

Legislative notebook: House votes to end pretrial diversion option

Program lets some defendants avoid criminal record

By Tom Humphrey

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NASHVILLE — The House has voted to abolish the state's pretrial diversion program, which allows first-time offenders to avoid having a criminal conviction on their records in many cases.

Approval of HB694 came after sometimes contentious debate, much of it over an amendment proposed by Rep. Vance Dennis, R-Savannah, that he said would "fix this program and not just kill it outright ... for the sake of a couple of (district attorneys) who got their toes stepped on."

The current law, enacted in 1975, excludes defendants charged with Class A and B felonies — mostly violent offenses — from getting pretrial diversion, but allows it for some specified Class C felonies. Dennis' amendment would have made all Class C defendants ineligible, along with all those accused of sexual offenses. It would also have placed into law new criteria to be used in determining eligibility.

Dennis' amendment was killed on a 55-36 vote. The bill itself, sponsored by House Republican Caucus Chairman Debra Maggart of Hendersonville, was subsequently approved 74-23. It now is scheduled for a vote Tuesday in the Senate Judiciary Committee.

Present law gives defendants a legal right to pre-trial diversion and, if not granted in a case meeting the criteria, can lead to a judge throwing out a subsequent conviction. Proponents of repeal say this has led to many abuses wherein clearly guilty defendants go free and then have nothing on their record to enhance punishment for subsequent offenses.

In a typical diversion case, the defendant has his or her record expunged after a probationary period of up to two years. If it is abolished, "judicial diversion" would remain, wherein the defendant must plead guilty and then be granted probation by the judge, who could later decide to expunge the record at the end of probation.

Maggart said the current system allows criminals to "escape responsibility for their

actions” and favors “wealthier defendants” who can afford attorneys. Critics disputed both points.

Dennis said the proposition that defendants avoid responsibility was “absolutely false” since they typically must pay court costs, make restitution to victims and meet conditions of good behavior for up to two years.

n The Senate has given final legislative approval to repealing a mandate in the 2008 Voter Confidence Act for installation of voting machines providing a “paper trail” in all 95 counties.

Senate approval of HB386 came on a 24-6 vote under sponsorship of Sen. Ken Yager, R-Harriman. The House had approved the measure earlier on a 71-26 vote. It now goes to Gov. Bill Haslam for his expected signature.

The bill allows each county to decide whether to adopt the paper-trail voting system. Two counties, Pickett and Hamilton, have already adopted the machines, which proponents say provide needed safeguards against manipulation of results.

About \$37 million in federal money to pay for the machines is being held by the state. But Yager said related costs are not covered and that the 2008 law amounts to “a crushing unfunded mandate” on county governments. By one estimate, county governments statewide would have to spend about \$11 million to cover those related costs, which range from buying paper for the machines to storing the paper ballots after an election for several years.

n The House and Senate have approved two bills presented as ways to combat “cyberbullying,” defined as the use of electronic devices to intentionally inflict emotional distress or fear of physical harm.

One of the bills, HB301, amends the state’s general law, which makes harassment or intimidation of another person a misdemeanor, to include electronic communication via email, text messages, website postings and the like. It also declares that law enforcement officers and prosecutors can demand records from operators of social networks and other service providers to determine the origin of an electronic communication.

The bill passed the Senate 30-0 on Thursday after being amended to make a conviction punishable by community service work only. It passed the House earlier 76-18, but now returns to that body for concurrence on the Senate amendment.

The sponsors, Rep. Charles Curtiss, D-Sparta and Sen. Bill Ketron, R-Murfreesboro, said the measure will help clarify current law to ensure it covers electronically transmitted threats that cause “emotional distress” or a reasonable fear of bodily harm.

Most criticism focused on concerns that the bill is too broad and could interfere with free speech. Among the opponents was Rep. John Ragan, R-Oak Ridge.

“I do not think we ought to limit free speech of our citizens just because someone is offended,” he said.

The other bill, HB300, gives school boards the authority to take disciplinary action against students who engage in “cyberbullying” against another student or students, even if the acts in question were committed off campus.

It inspired considerably less debate and passed 87-8 in the House, 29-1 in the Senate. The measure now goes to the governor.

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