered. Once the motion has been made, the court may approve it and refer the applicant to the family violence intervention unit and continue the case pending the unit’s report to the court. The court must also provide the victim or victims (1) notice that the defendant has applied for the program and (2) the opportunity to be heard.

If the applicant is placed in the program, he or she must appear in court and be released to the custody and supervision of a family violence intervention unit for up to two years. The participant must also comply with any conditions the court orders.

## **Conditions**

A participant in the FVEP must agree to (1) the tolling of the statute of limitations with respect to his or her crime and (2) a waiver of the right to a speedy trial.

## **Fees**

Fees for the FVEP are (1) \$100 (nonrefundable) for an application and (2) \$300 for the program. In both cases, the fees are credited to the General Fund. No one can be excluded from the program because of an inability to pay a fee if the defendant files an affidavit of indigency or inability to pay that is found by the court.

## **Results**

### *Successful Program Completion*

If a participant satisfactorily completes this program and successfully complies with all conditions set by the court, he or she may apply for dismissal of the charges. If the court finds satisfactory compliance, it must dismiss the charges and erase all record of them.

### *Program Noncompletion*

If the participant fails to comply with the program or violates the court's conditions, his or her case is subject to regular criminal processing.

## **Pretrial School Violence Prevention Program**

### **Program Overview**

Under the Pretrial School Violence Prevention Program (SVPP), authorized under and prescribed by Connecticut General Statutes § 54-56j, public or private school students charged with an offense involving the use or threatened use of physical violence in or on school property or at a school-connected activity can participate in a one-year program instead of facing conventional criminal case processing. The program is open to secondary school students, but an alleged offense qualifies if it occurs in or on elementary or secondary school property. To participate eligible defendants must apply to the court. The Judicial Branch's Court Support Services Division must assess and confirm eligibility, and then refers the student for evaluation and placement in an appropriate school violence prevention program for one year. By law, the School Violence Prevention Program consists of group counseling sessions in anger management and nonviolent conflict resolution. CSSD must develop standards, oversee the appropriate programs, and contract with program service providers.

This program was enacted through an amendment adopted in the Senate on June 7, 1999 and passed in the House on June 9. The debate in the Senate, starting with Senator Don Williams, and in the House of Representatives, led by Representative Michael Lawlor, referred to two important circumstances that provided the context for this bill: (1) the April 20, 1999 shooting at Columbine High School in Colorado and (2) specific threats of student violence received that year by Putnam High School officials in northeastern Connecticut. According to Representative Lawlor:

...Juvenile Court did not provide enough options to adequately, to appropriately deal with those types of threats. This amendment would establish a program a lot like our existing accelerated rehabilitation program, our youthful offender program, our drunk driver education program, family violence program, those types of diversionary programs for first offenders, but for specialized reasons (House of Representatives Proceedings, June 9, 1999, p. 304).

### **Current Eligibility Requirements**

To be eligible to participate in the Student Violence Prevention Program, a student must meet statutory criteria based on current charges and prior participation and convictions. A person is eligible for this program if he or she is a public or private secondary school student charged with an offense involving the use or threatened use of physical violence in or on the property of a public or private elementary or secondary school or at a school-sponsored activity. As a condition of eligibility, the law also requires that the student and his or her parent or guardian certify under penalty of false statement that, to the best of their knowledge, the person does not possess any firearms, dangerous weapons, controlled substances, or anything that is illegal.

Defendants are not eligible for this diversionary program if previously (1) referred to the program or (2) convicted for this or a similar offense in Connecticut or any other state.

## **Process**

State statute sets out the process for participating in the Pretrial School Violence Prevention Program. Once the defendant applies, the court must seal the case file. The court has discretion to grant entry into the program after considering the recommendation of the prosecutor. If the defendant is admitted, the defendant is referred to CSSD, which assesses and confirms the person's eligibility for the program.

CSSD monitors program participation and compliance with court orders and maintains contact with the student and school officials.

## **Conditions**

A participant in the School Violence Prevention Program must agree to:

1. the tolling of the statute of limitations with respect to his or her crime,
2. waive the right to a speedy trial, and
3. participate in the assigned program.

## **Fees**

The student's parent or guardian must pay the participation costs for the School Violence Prevention Program. However, no one can be excluded from this program because of an inability to pay the cost if the parent or guardian files an affidavit of indigence or inability to pay and the court enters such a finding. Unlike other diversionary programs, the fee for the School Violence Prevention Program is not set by statute.

## **Outcomes**

### **Successful Program Completion**

The defendant can apply to have charges dismissed one year after program placement upon a successful completion of the program. The court must dismiss the charges if it finds successful compliance. Even if the defendant does not apply for dismissal, the court can do so on its own motion when it receives notification of successful program completion and one year has elapsed since the program placement.

### **Program Noncompletion**

If a program provider informs the court that a defendant did not successfully complete the program, the court must (1) order the defendant's file to be unsealed, (2) enter a not guilty plea, and (3) immediately put the case on the trial list.

## **Supervised Diversionary Program**

### **Overview**

In January 2008, the General Assembly established a diversionary program designed for individuals who have a psychiatric disability and are accused of committing a crime or a motor vehicle violation that is “not of a serious nature” (CGS § 54-56ℓ). In 2012, the program was expanded to include veterans with mental health conditions. Program participants are subject to supervision and provided mental health treatment and services based on individualized treatment plans. The Judicial Branch’s Court Support Services Division administers the program and determines applicant eligibility, develops individualized treatment plans, refers participants to treatment and services, and supervises program participants. CSSD may collaborate with the Department of Mental Health and Addiction Services (DMHAS), (or in the case of a veteran, with the state or federal Departments of Veterans) to place an eligible individual in a program that provides appropriate community supervision, treatment, and services. CSSD, in consultation with DMHAS, must develop standards, oversee appropriate treatment programs, and contract with service providers.

The program’s authorizing legislation was proposed, in part, as a response to the Cheshire home invasion murders that occurred on July 23, 2007. The home invasion prompted recommendations from two separate sentencing task forces, both of which supported the enactment of this program. Governor M. Jodi Rell appointed a Sentencing and Parole Review Task Force, which held its first meeting on September 12, 2007. That task force’s final report included a recommendation to create a diversionary program for people with psychiatric disabilities similar to accelerated rehabilitation ([Governor's Sentencing and Parole Review Task Force](#), Recommendation 6E and Appendix C). In addition, the Sentencing Task Force, established by PA 06-193, made a similar recommendation in its January 2008 interim report ([Sentencing Task Force Interim Report](#)). Its first recommendation was to “create a diversionary program for people with psychiatric disabilities who have pending charges that are not of a serious nature” in order to “reduce the number of [such] clients incarcerated or insufficiently served while aiding in recovery.” The resulting legislation, *An Act Concerning Criminal Justice Reform* (PA 08-1, January Special Session), incorporated language from both task force reports to establish the Pretrial Supervised Diversionary Program.

### **Current Eligibility Requirements**

The program is available to an individual charged with a non-serious crime or a nonserious motor vehicle violation subject to the penalty of imprisonment who:

1. has a “psychiatric disability” (meaning a mental or emotional condition, other than solely substance abuse, that has substantial adverse effects on the person’s ability to function and requires care and treatment) or
2. is a “veteran” (defined as an individual who has been honorably discharged or released under honorable conditions from active service in the U.S. armed forces) found to have a mental health condition that is amenable to treatment.

An individual is not eligible for this program if he or she has previously participated in the program twice before. In addition, anyone ineligible for the pretrial accelerated rehabilitation (AR) program under CGS § 54-56e(c) is also generally ineligible for this program. If an individual is charged with an offense that qualifies for participation in the family violence education program, the court may permit him or her to enter the supervised diversionary program instead, if it seems more appropriate.

CSSD is required to retain the police report supplied by the prosecutor and the supervision record of an individual's first time participating in the program. If that individual applies for the program a second time, CSSD must provide the prior record and report to the court, the prosecutor, and the defense attorney.

## **Process**

State statute establishes the process for participation in the Pretrial Supervised Diversionary Program (CGS § 54-56*ℓ*). Once the application is submitted and the applicant has stated under oath that he or she has not participated in the program more than once before, the court must seal the case file. The court must also (1) notify any victim of the crime or motor vehicle violation that the defendant has applied for the program and (2) provide the victim an opportunity to be heard on the matter. State law requires that CSSD establish procedures for notifying victims of (1) any court-set conditions that affect them and (2) the participant's scheduled court appearances.

Following the application, oath, and victim notification, the court must refer the applicant to CSSD for eligibility confirmation and a mental health assessment. As part of its assessment, CSSD must determine whether the person is amenable to treatment and if appropriate community treatment services are available.<sup>1</sup> If so, CSSD must develop a treatment plan specific to the applicant and submit that plan to the court. Upon reviewing the plan, the court has discretion to grant or deny entry into the supervised diversionary program. If granted, the court refers the participant back to CSSD for program placement.

To determine the appropriate community supervision, treatment, and services, CSSD may collaborate with DMHAS or, in the case of a veteran participant, the state or federal Department of Veterans Affairs, and place the person in a program. The participant is also placed under the supervision of a probation officer who has a reduced caseload and is specially trained to work with people with psychiatric disabilities.

## **Conditions**

As with most of Connecticut's pretrial diversion programs, an eligible individual's participation is contingent on an agreement to:

1. the tolling of the statute of limitations with respect to his or her crime,
2. a waiver of the right to a speedy trial, and
3. conditions set by CSSD, such as required attendance at meetings or program sessions.

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<sup>1</sup> The program is distinguishable from other diversion programs in that its enabling statute explicitly bases program participation on the availability of treatment and services.

CSSD keeps a database of program participant information available to state and local police departments for use in responding to incidents involving participants. For five years, CSSD must retain information on participants, including details of the person's violations, program participation, and whether a deadly weapon or dangerous instrument was involved in the original violation.

## **Fees**

There are no fees for this program.

## **Outcomes**

### *Successful Program Completion*

Once the participant has completed the assigned program, he or she may apply to have the charges dismissed, and the court must dismiss them if it finds satisfactory completion. Even if the participant does not apply for dismissal, the court may do so on its own motion when it receives notification from CSSD of successful program completion.

### *Program Noncompletion*

If CSSD certifies to the court that the participant did not successfully complete the assigned program, the court must (1) order the defendant's file to be unsealed, (2) enter a not guilty plea, and (3) immediately put the case on the trial list.

## **Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers Program**

### **Program Overview**

The Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers Program provides eligible applicants with the opportunity to forgo prosecution for certain firearm offenses by submitting to a period of pretrial supervision (CGS § 29-33(h)). Individuals interested in participating in the program must meet certain statutory eligibility requirements and apply for a court order. The Court Support Services Division is responsible for investigating applicant eligibility, supervising program participants, and reporting on successful completion. The program applies to violations concerning the sale, delivery, or transfer of long guns, pistols or revolvers, and ammunition (CGS § 29-37a, § 29-33, and § 53-202~~l~~, respectively). The program can also be used to divert charges involving the possession, sale, or transfer of magazines that can hold more than 10 cartridges of ammunition (§ 53-202w).

The program was first established in Connecticut in 1994 (PA 94-1, July Special Session) effective October 1, 1994) as part of a comprehensive gun control bill. The act, *An Act Concerning the Sale, Transfer, and Possession of Pistols and Revolvers, the Possession of Assault Weapons and the Storage of Firearms and Weapons by the Department of Correction*, was drafted and enacted in response to increases in gun violence on both the state and national levels. The program was established to allow the court to provide the same type of leniency found in the accelerated rehabilitation statute to individuals charged with non-violent, technical violations of the gun control statute. Senator George Jepsen indicated that the program was added, "...at the request of a large number of legislators who were greatly concerned that an individual, the classical case cited was an elderly person who maybe owned one gun...not knowing the full terms of the law, sold that gun or gave that gun to a nephew or to a friend..." and that the program provided, "...a sensible safety valve for the law." (Senate Proceedings, July 6, 1994, p. 3552). House members passed the bill by a vote of 84-62 after considering numerous amendments; the Senate passed the bill by a vote of 21-13.

Originally, the program applied only to individuals charged with the illegal sale, transfer, or delivery of pistols or revolvers. However, the program was expanded in 2001 to include violations of laws criminalizing certain types of ammunition and in 2013 to include the illegal sale, delivery, and transfer of long guns and the possession, sale, or transfer of large capacity magazines.

The intent and operation of the program has remained relatively unchanged since its creation, and the legislature has not amended the program's statutory provisions since 2013.

### **Current Eligibility Requirements**

A person is eligible for this program if he or she is charged with one of the following offenses but has not previously had a prosecution suspended for, nor previously been convicted of, the pending offense:

1. illegal sale, delivery, or transfer of a pistol or revolver (§ 29-33);
2. illegal sale, delivery, or transfer of a long gun (§ 29-37a);



3. sale or transfer of armor piercing or incendiary .50 caliber ammunition (or carrying or transporting a firearm loaded with such ammunition) (§ 53-202ℓ); or
4. possession, sale, or transfer of large capacity magazines (§ 53-202w).

In order for a court to invoke the program, the applicant must acknowledge that he or she understands the consequences of suspending prosecution, and the court must find that (1) the alleged violation was not of a serious nature and (2) the person charged with the violation will probably not offend in the future.

### **Process**

Individuals must apply for participation in the program by filling out and submitting the Judicial Division's Application for Suspension of Prosecution – Violation of Firearm Laws. Upon submission of the application, the person will usually appear in open court and indicate his or her willingness to participate in the program. The court will then continue the applicant's case for a court hearing date and refer the application to CSSD's Intake, Assessment and Referral specialists (IAR) for an assessment and eligibility determination. Once IAR has completed its review of the application, it reports to the clerk who adds the report to the applicant's file. The court then reviews the applicant's file, makes a determination in open court, and, if the application is granted, orders any conditions it deems necessary. The court retains the discretion to deny an application even if IAR determines that the applicant is eligible.

Once the application is granted, the defendant is released to CSSD's supervision for a period of probation of up to two years.

CSSD, through its adult and bail services unit, is the state agency responsible for administering the program and must assess and determine eligibility, oversee applicant probation, and report on completion status.

### **Conditions**

A participant in the program must agree to:

1. the tolling of the statute of limitations with respect to his or her crime,
2. a waiver of the right to a speedy trial, and
3. such other conditions as the court may order.

### **Fees**

There are no fees for this program.

### **Outcomes**

#### **Successful Program Completion**

When a defendant satisfactorily completes the period of probation under the conditions ordered, he or she can apply to have the charges dismissed, and the court must dismiss them if it finds that the program has been successfully completed. Even if the defendant does not apply for dismissal, the court may do so on its own motion upon receipt of notification of successful

program completion from CSSD. Once dismissed, the court is required to erase all records of the charges.

*Program Noncompletion*

If the defendant refuses to accept the conditions ordered by the court or violates those conditions, the court must (1) terminate suspension of prosecution and (2) bring the case to trial.

## **Suspended Prosecution and Treatment for Alcohol or Drug Dependency**

### **Program Overview**

Connecticut law permits courts to order the suspension of prosecution for defendants who are drug- or alcohol-dependent, and instead refer to them to treatment (CGS §§ 17a-691 through -698). A similar program is authorized for convicted individuals prior to sentencing (see CGS § 17a-699). Through the pretrial program, prosecution of charges is suspended for up to two years, and the defendant is referred to the custody of the Judicial Branch's Court Support Services Division for treatment for alcohol or drug dependency. The court may dismiss the charges when the defendant has successfully completed the treatment program, complied with the court's and CSSD's conditions, and abstained from the use of alcohol or the unlawful use of drugs for one year. Otherwise, the state's attorney may proceed with the prosecution.

The law creating this program was passed as an "emergency certified" bill (PA 89-390, SB 1069) on the last days of the 1989 legislative session. It was introduced in the Senate "to address in a comprehensive way, the problem of drug abuse in Connecticut" (Senate Proceedings, June 2, 1989). Senator Kevin Sullivan described the 43-page bill as the "single most important initiative before this General Assembly this year." It included many of the provisions that had been raised in the over 300 bills proposed that year and referred to the Substance Abuse Committee. The comprehensive approach addressed the general policy areas of (1) statute revisions, (2) criminal justice, (3) drug abuse prevention and education, (4) treatment, (5) alternatives to incarceration, and (6) law enforcement and financing. Pursuant to the act, the Legislative Program Review and Investigations Committee had to conduct a review of the initiatives after one year.

The original act appropriated \$16.5 million and authorized another \$25 million in bonds for a variety of drug enforcement and treatment programs and facilities. These included (1) a new boot camp-style alternative incarceration program for 16- to 21-year-old male felons with no prison record; (2) a new 15-bed drug treatment facility for female offenders; (3) \$10 million in grants to towns and the Statewide Narcotics Task Force for enforcement, education, and training programs; (4) \$3 million for drug abuse treatment and prevention programs administered by the Connecticut Alcohol and Drug Abuse Commission (CADAC); (5) substance abuse treatment programs for low-income pregnant women and women with children; and (6) bonding for the boot camp facilities and to renovate surplus state facilities for use as drug treatment centers. The act rewrote the statutes that dealt with the treatment of alcohol- or drug-dependent people accused of a crime.

### **Current Eligibility Requirements**

For a defendant to be eligible for suspended prosecution, the court must find that (1) the accused person was an alcohol-dependent or drug-dependent person at the time of the crime, (2) the person presently needs and is likely to benefit from treatment for the dependency, and (3) suspension of prosecution will advance the interests of justice.

The statute prohibits those charged with one of the following crimes of violations from participating in this program, though the court may waive the ineligibility provisions unless the

defendant is charged #1, 2, 5, or 6 below *and* was operating a commercial motor vehicle or held a commercial driver's license or commercial driver's instruction permit at the time of the offense.

1. operation of a motor vehicle while under the influence of liquor or drug or while having an elevated blood alcohol content (CGS § 14-227a);
2. operation of a motor vehicle by a person under the age of 21 with an elevated blood alcohol content (CGS § 14-227g);
3. operation of a motor vehicle with a child passenger (under age 18) while under the influence of liquor or drug or while having an elevated blood alcohol content (CGS §14-227m);
4. operation of a school bus (with or without a child on board) while under the influence of liquor or drug or while having an elevated blood alcohol content (CGS §14-227n (a) (1) or (2));
5. manslaughter in the second degree with a motor vehicle, which is a class C felony (CGS § 53a-56b)
6. assault in the second degree with a motor vehicle, which is a class D felony (CGS § 53a-60d); and
7. any class A, B, or C felony.

Defendants are not eligible if they have twice participated in this program or an earlier version of it (CSG §§ 17-155y(i), 19a-386, or 21a-284, revised to 1989).

## **Process**

To participate in this program, a defendant must first be referred by the court (upon its own motion or upon a motion by the defendant or the state's attorney) for examination for alcohol or drug dependency. DMHAS-appointed clinical examiners then conduct an independent examination to determine whether the person was dependent at the time they committed the offense. If the examiner determines that the person was indeed dependent, the examiner must next review the person's history and pattern of dependency and determine whether he or she would benefit from treatment. If so, the examiner makes a recommendation that includes provisions for an appropriate program placement, the type and length of treatment, and when space will be available in the given treatment program, which must be within 45 days of the report. No later than 30 days after the examination is ordered, the examiner's written report is given to the court, CSSD, the state's attorney, and defense counsel.

After the court receives the examination report, an eligible person may make a motion that the court suspend prosecution and order treatment. If the court finds the defendant eligible, it may order treatment and the suspension of prosecution so long as the defendant has:

1. acknowledged understanding of the consequences of the suspension;
2. given proper notice to any victim of the crime; and
3. unless indigent, paid the \$25 program administration fee.

Any victim of the crime must also have been given an opportunity to be heard on the motion to suspend before the court can grant the motion.

### **Conditions**

Prosecution may be suspended for up to two years. A participant in a treatment program must agree to:

1. the tolling of the statute of limitations with respect to his or her crime;
2. a waiver of the right to a speedy trial;
3. be placed in CSSD's custody for treatment;
4. comply with the court's or CSSD's conditions, such as work- and family-related or counseling requirements; and
5. submit to alcohol or drug tests.

A defendant must be released on a bond or written promise to appear in court. Any other posted bond must be terminated.

### **Fees**

Unless indigent, the defendant must pay the \$25 administration fee and must pay directly to the provider all costs of the treatment program. Under this program, the court determines indigence when the person has an estate found to be insufficient to provide support or no other person is legally liable or able to support the person.

### **Outcomes**

#### *Successful Program Completion*

Upon a defendant's completion of the ordered treatment program, he or she is discharged from the program and CSSD is notified. At any time within the period of suspended prosecution, CSSD may recommend that the court dismiss charges if the person has completed the program, complied with conditions, and abstained for one year from the use of alcohol or the unlawful use of drugs. No later than one month before the suspension period expires, CSSD must notify the court that the period is about to end and report on whether the person has completed the program and complied with conditions. In this report, CSSD also recommends whether charges should be dismissed.

When the court, on its own or the defendant's motion, finds that the person (1) is responding favorably to treatment at the end of the suspension period or has completed the treatment program and (2) has complied with all other conditions, it may dismiss the charges for which prosecution has been suspended.

#### *Suspension Modification or Termination*

The court must hold a hearing if notified by CSSD, after receiving the report of the director of a treatment program, that a person has (1) committed or threatened to commit a violent act at the treatment facility, (2) seriously violated program rules, (3) repeatedly violated program rules in a way that inhibits the person's ability to function in the program, (4)

continually refused to participate, (5) asked to be removed, or (6) is unable to participate due to a medical or psychosocial condition that cannot be treated by the program. The treatment program director must establish the supporting facts when making such a report. CSSD must also notify the court if a participant is not complying with its or the court's conditions. In either case, the court, after a hearing, determines whether conditions of suspension should be modified or if the suspension should be terminated. If the court terminates the suspension, the state's attorney may proceed with prosecution.

#### *Noncompletion and Discharge*

Defendants who have failed to complete treatment may be discharged from the program, though CSSD must be notified at least four days before the proposed discharge unless immediate discharge is necessary to protect the health or safety of staff or other program participants.

## **Pretrial Diversionary Program for Underage Defendants of Motor Vehicle Violations and Crimes Related to Underage Drinking**

### **Program Overview**

In 2016, the General Assembly created a diversionary program for people under age 21 at the time of the violation who are charged with motor vehicle violations and crimes related to underage drinking (PA 16-182, codified at CGS § 54-56p). It gives the court discretion to “invoke a program” for a defendant under 21 years old who is charged with certain violations or crimes. The program, approved by the Judicial Branch’s Court Support Services Division and operated by a nonprofit organization, provides a nonconfrontational forum to hear from victims affected by underage drinking, drunk driving, or other motor vehicle violations. Charges are dismissed against a defendant who satisfactorily completes this program.

The bill, HB 5629, as amended by House “A,” passed unanimously in the House of Representatives on April 30 after an explanation by Representative Tong and discussion by Representatives Rebimbas and Klarides (the amendment’s sponsor). On May 4, the Senate passed the bill on the consent calendar in concurrence with the House with no debate.

### **Eligibility Requirements**

To be eligible for this program, defendant must have been under 21 years old at the time of the offense and charged with:

1. a motor vehicle violation (depending on the violation, a motor vehicle violation is punishable by only a fine or as a crime);
2. misrepresenting his or her age or using another person’s driver’s license to procure alcohol (punishable by a fine of \$200 to \$500, up to 30 days in prison, or both) (CGS § 30-88a);
3. permitting or failing to halt a minor’s illegal possession of alcohol on private property (a class A misdemeanor, punishable by up to one year in prison, a fine of up to \$2,000, or both) (CGS § 30-89a);
4. the illegal purchase or attempt to purchase alcohol or making a false statement to procure alcohol (punishable by a fine of \$200 to \$500) (CGS § 30-89 (a)); or
5. possession of alcohol by a minor (punishable as an infraction for a first offense and a fine of \$200 to \$500 for any subsequent offense) (CGS § 30-89(b)).

A defendant is not eligible for this diversion program if he or she has used the program before or, at the time of the offense, held a commercial driver’s license or permit or was operating a commercial vehicle. In addition, a person is not eligible if he or she is charged with:

1. a motor vehicle violation causing serious injury or death,
2. a motor vehicle violation classified as a felony, unless good cause is shown, or
3. driving under the influence (CGS §§ 14-227a or 14-227g);
4. or distracted driving (§ 14-296aa).

**Process**

The court has the authority to approve this program on the motion of the defendant or the state's attorney. CSSD is responsible for determining eligibility. By law, CSSD must approve a program that provides a nonconfrontational forum in which the defendant hears from victims who have been affected by underage drinking, drunk driving, distracted driving, or other motor vehicle violations. The program must be conducted by a nonprofit organization that advocates on behalf of accident victims caused by drivers who are under the influence of alcohol or drugs or both. The organization must report to CSSD on a defendant's satisfactory program completion.

**Fees**

The nonprofit operating the program may assess a participation fee of up to \$50.

**Conditions**

Charges are dismissed for a defendant who satisfactorily completes the program within nine months. If not, the prosecution is reinstated.

Because this program was instituted after Governor Malloy's initial request to Sentencing Commission, statistics involving the utilization and passage rates of this program are not included in the following analysis.



**Table 4: Connecticut's Pretrial Diversionary Programs**

Below, table 4 shows the details of each program for comparison of offenses, eligibility and ineligibility criteria, usage allowances, and fees

<b>Established</b>	<b>Program Description</b>	<b>Eligibility</b>	<b>Ineligibility</b>	<b>Uses Allowed</b>	<b>Fees</b>
<b>Accelerated Rehabilitation (CGS § 54-56e)</b>					
1973	A program of probation or supervision to (1) provide rehabilitation to first-time offenders of non-serious crimes, violations, and motor vehicle violations and (2) reduce caseloads in the judicial system.	<ul style="list-style-type: none"> <li>• Court's belief there will be no future offense</li> <li>• No prior criminal convictions; no prior conviction of certain motor vehicle violations</li> <li>• Veteran: No more than one previous use of AR</li> <li>• Non-veteran: no prior use or AR or AR has been used only once in the past, over ten years ago, to divert crimes or motor vehicle violations carrying a maximum prison sentence of one year or less</li> </ul>	<p>Current offense cannot be:</p> <ul style="list-style-type: none"> <li>• a class A or C felony;</li> <li>• a class B felony (excludes most larceny 1 type offenses as long as they do not involve the use of force or a state or municipal employee or public official if charged with § 53a-122(a)(4));</li> <li>• operating a motor vehicle while under the influence or (on or after October 1, 1985) with a .08 blood alcohol level;</li> <li>• the sexual activity related provisions of risk of injury to a minor;</li> <li>• manslaughter in the second degree with a motor vehicle while under the influence;</li> <li>• assault in the second degree with a motor vehicle while under the influence;</li> <li>• sexual assault in the first degree, aggravated sexual assault in the first degree, and sexual assault in a spousal or cohabiting relationship;</li> <li>• sexual assault in the second degree*;</li> <li>• sexual assault in the third degree* and sexual assault in</li> </ul>	<p><i>Veterans:</i> Two  <i>Non-veterans:</i> One, unless first use was over 10 years ago to divert crimes or motor vehicle violations carrying a maximum prison sentence of one year or less</p>	<p>Application: \$35  Program: \$100</p>

<i><b>Established</b></i>	<i><b>Program Description</b></i>	<i><b>Eligibility</b></i>	<i><b>Ineligibility</b></i>	<i><b>Uses Allowed</b></i>	<i><b>Fees</b></i>
			<p>the third degree with a firearm*;</p> <ul style="list-style-type: none"> <li>enticing a minor*;</li> <li>possession of child pornography in the second degree* and possession of child pornography in the third degree*;</li> <li>a crime or motor vehicle violation that caused the death of another person;</li> <li>a family violence crime and is eligible for the pretrial family violence program or has previously entered into the pretrial family violence program;</li> <li>illegal possession of a controlled substance or use, possession, or delivery of drug paraphernalia and is eligible for the pretrial drug education and community service program or has previously entered into the pretrial drug education and community service program or pretrial drug education program;</li> <li>an absentee ballot related offense;</li> <li>a motor vehicle violation while operating a commercial vehicle or while holding a commercial driver's license or commercial driver's instruction permit;</li> </ul>		

<i><b>Established</b></i>	<i><b>Program Description</b></i>	<i><b>Eligibility</b></i>	<i><b>Ineligibility</b></i>	<i><b>Uses Allowed</b></i>	<i><b>Fees</b></i>
			<ul style="list-style-type: none"> <li>• assault in the second degree with intent to cause serious physical injury to another person by rendering such other person unconscious, and without provocation by such other person, the actor causes such injury to such other person by striking such other person on the head; or</li> <li>• larceny in the first degree or larceny in the second degree while operating as a health care provider or vendor participating in the state's Medicaid program</li> <li>• operating a motor vehicle with a child passenger (§ 14-227m) or operating a school bus or student transportation vehicle with or without a child passenger (Sec. 14-227n(a)(1) or (2)) under the influence or with a .08 blood alcohol level.</li> </ul>		
<b>Hate Crimes</b>					
2000	Added to AR in response to an increase in hate crimes and hate-related vandalism and to rehabilitate youth engaged in hate-related	<ul style="list-style-type: none"> <li>• discriminatory deprivation of rights, desecration of property, cross burning, or placement of a noose with intent to discriminate;</li> <li>• deprivation of a person's civil rights by person wearing mask or hood;</li> <li>• intimidation based on bigotry or bias in the first degree;</li> <li>• intimidation based on bigotry or bias in the second degree; or</li> </ul>	See above	See above	Program: \$425

<b>Established</b>	<b>Program Description</b>	<b>Eligibility</b>	<b>Ineligibility</b>	<b>Uses Allowed</b>	<b>Fees</b>
		<ul style="list-style-type: none"> <li>• intimidation based on bigotry or bias in the third.</li> </ul>			
<b>Alcohol Education Program (CGS § 54-56g)</b>					
1981	<p>Alcohol education or substance abuse treatment programs for eligible defendants charged with driving a motor vehicle or boat under the influence of alcohol or drugs.</p> <p>CSSD confirms eligibility. DMHAS service providers evaluate applicants and operates and oversees the programs.</p> <p>Can be reinstated up to two times if participant does not successfully complete the assigned program or is no longer amenable to treatment</p>	<ul style="list-style-type: none"> <li>• Driving under the influence (DUI) *</li> <li>• DUI under age 21*</li> <li>• Safe boating rules*</li> <li>• Reckless operation of a vessel in the 2<sup>nd</sup> degree while under the influence</li> <li>• operating a motor vehicle with a child passenger (§ 14-227m) or operating a school bus or student transportation vehicle with or without a child passenger (Sec. 14-227n(a)(1) or (2)) under the influence or with a .08 blood alcohol level</li> </ul> <p>*Eligibility barred if violation caused serious physical injury to another, except for good cause.</p>	<p>Prior conviction for:</p> <ul style="list-style-type: none"> <li>• DUI or driving with elevated BAC Manslaughter in 2<sup>nd</sup> degree with a vessel while DUI</li> <li>• Drunken boating</li> <li>• Reckless operation of a vessel in the 2<sup>nd</sup> degree while under the influence</li> <li>• Reckless operation of a vessel in 1<sup>st</sup> or 2<sup>nd</sup> degree while under the influence</li> <li>• Manslaughter in 2<sup>nd</sup> degree with a motor vehicle while DUI</li> <li>• Assault in 2<sup>nd</sup> degree with a motor vehicle while DUI</li> <li>• Operating a motor vehicle with a child passenger or operating a school bus or student transportation vehicle with or without a child passenger under the influence or with a .08 blood alcohol level;</li> <li>• A substantially similar crime in another state</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• Prior use of the program in previous 10 years.</li> </ul>	One time every 10 years (unless prior use was for a safe boating violation other than drunken boating)	<p>\$100, application</p> <p>\$100, evaluation</p> <p>\$350 or \$500, program**</p> <p>\$175 or \$250, reinstatement</p> <p>Up to \$75, victim impact panel program, unless it causes economic hardship</p>
<b>Drug Education and Community Service (CGS § 54-56i)</b>					
1997	Drug education or substance abuse treatment programs and required community service for violators of certain drug	<ul style="list-style-type: none"> <li>• Drug possession, including marijuana</li> <li>• Use or possession of drug paraphernalia</li> </ul>	<ul style="list-style-type: none"> <li>• Two times prior program participation, unless good cause shown</li> </ul>	Twice, unless permitted by the court for a 3 <sup>rd</sup> time	<p>\$100, application</p> <p>\$150, evaluation</p>

<b>Established</b>	<b>Program Description</b>	<b>Eligibility</b>	<b>Ineligibility</b>	<b>Uses Allowed</b>	<b>Fees</b>
	<p>possession or drug paraphernalia laws.</p> <p>CSSD confirms eligibility. DMHAS service providers evaluate applicants and develops standards, oversees drug education programs, and contracts with program providers. Veterans can receive treatment services from the state or federal veterans affairs department.</p> <p>Can be reinstated up to two times if participant does not successfully complete the assigned program or is no longer amenable to treatment</p>		<ul style="list-style-type: none"> <li>Three times prior program participation</li> </ul>		<p>\$600, drug education**</p> <p>\$100 plus program costs, substance abuse treatment**</p> <p>\$250 reinstatement for drug education; program costs, for substance abuse treatment reinstatement</p>
<b>Family Violence Education (CGS § 46b-38c(h))</b>					
1986	A cognitive intervention program that explains the basic elements of family violence laws and the applicable penalties to those charged with specified family violence crimes. It educates offenders about the impact of violence on relationships and provides them with the interpersonal skills needed to develop violence-free relationships.	A family violence crime or a crime that includes an element of family violence to a family or household member	<ul style="list-style-type: none"> <li>Conviction for a family violence crime on or after October 1, 1986</li> <li>Class A, B, or C felony or unclassified felony with potential prison sentence of more than 10 years</li> <li>Class D felony, unclassified felony with potential prison sentence of more than five years</li> <li>Offense that involves inflicting serious physical injury, unless good cause shown</li> <li>Prior use of this program or of AR for a family violence crime</li> </ul>	Once in this or AR for a family violence crime since October 1, 1986	<p>\$100, application**</p> <p>\$300, program**</p>

<b>Established</b>	<b>Program Description</b>	<b>Eligibility</b>	<b>Ineligibility</b>	<b>Uses Allowed</b>	<b>Fees</b>
<b>School Violence Prevention (CGS § 54-56j)</b>					
1999	<p>One-year program of at least eight group counseling session in anger management and nonviolent conflict resolution for secondary school students charged with the use or threatened use of physical violence in or on school property or at a school-connected activity.</p> <p>CSSD confirms eligibility and refers the participant for evaluation and appropriate placement. It develops standards, oversees programs, and contracts with program providers.</p>	<ul style="list-style-type: none"> <li>Public or private secondary school student</li> <li>Use or threatened use of physical violence in or on property of a public or private elementary or secondary school or at a school-sponsored activity</li> <li>Certification that person does not possess any firearms, dangerous weapons, controlled substances, or anything that is illegal</li> </ul>	<ul style="list-style-type: none"> <li>Prior conviction for similar offense</li> <li>Prior use of this program</li> </ul>	Once	Not set by statute. Costs paid by student, parent or guardian**
<b>Supervised Diversionary Program (CGS § 54-56ℓ)</b>					
2008, 2012 for veterans	<p>Individualized treatment for offenders with a psychiatric disorder or veterans with mental health conditions that are not deemed a psychiatric disorder.</p> <p>CSSD confirms eligibility and develops a treatment plan; may collaborate with DMHAS or veterans agency for appropriate placement.</p>	A crime or a motor vehicle violation for which a prison term may be imposed but which is not of a serious nature	<ul style="list-style-type: none"> <li>The same charges that ban participation in AR</li> <li>Prior use of this program more than one time</li> </ul>	Twice	None
<b>Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols and Revolvers (CGS § 29-33(h))</b>					
1994	Treatment for up to two years under CSSD supervision for non-violent, technical violations of gun control laws for offenders who are unlikely to offend again.	<ul style="list-style-type: none"> <li>Illegal sale, delivery, or transfer of a pistol, revolver, or long gun</li> <li>Possession, sale, delivery, or transfer of illegal ammunition or magazines</li> </ul>	<ul style="list-style-type: none"> <li>Prior conviction of the instant offense</li> <li>Previously had prosecution of the same offense suspended under this program</li> </ul>	Once for each of the four charges (pistol/revolver, long gun, illegal ammunition, large-capacity magazine)	None

<b>Established</b>	<b>Program Description</b>	<b>Eligibility</b>	<b>Ineligibility</b>	<b>Uses Allowed</b>	<b>Fees</b>
<b>Suspended Prosecution and Treatment for Alcohol or Drug Dependency (CGS § 17a-693 through -698)</b>					
1989	Two-year suspended prosecution for violators with drug- or alcohol-dependency who participate in treatment programs and comply with conditions under CSSD supervision. DMHAS conducts evaluations for dependency in each case.	<ul style="list-style-type: none"> <li>• Crimes, including drug sale or possession laws</li> <li>• Determination of drug- or alcohol- dependency at time of crime</li> <li>• Determination of need and likelihood of treatment benefit</li> <li>• Interests of justice would be served</li> </ul>	<ul style="list-style-type: none"> <li>• DUI</li> <li>• 2<sup>nd</sup> degree assault with a motor vehicle</li> <li>• Any class A, B, or C felony</li> <li>• Previously treated twice under this program</li> </ul>	Twice, unless restriction is waived by court	\$25, application**  Treatment program costs**
<b>Underage Defendants of Motor Vehicle Violations and Crimes Related to Underage Drinking (PA 16-182)</b>					
2016	Nonconfrontational forum for defendants under age 21 at the time of the violation who are charged with motor vehicle violations or alcohol purchase or possession to hear from victims affected by underage drinking, drunk or distracted driving, or other motor vehicle violations. Program completion required within nine months.	<ul style="list-style-type: none"> <li>• Motor vehicle violation</li> <li>• Misrepresenting age or using another's ID to procure alcohol</li> <li>• Permitting or failing to halt illegal possession of alcohol on private property</li> <li>• Underage purchase or attempt to purchase or procure or possession of alcohol</li> </ul>	<ul style="list-style-type: none"> <li>• Prior use of this program</li> <li>• DUI</li> <li>• A motor vehicle violation causing serious injury or death</li> <li>• A motor vehicle violation classified as a felony</li> <li>• Distracted driving violation</li> </ul>	Once	Up to \$50 program fee may be assessed

\*\*Fees or costs can be waived in the case of indigence or inability to pay, upon such a finding by the court.

Sources: Connecticut General Statutes and "Criminal Pretrial Diversionary Programs," Christopher Reinhart, Office of Legislative Research Report 2016-R-0020, January 14, 2016.

### III. USAGE DATA

To better understand the utilization and outcomes of Connecticut's statutory diversionary programs, the Sentencing Commission obtained program enrollment data from the Court Support Services Division of the Judicial Branch (CSSD). The data included records for dockets referred to diversionary programs for the ten years from 2009 through 2018. These data did not include records for the diversionary program for Underage Defendants of Motor Vehicle Violations and Crimes Related to Underage Drinking.

#### A. Overall Enrollment

Over the 10-year period covered by the data, there were 211,699 enrollments across the eight diversionary programs studied. Table 5a and Figure 5b below present the distribution of these enrollments by program and by year of enrollment.

Accelerated Rehabilitation (AR) and the Pretrial Alcohol Education Program (AEP) were the two most-frequently utilized programs, accounting for nearly 70% of all diversionary program enrollments in the sample studied. The Illegal Gun Transfer Program was the least-utilized, with only 108 dockets referred to the program (0.05% of all program enrollments).

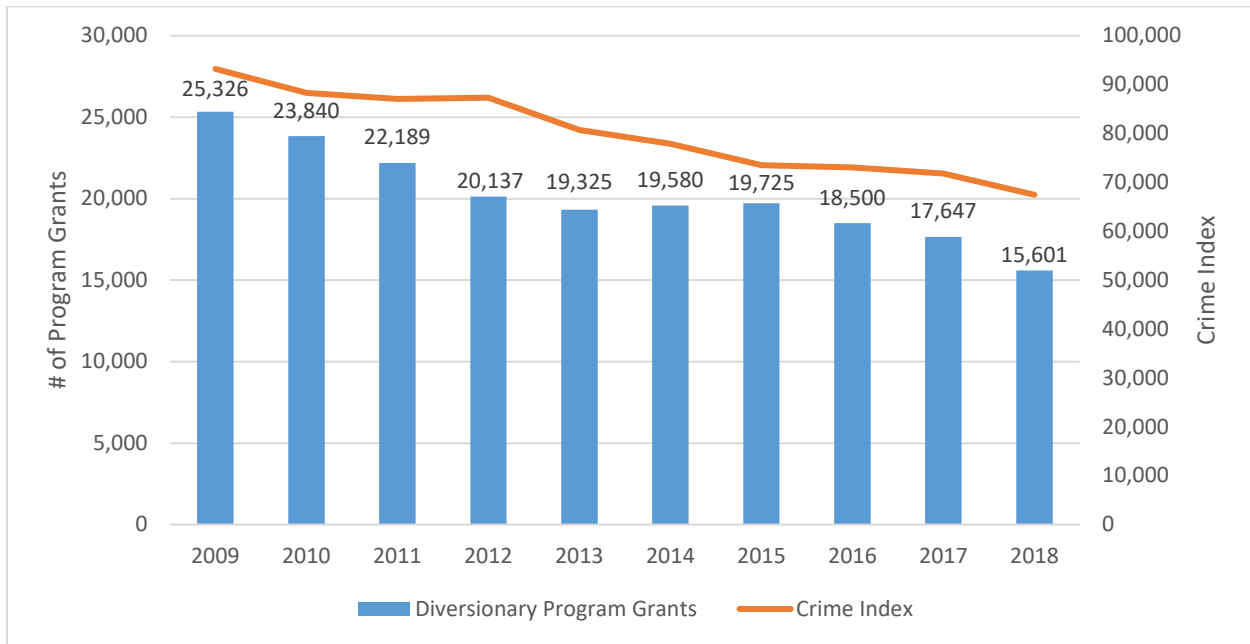
**Table 5a: Diversionary Program Enrollment**

<b>Program Name</b>	<b>Number of Enrollments</b>	<b>% of all Enrollments</b>
<i>Accelerated Rehabilitation</i>	74,781	35.32
<i>Alcohol Education Program</i>	70,030	33.08
<i>Drug Education and Community Service Program</i>	27,768	13.12
<i>Family Violence Education Program</i>	31,407	14.84
<i>School Violence Prevention Program</i>	527	0.25
<i>Supervised Diversionary Program</i>	5,873	2.77
<i>Illegal Firearm Transfer Program</i>	108	0.05
<i>Suspended Prosecution and Treatment for Alc./ Drug Dependency</i>	1,205	0.57
<b>Total</b>	<b>211,699</b>	<b>100.00</b>

In the period studied, there was a decline in diversionary program enrollment over time. By 2018, there were over 35% fewer diversionary program enrollments compared to 2009. While this study does not explore why this decrease occurred, the decline in program enrollment is generally consistent with the drop in Connecticut's crime rate over the same period (see the overlay plotted in Figure 5b below).



**Figure 5b: Diversionary Program Enrollment, By Year\***



\* For administrative reasons, ~10,000 enrollments had enrollment dates outside the sampled range. Accordingly, the figures listed above do not add to the total number of enrollments reported elsewhere in this report.

### **B. Demographics**

There were 184,046 individuals recorded in the CSSD dataset. This number is smaller than the total number of enrollments because some defendants participated in multiple diversionary programs, had multiple cases brought against them over the time period studied, or both.<sup>2</sup> Tables 6a and 6b and Figure 6c provide demographic data on participant gender, race, and age. Race- and gender-level data are presented at the person-level; age is presented at the docket-level.

Over the time period studied, more than two-thirds of all diversionary program participants were men. Women constituted slightly more than 30% of all participants.

**Table 6a: Participant Gender**

Gender	Number of Participants	% of all Participants
<i>Female</i>	58,016	31.52
<i>Male</i>	125,430	68.15
<i>Missing</i>	600	0.33
<b>Total</b>	<b>184,046</b>	<b>100.00</b>

<sup>2</sup> 1,017 diversionary program enrollments did not have a valid person identifier tied to it. These cases (less than 0.5% of the sample) were excluded from person-level analyses.

**Table 6b: Participant Race**

<b>Race</b>	<b>Number of Participants</b>	<b>% of all Participants</b>
<i>Asian</i>	1,580	0.86
<i>Black</i>	31,432	17.08
<i>Hispanic</i>	30,744	16.70
<i>White</i>	116,570	63.34
<i>Other</i>	631	0.34
<i>Missing</i>	3,089	1.68
<b>Total</b>	<b>184,046</b>	<b>100.00</b>

White individuals constituted a majority (63%) of all individuals enrolled in diversionary programs. Black and Hispanic individuals were the next two largest groups, each constituting around 17% of all participants.<sup>3</sup> Further research should be done to explore race-related trends in case processing outcomes to assess the extent to which racial groups face differential pretrial treatment.

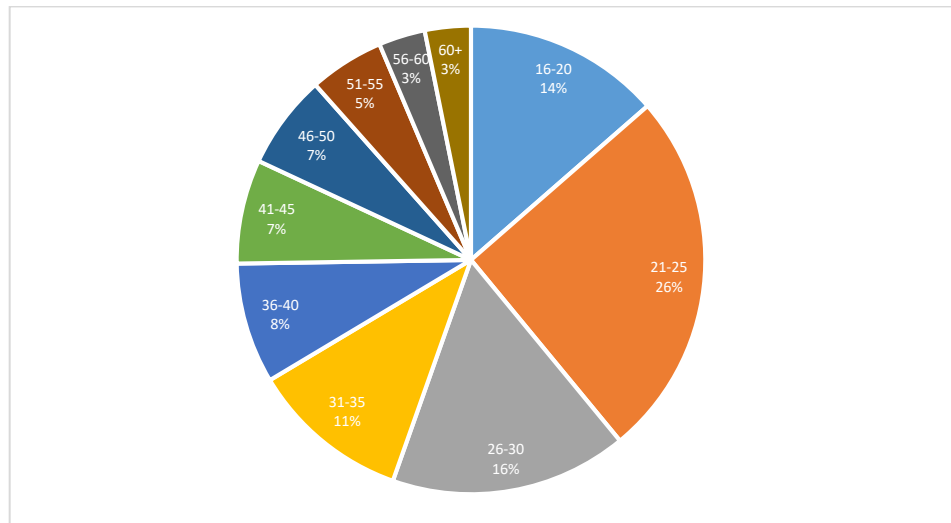
More than half of diversionary program participants were 30 years old or younger when they were granted admittance into their program. More than a quarter were between the ages of 21 and 25. Fewer than 4% were over the age of 60.

Race, gender, and age distributions for each specific diversionary program over the period of review can be found in Appendix B.

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<sup>3</sup> By itself, the racial composition of diversionary program enrollment is not determinative in identifying potential racial disparities. Disparities are always measured in relation to some reference population, and, in this study, the Commission only analyzed defendants who *were* granted admission into a program. As such, the Commission could not compare the racial composition of program enrollment to a broader reference point, such as the racial composition of all individuals arrested over the time period studied. Furthermore, even if a disparity were identified, it would be difficult to attribute this disparity to a single cause. Racial disparities in program enrollment can result from a wide number of causes, such as variation in program eligibility, criminal history, legal representation, and/or racial bias. Lastly, in order to fully understand the impact of any disparities in program enrollment, the Commission would also need to explore the outcomes of defendants who were *denied* a diversionary program. For instance, disparities in diversionary program enrollment might be less concerning if defendants who are denied program enrollment have their charges dropped as often as those who were granted a program. In any event, these types of research questions require data beyond the scope of this report.

**Figure 6c: Age at Time of Enrollment**



**C. Multi-Program Enrollment**

Except as limited by statute, defendants can generally participate in diversionary programs multiple times. This can occur when defendants are referred to two programs to divert different charges on the same docket, or when a defendant who had previously participated in a diversionary program is eligible for another program in a subsequent docket.

Table 7 below presents data on the number of diversionary programs an individual participated in over the time period studied. The vast majority (87%) of individuals contained in the dataset enrolled in a diversionary program only once. 11% of participants either enrolled in two different programs or enrolled in the same program two distinct times. Fewer than 2% enrolled in diversionary programs more than twice.

**Table 7: Number of Enrollments per Participant**

Enrollments	Number of Participants	% of all Participants
1	160,763	87.35
2	20,330	11.05
3	2,596	1.41
≥ 4	357	0.19
Total	184,046	100.00

**D. Success Rates**

Upon successful completion of a diversionary program, all relevant charges in a diverted docket are dismissed. In some cases, charges in a diverted docket can also be *nolled*, which is when the state's attorney declines to further prosecute a charge. Whether the charges are dismissed or *nolled*, the defendant is not tried for the offense and is not convicted. These

outcomes represent a successful diversionary program outcome – the pending criminal charges are erased, and the defendant faces no penalties.

By contrast, if charges are not dismissed or *nolled*, prosecution may continue, which can result in conviction and sentencing if the defendant accepts a plea agreement or is found guilty in a trial. These outcomes constitute an unsuccessful outcome for a pretrial diversionary program.

Lastly, there are scenarios in which a defendant's charges may be (1) transferred to juvenile court, (2) brought to trial and be found not guilty, or (3) result in a suspended license or forfeited bond due to nonappearance for court. While these dispositions do not reflect a guilty finding nor constitute a conviction, they would generally not be considered "successful" outcomes for pretrial diversion, as they indicate that a defendant still went to trial or faced some noncriminal penalty.

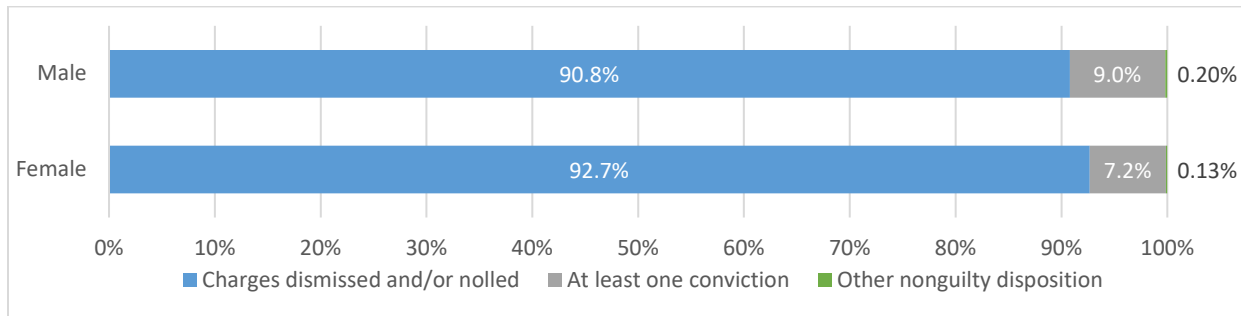
Table 8 presents data on the overall passage rates for diversionary program enrollments over the period studied. The total number of dispositions in this table is smaller than the total number of program enrollments (211,699) because some dockets contained charges that are still pending and have not yet received a disposition. A majority (61%) of diversionary program enrollments resulted in dismissal of all charges in the docket. Another 30% of enrollments resulted in having all charges in the docket receive a mix of dismissals and *nolles*. Overall, this means 91% of dockets enrolled in these programs had all charges dropped and were successfully diverted. By contrast, 8.4% of participating dockets ultimately resulted in at least one conviction, meaning the defendant was not successfully diverted from conventional criminal case processing. Lastly, 0.18% of charges received some other disposition that, while not resulting in conviction, would not be considered a successful pretrial diversion.

**Table 8: Overall Diversionary Program Success Rates**

<b><i>Disposition</i></b>	<b><i>Number of Enrollments</i></b>	<b><i>% of All Enrollments</i></b>
Charges dismissed and/or <i>nolled</i>	187,388	91.38
At least one conviction	17,302	8.44
Other nonguilty disposition	371	0.18
<b>Total</b>	<b>205,061</b>	<b>100.00</b>

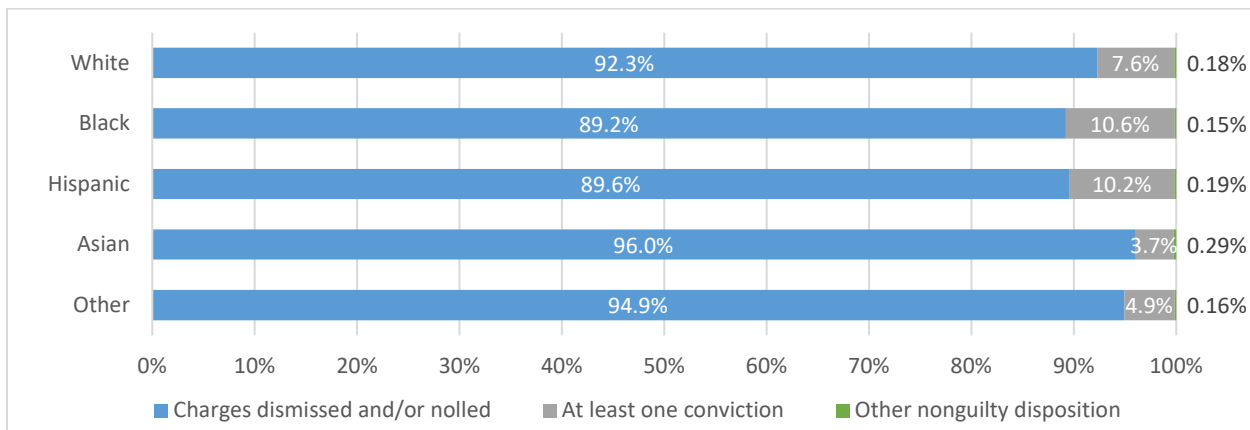
Figure 9a and Table 9b present program passage rates by gender and by race. Overall, women had success rates that were about 2% higher than those of men.

**Figure 9a: Success Rate by Gender**



With respect to participants' race, Asian defendants had the highest success rate (96%). White participants had the next highest success rate (92%), followed by Hispanic defendants (90%), and then Black defendants, who had the lowest success rate of the group (89%).

**Table 9b: Success Rate by Race**



For more information, Appendix B provides success rates for each individual diversionary program.

#### **E. Prior Records of Arrest and Conviction**

Having a prior arrest or conviction does not automatically make a defendant ineligible for pretrial diversion. Rather, different programs have different criteria concerning eligibility related to prior criminal records. These specific disqualifiers are detailed under each program description in Section II.

Table 10 presents data on the arrest and conviction history of individuals in the sample used for this study. An individual is considered to have an arrest history if he or she had been arrested before the arrest that led to their enrollment in a diversionary program. For individuals who participated in multiple diversionary programs during the period of review, they are considered to have an arrest history if they had been arrested prior to the arrest for their *first* diversionary program. A similar approach is used for determining conviction history. Because infractions and violations are not crimes and can only result in fines or administrative sanctions, records for prior infraction- or violation-only dockets are not reflected in this table.

**Table 10: Prior Arrest and Convictions Histories**

Prior Arrest History		
	Number of Participants	% of All Participants
<i>No prior arrest</i>	109,414	59.45
<i>≥1 prior arrest</i>	74,632	40.55
Prior Conviction History		
	Number of Participants	% of All Participants
<i>No prior conviction</i>	151,362	82.24
<i>≥1 prior conviction</i>	32,684	17.76

Overall, 40.55% of the diversionary program participants in this study had an arrest history prior to the arrest leading to their first diversionary program. 17.8% had a prior criminal conviction.

**F. Program-Specific Analysis**

**i. Accelerated Rehabilitation**

There were 74,781 enrollments in Accelerated Rehabilitation (AR) over the time period studied. The five most common charges in referred dockets are presented below in Table 11. The most common charge in these dockets was larceny in the sixth degree.

**Table 11: Five Most Common Charges in Dockets Referred to Accelerated Rehabilitation**

<b>Charge</b>	<b>C.G.S. Sec.</b>	<b>Number of Charges</b>	<b>% of All Charges</b>
<i>Larceny in the 6<sup>th</sup> degree</i>	53a-125b	20,078	11.44
<i>Breach of peace in the 2<sup>nd</sup> degree</i>	53a-181	11,896	6.78
<i>Interfering with an officer</i>	53a-167a	7,076	4.03
<i>Assault in the 3<sup>rd</sup> degree</i>	53a-61	5,441	3.10
<i>Failure to appear in the 2<sup>nd</sup> degree</i>	53a-173	4,779	2.72

Overall, 93.2% of AR enrollments ended with all charges in the docket being dismissed or *nolled*. By contrast, 6.6% of AR-enrolled dockets ultimately resulted in at least one conviction. Of the total, 0.2% resulted in some other disposition. These results are presented alongside results for all programs in Table B-4 in Appendix B.

Defendants can use AR one time every 10 years, unless they are a veteran, in which case they can use the program twice. In the data used for this study, 74,104 (99.8%) of AR participants used the program only one time. There were 176 individuals who were enrolled in AR twice.<sup>4</sup>

<sup>4</sup> A small number of diversionary enrollments are not tied to specific person\_IDs. As a result, the numbers reported here and in corresponding places throughout this subsection do not always account for the total number of enrollments for the given diversionary program.

ii. *Alcohol Education Program*

There were 70,030 enrollments in the pretrial Alcohol Education Program (AEP) over the time period studied. The five most common charges in referred dockets are presented below in Table 12. The most common charge in these dockets was operating under the influence of liquor or drugs or while having an elevated blood alcohol content.

Overall, 91.4% of enrollments in AEP resulted in all charges being dismissed or *nolled*. By contrast, 8.3% of dockets resulted in at least one conviction. Less than one percent (0.25%) of dockets referred to AEP resulted in some other disposition. These results are presented alongside results for all programs in Table B-4 in Appendix B.

By statute, a defendant may only use AEP one time every ten years. 69,704 (99.92%) of AEP participants used the program one time during the period of review. There were 56 defendants who enrolled in AEP twice during the period studied.

**Table 12: Five Most Common Charges in Dockets Referred to the Alcohol Education Program**

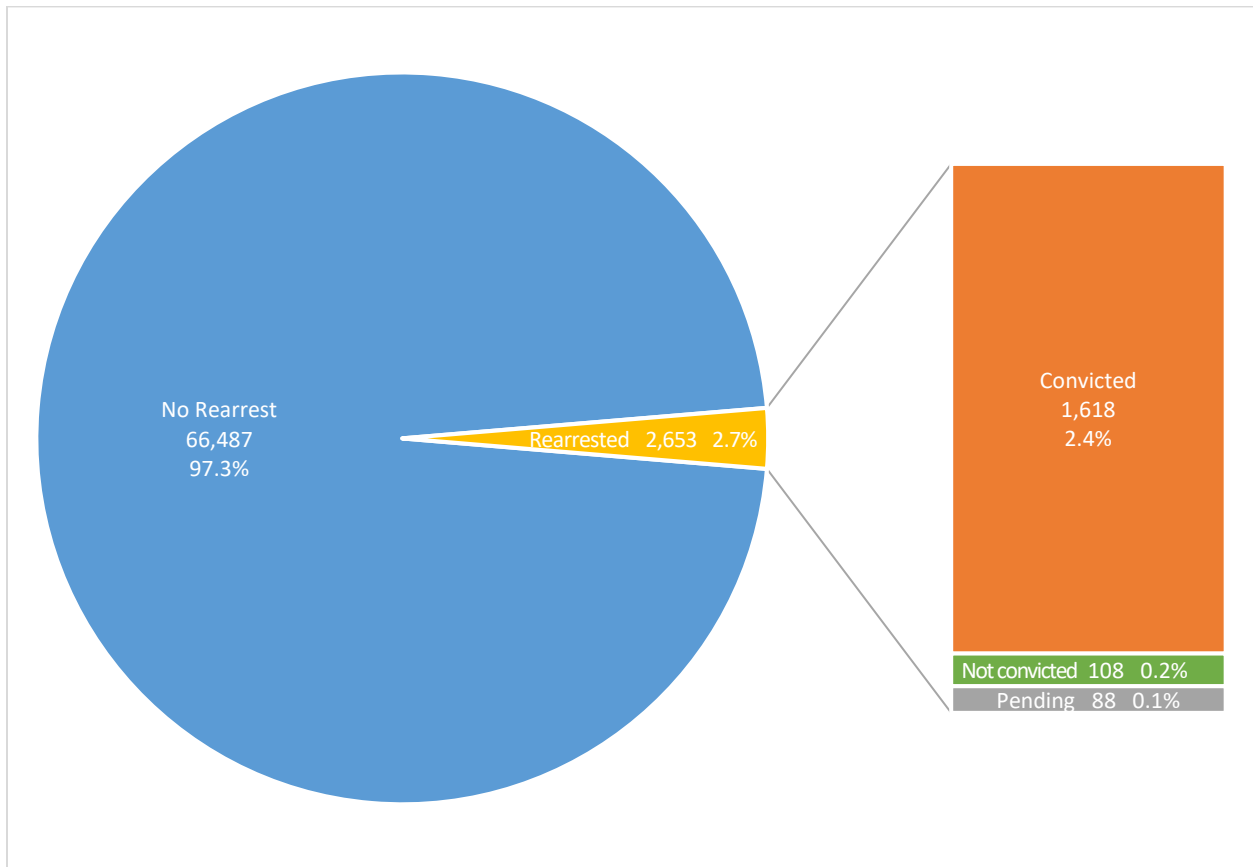
<b>Charge</b>	<b>C.G.S. Sec.</b>	<b>Number of Charges</b>	<b>% of All Charges</b>
<i>Operation while under the influence of liquor or drug or while having an elevated blood alcohol content</i>	14-227a	67,602	40.65
<i>Multiple-lane highway violation</i>	14-236	17,342	10.43
<i>Failure to drive upon the right lane</i>	14-230(a)	10,821	6.51
<i>Operation of motor vehicle without driver's license</i>	14-36(a)	4,908	2.95
<i>Failure to appear in the 2<sup>nd</sup> degree</i>	53a-173	4,039	2.43

While defendants may only enroll in AEP once every ten years, participants can have the program reinstated up to two times if they fail to complete the program. Over the period studied, 1,952 (3%) participants were granted a first reinstatement. Of those, 112 (0.2%) were granted a second reinstatement.

Figure 13 presents data on AEP-related recidivism for program participants. Of those who participated in AEP, 1,814 (2.66%) were subsequently rearrested for one of the charges covered by AEP within one year of the end of the program. Of these individuals, 1,618 were ultimately convicted, 108 were arrested and not convicted, and 88 still had charges pending at the time the data were generated.

Table 14 presents rearrest rates for AEP-eligible charges broken down by the individual's AEP disposition. While it would appear that those who successfully completed AEP experienced higher rearrest rates than those who failed the program and were convicted, this could simply reflect the fact that convicted defendants may be incarcerated or otherwise penalized (i.e., revoked driver's license) such that they are incapable of recidivating.

**Figure 13: One-Year AEP Recidivism for Similar Offenses**



**Table 14: AEP Rearrest Rates by Program Outcome**

<i>AEP Disposition</i>	<i>No rearrest</i>	<i>Rearrest (within year)</i>
Charges dismissed and/or <i>nolled</i>	97.23	2.77
At least one conviction	98.58	1.42
Other nongUILTY disposition	98.26	1.74
<b>Total</b>	<b>97.34</b>	<b>2.66</b>

*iii. Drug Education and Community Service Program*

There were 27,768 enrollments in the Drug Education and Community Service Program (DECSP) over the time period studied. The five most common charges in referred dockets are presented below in Table 15. The most common charge in these dockets was illegal possession of a controlled substance.

Overall, 88.8% of DECSP enrollments ended with all charges in the docket being dismissed or *nolled*. By contrast, 11.1% of dockets resulted in at least one conviction. Less than one percent (0.13%) enrollments resulted in some other disposition. These results are presented alongside results for all programs in Table B-4 in Appendix B.



By statute, a defendant may use DECSP two times or, for good cause, three times. Of DECSP participants, 25,448 (96%) used the program only one time during the period of review; 1,022 individuals (3.9%) enrolled in DECSP twice; and 48 individuals enrolled in DECSP three times.

**Table 15: Five Most Common Charges in Dockets Referred to the Drug Education Program**

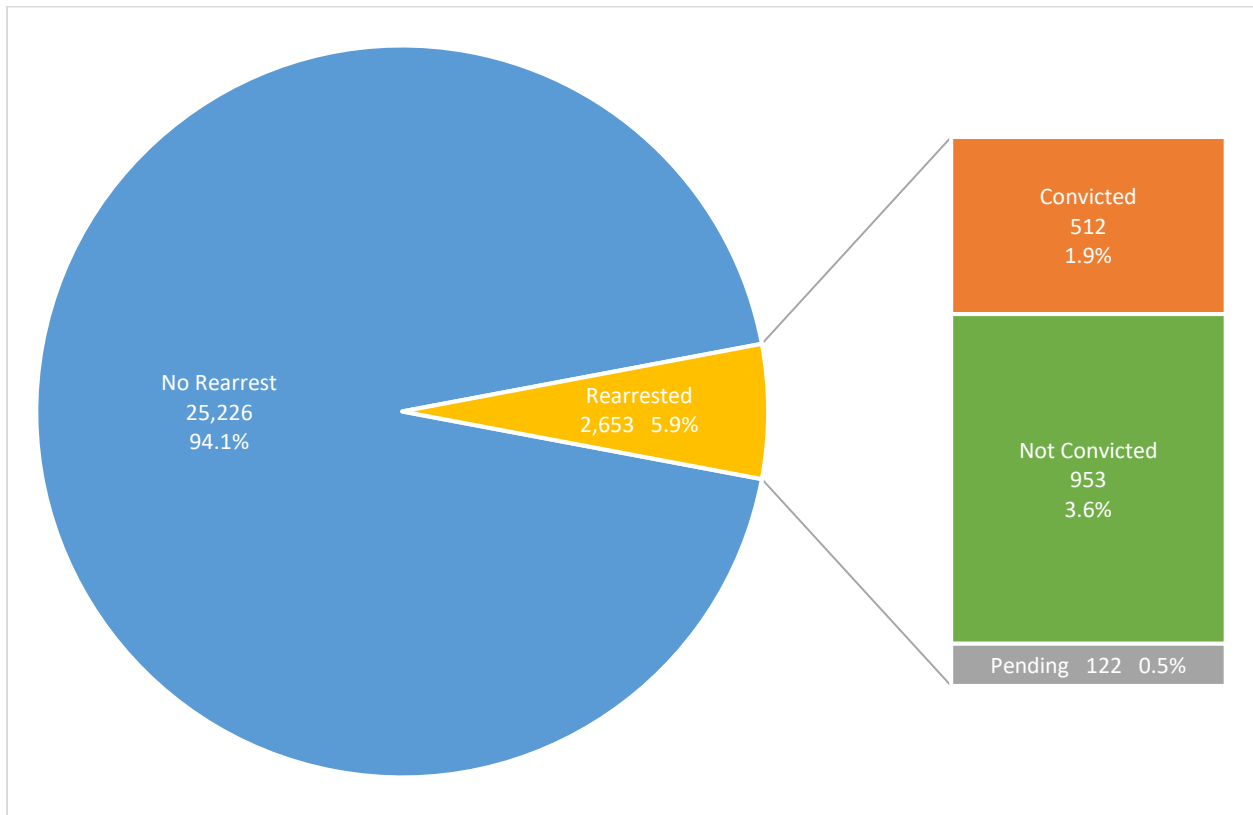
<i>Charge</i>	<i>C.G.S. Sec.</i>	<i>Number of Charges</i>	<i>% of All Charges</i>
Illegal possession of controlled substance	21a-279	33,018	47.41
Use, possession or delivery of drug paraphernalia	21a-267(a)	10,025	14.40
Failure to appear in the 1 <sup>st</sup> degree	53a-172	2,289	3.29
Illegal manufacture, distribution, sale, prescription or administration of controlled substance in a school/public housing/childcare zone	21a-278a(b)	1,907	2.74
Illegal manufacture, distribution, sale, prescription, dispensing of controlled substance other than a narcotic or hallucinogenic	21a-277(b)	1,845	2.65

While defendants may only enroll in DECSP two to three times, they can have DECSP reinstated up to two times if they fail to complete the program. In the period studied, 1,126 (4%) were granted a reinstatement of the program. Of these, 67 (0.2%) had the program reinstated two times.

Figure 16 presents data on DECSP-related recidivism for DECSP participants. Of those who participated in the program, 1,596 (6%) were subsequently rearrested for one of the charges covered by DECSP within one year of the end of the program. Of these individuals, 521 were ultimately convicted, 953 were arrested but not convicted, and 122 still had charges pending at the time the data for this report were generated.

Table 17 presents rearrest rates for DECSP-eligible charges, broken down by the individual's DECSP disposition. Those who failed DECSP were 28% more likely to be rearrested (7.38%) for a drug-related charge within the following 12 months than those who completed DECSP and successfully had their charges diverted (5.76%). While those who received "other" dispositions had a particularly high recidivism rate (11.43%), this was a very small subpopulation of all DECSP outcomes (0.13%) and should be interpreted cautiously.

**Figure 16: One-Year DECSP Recidivism for Similar Offenses**



**Table 17: DECSP Rearrest Rates by Program Outcome**

<i>DECSP Disposition</i>	<i>No rearrest</i>	<i>Rearrest (within year)</i>
Charges dismissed and/or <i>nolled</i>	94.24	5.76
At least one conviction	92.62	7.38
Other nongUILTY disposition	88.57	11.43
<b>Total</b>	<b>94.06</b>	<b>5.94</b>

*iv. Family Violence Education Program*

There were 31,407 enrollments in the Family Violence Education Program (FVEP) over the time period studied. The five most common charges in referred dockets are presented below in Table 18. The most common charge in these dockets was disorderly conduct.

Overall, 91.2% of enrollments in FVEP resulted in all charges being dismissed or *nolled*. By contrast, 8.7% of dockets resulted in at least one conviction. Less than 0.1% of enrollments ended in some other disposition. These results are presented alongside results for all programs in Table B-4 in Appendix B.

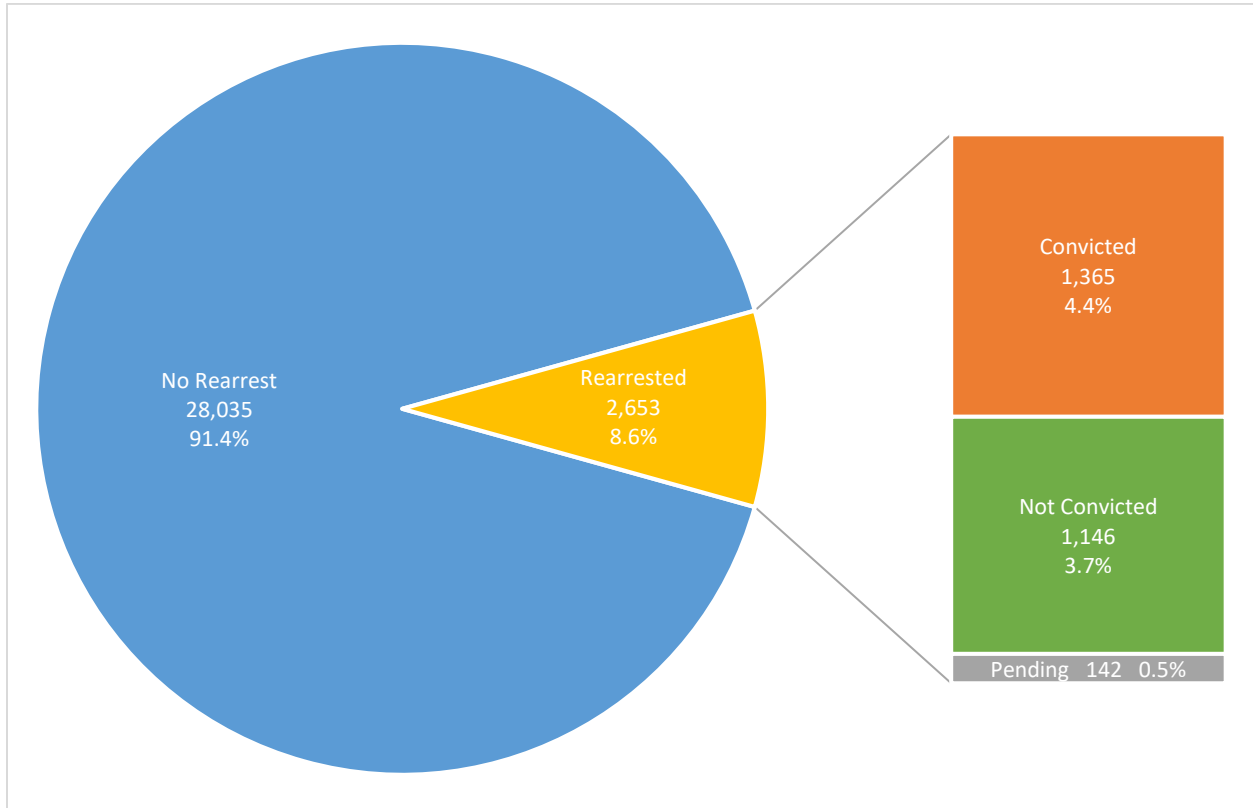
FVEP may only be used one time.

**Table 18: Five Most Common Charges in Dockets Referred to the Family Violence Education Program**

<b>Charge</b>	<b>C.G.S. Sec.</b>	<b>Number of Charges</b>	<b>% of All Charges</b>
<i>Disorderly Conduct</i>	53a-182	16,051	22.29
<i>Assault in the 3<sup>rd</sup> degree</i>	53a-61	13,014	18.07
<i>Breach of the peace in the 2<sup>nd</sup> degree</i>	53a-181	10,986	15.26
<i>Injury or risk of injury to, or impairing morals of, children</i>	53-21	3,723	5.17
<i>Threatening in the 2<sup>nd</sup> degree</i>	53a-62	3,634	5.05

Figure 19 presents data on family violence recidivism for FVEP participants. Of those who participated in FVEP, 2,653 (9%) were rearrested for family violence within one year of the end of the program. Of these individuals, 1,365 were ultimately convicted, 1,146 were arrested but not convicted, and 142 still had charges pending at the time the data were generated.

**Figure 19: One-Year FVEP Recidivism for Family Violence**



**Table 20: FVEP Rearrest Rates by Program Outcome**

<b>FVEP Disposition</b>	<b>No rearrest</b>	<b>Rearrest (within year)</b>
Charges dismissed and/or <i>nolled</i>	91.54	8.46
At least one conviction	89.47	10.53
Other nonguilty disposition	86.21	13.79
<b>Total</b>	<b>91.36</b>	<b>8.64</b>

Table 20 presents rearrest rates for family violence offenses, broken down by the individual's FVEP disposition. Those who failed FVEP were 24% more likely to be rearrested (10.53%) for family violence within the following 12 months than those who passed FVEP and successfully had their charges diverted (8.46%). While those who received "other" dispositions had a particularly high recidivism rate (13.79%), this was a very small subpopulation of all FVEP outcomes (less than 0.1%) and should be interpreted cautiously.

*v. School Violence Prevention Program*

There were 527 enrollments in the School Violence Prevention Program (SVPP) over the period studied. The five most common charges in referred dockets are presented below in table 21. The most common charge in these dockets was breach of the peace in the second degree.

**Table 21: Five Most Common Charges in Dockets Referred to the School Violence Prevention Program**

<b>Charge</b>	<b>C.G.S. Sec.</b>	<b>Number of Charges</b>	<b>% of All Charges</b>
<i>Breach of the peace in the 2<sup>nd</sup> degree</i>	53a-181	328	33.13
<i>Assault in the 3<sup>rd</sup> degree</i>	53a-61	234	23.64
<i>Disorderly Conduct</i>	53a-182	72	7.27
<i>Failure to appear in the 2<sup>nd</sup> degree</i>	53a-173	49	4.95
<i>Threatening in the 2<sup>nd</sup> degree</i>	53a-62	45	4.55

Overall, 90.6% of SVPP enrollments ended with all charges in the docket being dismissed or *nolled*. By contrast, 8.8% of dockets referred to SVPP resulted in at least one conviction. Less than one percent (0.13%) of enrollments ended in some other outcome. These results are presented alongside results for all programs in Table B-4 in Appendix B.

Defendants may use the School Violence Prevention program only one time.

*vi. Supervised Diversionary Program*

There were 5,873 enrollments in the Supervised Diversionary Program over the time period studied. The five most common charges in referred dockets are presented below in table 22. The most common charge in these dockets was breach of the peace in the second degree.

**Table 22: Five Most Common Charges in Dockets Referred to the Supervised Diversionary Program**

<b>Charge</b>	<b>C.G.S. Sec.</b>	<b>Number of Charges</b>	<b>% of All Charges</b>
Breach of peace in the 2 <sup>nd</sup> degree	53a-181	1,765	11.18
Larceny in the 6 <sup>th</sup> degree	53a-125b	1,075	6.81
Disorderly Conduct	53a-182	1,037	6.57
Interfering with an officer	53a-167a	843	5.34
Assault in the 3 <sup>rd</sup> degree	53a-61	708	4.49

Overall, 84.8% of enrollments in the Supervised Diversionary Program resulted in all charges being dismissed or *nolled*. By contrast, 15.1% of referred dockets resulted in at least one conviction. Less than one percent (0.1%) of enrollments resulted in some other disposition. These results are presented alongside results for all programs in Table B-4 in Appendix B.

Defendants can enroll in the Supervised Diversionary Program up to two times. Of all participating individuals, 93% enrolled in the program just one time during the period reviewed and 7% enrolled two times.

*vii. Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers Program*

There were 108 enrollments in the Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers Program over the time period studied. The five most common charges in referred dockets are presented below in Table 23. The most common charge in these dockets was illegal sale, delivery, or transfer of a pistol or revolver.

Overall, 86% of enrollments in the program resulted in all charges being dismissed or *nolled*. By contrast, 14% of dockets resulted in at least one conviction. These results are presented alongside results for all programs in Table B-4 in Appendix B.

**Table 23: Five Most Common Charges in Dockets Referred to the Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers Program**

<b>Charge</b>	<b>C.G.S. Sec.</b>	<b>Number of Charges</b>	<b>% of All Charges</b>
Illegal sale, delivery or transfer of pistols and revolvers	29-33	284	47.73
Purchase of firearm with intent to transfer to a person prohibited	29-37a(j)	52	8.74
Illegal possession of a large capacity magazine obtained on or after April 5, 2013	53-202w(c)(2)	44	7.39
Illegal possession of a large capacity magazine obtained before April 5, 2013	53-202w(c)(1)	29	4.87
Carrying pistol without a permit	29-35(a)	23	3.87

By statute, this diversionary program may only be used one time for each of the eligible offenses (i.e., once for pistols or revolvers, once for long guns, once for illegal ammunition, and

once for large capacity magazines). In the period of review studied, all defendants used the program just one time.

Of those who enrolled in the illegal firearm transfer program, none were subsequently rearrested for a similar firearm or ammunition offense within a year of the end of the program.

*viii. Suspended Prosecution and Treatment for Alcohol or Drug Dependency*

There were 1,205 enrollments in Suspended Prosecution and Treatment for Alcohol or Drug Dependency over the time period studied. The five most common charges in referred dockets are presented below in Table 24. The most common charge in these dockets was illegal possession of a controlled substance.

Overall, 73% of enrollments in the program resulted in all charges being dismissed or *nolled*. By contrast, 27% of dockets resulted in at least one conviction. These results are presented alongside results for all programs in Table B-4 in Appendix B.

**Table 24: Five Most Common Charges in Dockets Referred to  
Suspended Prosecution and Treatment for Alcohol or Drug Dependency**

<i>Charge</i>	<i>C.G.S. Sec.</i>	<i>Number of Charges</i>	<i>% of All Charges</i>
Illegal possession of controlled substance	21a-279	983	20.61
Forgery in the second degree	53a-139	313	6.56
Use, possession or delivery of drug paraphernalia	21a-267(a)	273	5.72
Larceny in the 6 <sup>th</sup> degree	53a-125b	224	4.70
Fraudulently obtaining a controlled substance	21a-266(a)(1)	217	4.55

By statute, defendants can have prosecution suspended for drug or alcohol dependence treatment up to two times, unless the court waives this requirement. In the period studied, 1,143 (97.9%) participants used the program one time, 24 individuals (2.0%) enrolled in the program twice, and one person (0.1%) enrolled four times.

*G. Fee Data*

Most diversionary programs have one or more fees associated with participation. These include fees for applications, evaluations, enrollment, and, when applicable, reinstatement. Notwithstanding the fee requirements, courts may waive them upon sufficient evidence that the defendant is indigent or otherwise unable to afford the fee.

During the period studied in this report, the court waived at least some portion of program fees for 36% of the dockets enrolled in diversionary programs.<sup>5</sup> Table 25 presents the rates of fee waivers broken down by program. Participants in the Suspended Prosecution and Treatment for Alcohol or Drug Dependency Program had fees waived most frequently (56%),

<sup>5</sup> These percentages reflect when at least *some* financial obligation in a given docket was waived by the court. These figures do not serve as perfect measures of when diversionary program fees were waived, and not indicate whether *all* fees in a docket were waived.

while defendants enrolled in the School Violence Prevention Program had fees waived least frequently (7.4%).<sup>6</sup>

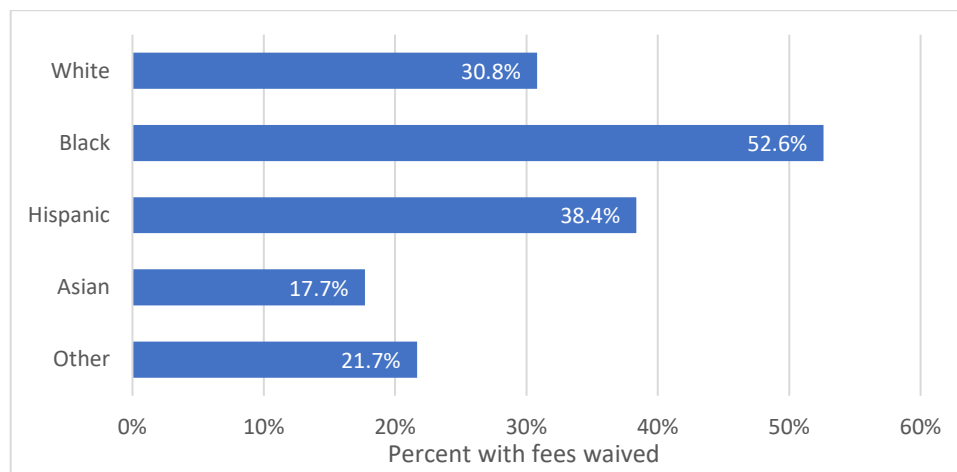
Figure 26 presents fee waiver percentages by race. Overall, Black program participants were most likely to receive fee waivers (52.6%) and Asian participants were least likely (17.7%)

**Table 25: Fee Waivers, by Program**

<i>Program</i>	<i>% with fee waivers</i>
Accelerated Rehabilitation	28.41
Alcohol Education Program	30.91
Drug Education and Community Service Program	53.41
Family Violence Education Program	50.45
School Violence Prevention Program	7.40
Supervised Diversionary Program*	17.18
Illegal Firearm Transfer Program*	12.04
Suspended Prosecution and Treatment for Alc./ Drug Dependency	56.10
<b>Overall % with fees waived</b>	<b>35.57</b>

\* Because these Diversionary Programs do not charge application or program fees, these percentages refer to other financial obligations in the given docket that the court has waived.

**Figure 26: Fee Waivers, by Race**



<sup>6</sup> Because the SVPP does not have statute-set fees, it is unclear whether these waivers correspond to actual program costs or other financial obligations the defendant may have incurred.

#### IV. CONCLUSION

While Connecticut offers several diversionary programs, each with its own set of eligibility criteria, funding sources, program fees, and program requirements, the programs all serve to provide defendants an alternative to conventional criminal case processing. By participating in the prescribed programming and abiding by conditions ordered by the court and CSSD, defendants enrolled in these programs can avoid facing many of the disruptive and adverse consequences of criminal prosecution.

To the extent these programs are designed to achieve these outcomes, Connecticut's pretrial diversionary programs are quite successful. Over 91% of the program enrollments studied in this report resulted in all charges against a defendant being *nolled* or dismissed. Through these programs, 187,388 dockets successfully diverted criminal case processing.

The Commission hopes this report will serve as an informative and insightful resource for future discussions about the state's diversionary programs.





## APPENDIX A

**Dannel P. Malloy**

GOVERNOR  
STATE OF CONNECTICUT

November 5, 2015

Justice David Borden, Chair  
Connecticut Sentencing Commission  
Office of Policy and Management  
450 Capitol Avenue  
Hartford, CT 06106

Andrew J. Clark, Acting Executive Director  
Connecticut Sentencing Commission  
Institute for Municipal & Regional Policy (IMRP)  
Central Connecticut State University (CCSU)  
Downtown Campus, Room 212  
New Britain, CT 06050

RE: Study of Bail Reform and Diversionary Programs

Dear Justice Borden and Mr. Clark:

I am writing today to ask the Sentencing Commission to examine two important issues relating to my Second Chance Society initiatives:

- 1) Connecticut's current bail bond system and the possibility for its reform, and
- 2) Connecticut's numerous diversionary programs, their efficacy and cost-effectiveness.

In Connecticut today, there are approximately six-hundred people in jail whose bond is less than \$20,000, and another six-hundred people whose bond is less than \$50,000. People who are not able to post the amount of bail required to get out of jail on such low bond – typically just a few hundred dollars – are people who most likely have no job and no support network. A large proportion of these people are non-violent, low-level offenders who would be able to get out of jail if they had a credit card, or a friend or family member who could loan them the small amount of money required to do so. Many are homeless, drug addicted, mentally ill and unemployed. They are also often veterans.

These people are not incarcerated because they are dangerous or a flight risk, but merely because they are poor; there are others just like them who have committed similar crimes under similar circumstances who are walking free because of the simple fact that they have the financial means to do so.

Many jurisdictions have begun to reconsider whether existing bail systems are fair and just, and it is time that we do the same in Connecticut. In 2014, for example, New Jersey changed its laws to permit courts, beginning January 1, 2017, to deny pretrial release of certain persons in criminal cases, and to permit monetary bail only when no other conditions of release will reasonably assure the eligible defendant's appearance in court.

I would like to request that the Sentencing Commission examine the bail systems in other jurisdictions, such as New Jersey, Massachusetts, Kentucky, and Oregon, as well as any recent reforms that have been made to those systems. Please include in your examination an analysis of potential ways Connecticut can focus pretrial incarceration efforts on individuals who are dangerous and/or a flight risk, as well as ways to reduce "bail inflation" in Connecticut, and report back to me with your recommendations.

The second issue I would like the Sentencing Commission to consider is the state of Connecticut's existing jail diversionary programs. Connecticut has a wide array of diversionary programs that provide services to individuals to keep them out of jail and to get them back on their feet. Individuals may be eligible to participate in a variety of diversionary programs related to substance use disorder, alcohol rehabilitation, and a history of sexual or domestic violence, among others. These programs are currently operated by both state-funded entities and non-profit organizations through contracts with the state.

I would like to know more about how these programs are meeting the needs of the state and its citizens. In particular, I have heard concerns from prosecutors, judges, defense attorneys and victims that the variety of diversionary programs available in Connecticut is confusing. I have heard that use of these programs has become automatic, resulting in offenders being shifted from one program to another without a case-by-case analysis of their situation, and may postpone the time by which an individual defendant's needs are addressed in a comprehensive way. I am concerned that the existing diversity of programs results in the opposite of the desired effect, and that the overly complicated administration of these programs may be wasteful of judicial resources.

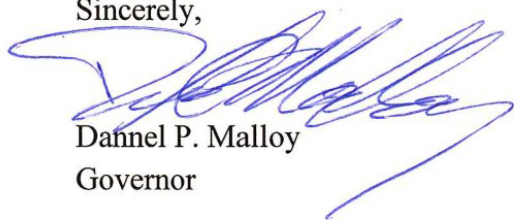
To address these concerns, I would like to solicit your expertise in helping to assess the scope of the diversionary programs that are currently in existence, and to determine how effective those programs are. Please review existing diversionary programs and analyze their cost and funding mechanisms, as well as how effective and efficient they are at both treating the populations they

seek to help and at preventing recidivism. In addition, please study best practices in diversionary programs generally, and examine whether having one generic diversionary program, with one application process, and one length of time, would benefit the participants of the program, as well as reduce the fiscal and administrative burden on the state.

Please let my office know by January 15, 2016 how soon you will be able to provide recommendations on these topics.

Thank you for your help on these important initiatives. My hope is that through our joint efforts, we can find a way to give more incarcerated individuals a "second chance" to succeed.

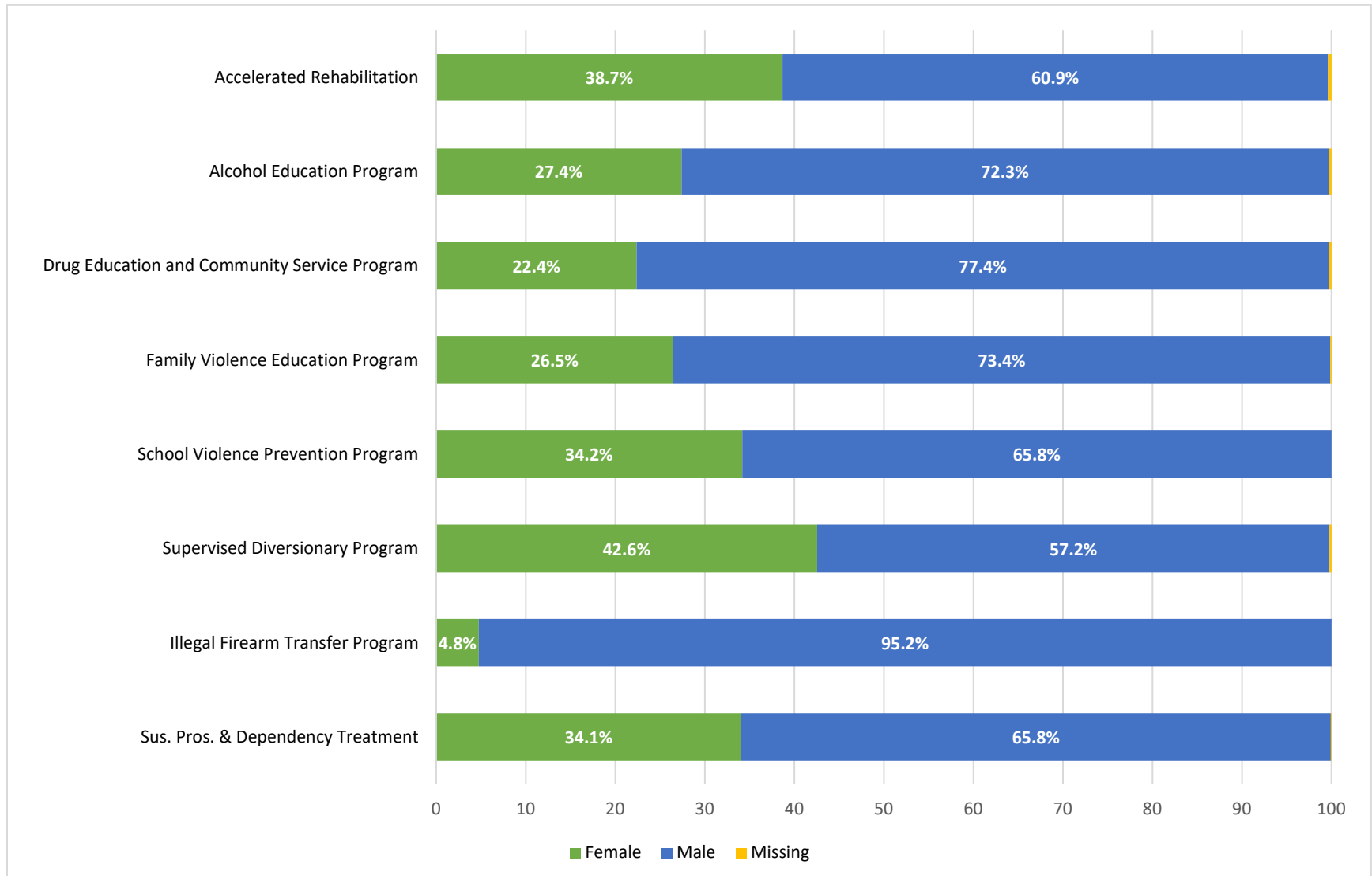
Sincerely,

A handwritten signature in blue ink, appearing to read "D. Malloy", is written over the printed name and title.

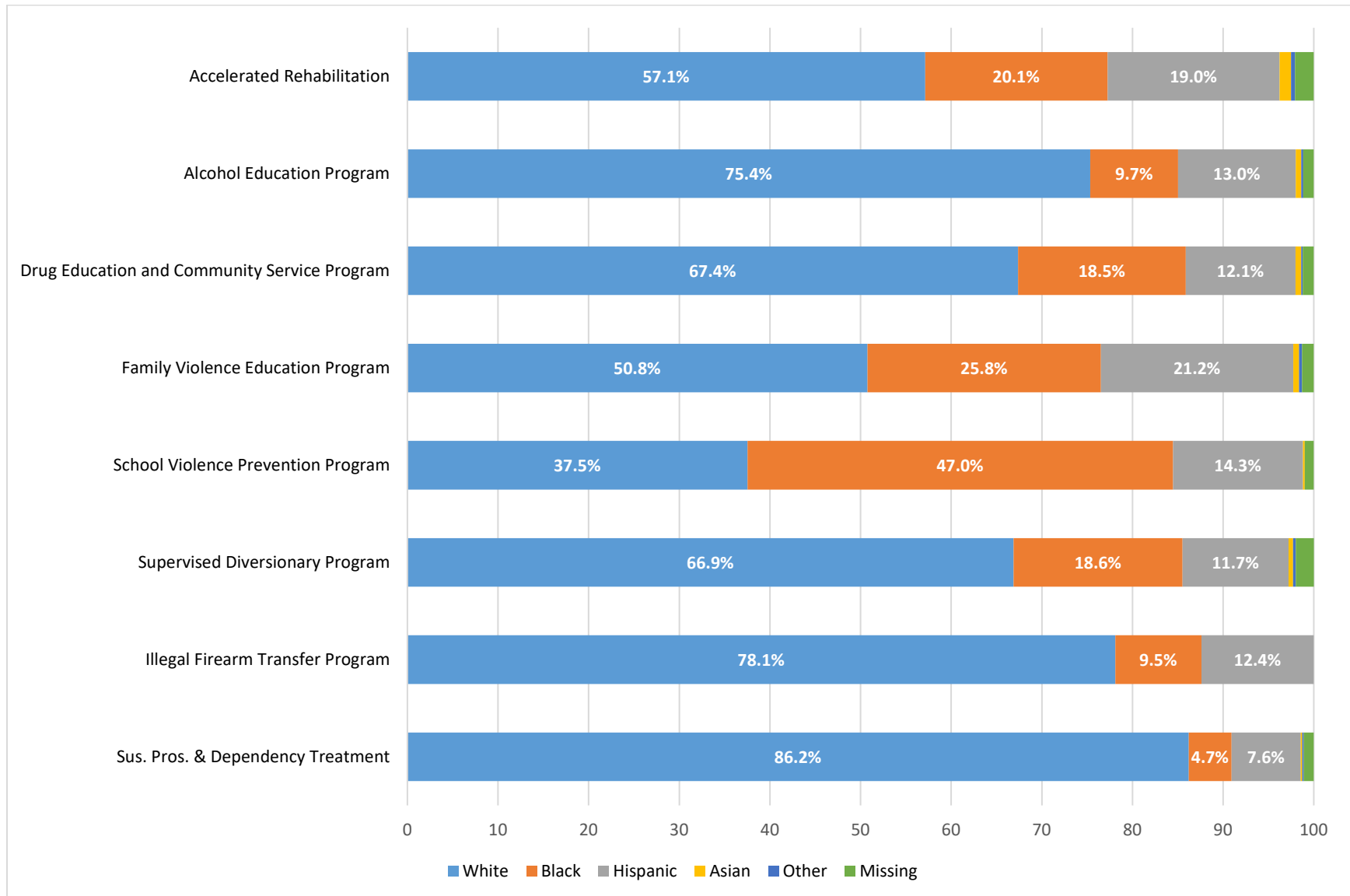
Dannel P. Malloy  
Governor

## APPENDIX B – ADDITIONAL PROGRAM-SPECIFIC STATISTICS

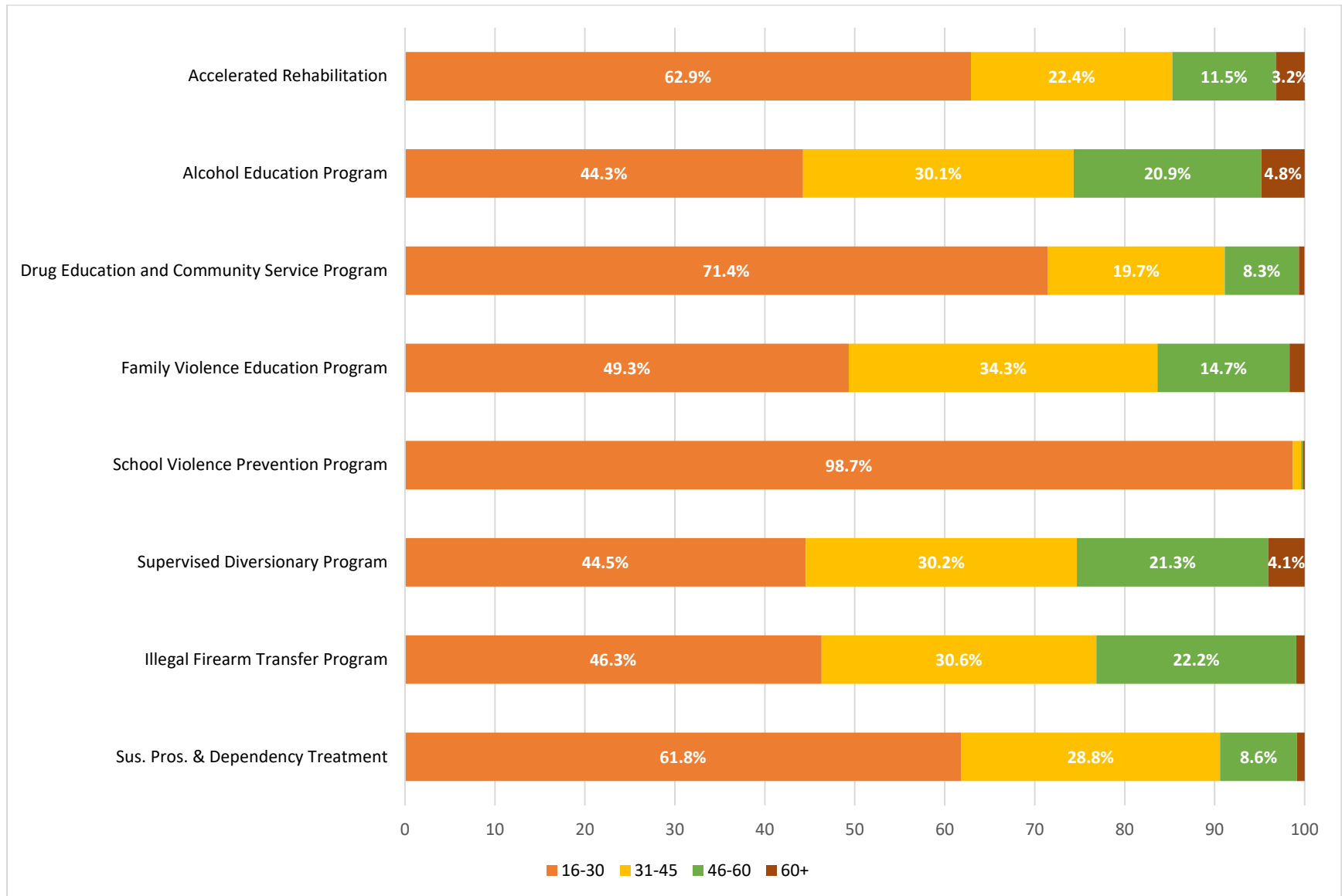
*Figure B-1: Participant Gender, By Program*



**Figure B-2: Participant Race, By Program**



**Figure B-3: Participant Age, By Program**



**Figure B-4: Diversion Success Rates, By Program**

