

SCS HCS HB 547 -- DISPOSAL OF JUDICIAL CASES

This bill provides alternative methods for the disposal of cases in the judicial system, including through the use of treatment courts and prosecution diversion programs.

TREATMENT COURTS

Prior to August 28, 2021, circuit courts shall establish a treatment court division to provide an alternative for the judicial system to dispose of cases which stem from or are impacted by substance use.

This bill provides that it is public policy of the state to encourage and provide an alternative method for the disposal of cases for military veterans and current military personnel with substance use disorders, mental health disorders, or co-occurring disorders. In order to accomplish this policy, circuit courts or any combination of circuit courts may establish a veterans treatment court for cases that stem from such disorders within military veterans or current military personnel, with a preference for individuals who have combat service.

PROSECUTION DIVERSION PROGRAMS

This bill authorizes prosecuting attorneys to divert criminal cases to a prosecution diversion program.

The bill increases a criminal case surcharge from \$1 to \$5, which is assessed equally for prosecutor services and prosecutor training.

A prosecuting attorney, with the agreement of the accused or defendant, may divert a criminal case to a prosecution diversion program for a period of six months to two years. Prosecuting attorneys may divert cases out of the criminal justice system when they determine utilizing a prosecution diversion program outweighs taking immediate court action. The statute of limitations for certain offenses shall be tolled during this time period. The period of a prosecution diversion program may be extended by a prosecuting attorney for purposes detailed in the bill, yet no such extension shall be for a period exceeding two years.

Prior to or upon issuance of an arrest warrant or information of indictment, any prosecuting attorney may forgo continued prosecution if the parties agree to a prosecution diversion program. This program must be in writing and for a specified period of time. While a prosecuting attorney has the authority to develop prosecution diversion programs, this bill details the

minimum requirements that a diversion program must meet.

Additionally, a prosecuting attorney may impose conditions on the behavior of the accused or defendant that assures the safety and well-being of the community, as well as that of the accused or defendant. These conditions may be imposed at any time during the prosecution diversion program and may include, but are not limited to, requiring the accused or defendant to remain free of any criminal behavior during the entire period of the program.

The responsibility and authority on whether or not to screen and divert a case are completely within the discretion of the prosecuting attorney. This responsibility and authority shall be official duties of a prosecuting attorney. The decision of a prosecuting attorney regarding the diversion of a criminal case shall not be appealable and may not be later raised as a defense in a criminal case involving the accused or defendant.

At any time, a person participating in a prosecution diversion program shall have the right to insist on criminal prosecution for the offense which he or she is accused. Also, any person participating in a diversion program may have legal counsel present at all phases of the diversion proceedings, but nothing in this bill shall create a right to appointment of counsel. Criminal proceedings may be re-initiated at any time by a prosecuting attorney for cases that have been diverted.

The potential liability of any county, city, person, organization, or agency, or employee or agent thereof, involved with the supervision of activities, programs, or community service that are a part of a prosecution diversion program is limited by provisions of this bill. Any person supervising or employing an accused or defendant under a prosecution diversion program shall report any violation of the terms of the program to the prosecuting attorney.

The bill provides that once the accused or defendant completes a prosecution diversion program to the satisfaction of the prosecuting attorney, the person shall be entitled to a dismissal or alternative disposition of charges against them. The individual shall be required to pay any associated costs prior to the dismissal of pending charges.

WRONGFUL INCARCERATION RESTITUTION

Finally, the bill provides that any person found guilty but later determined to be innocent solely as a result of DNA profiling analysis may be paid restitution of an amount of \$100, increased from \$50, per day for each day of post-conviction incarceration.