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DIVISION OF CRIMINAL JUSTICE

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Testimony of the Division of Criminal Justice

In Support of:

**S.B. No. 1387 (RAISED) AN ACT CONCERNING APPELLATE REVIEW OF
CERTAIN POST CONVICTION JUDGMENTS**

Joint Committee on Judiciary – March 12, 2007

The Division of Criminal Justice respectfully requests the Committee's Joint Favorable Report for S.B. No 1387, An Act Concerning Appellate Review of Certain Post Conviction Judgments. This bill was included in the Division's 2007 legislative package to clarify the intent of the General Assembly with regard to repeated appeals in habeas corpus matters to reduce the flood of frivolous appeals and the resulting drain on state resources that is now occurring.

Our Supreme Court has stated that the intent of the General Assembly in enacting Section 52-470 (b) was to discourage frivolous appeals in cases involving petitions for a writ of habeas corpus by requiring a party to first seek permission to appeal. *Simms v. Warden*, 230 Conn. 608,616 (1994) (*Simms II*); *Iovieno v. Commissioner of Correction*, 222 Conn. 254, 259-61 (1992). In practice, however, that has not been the case and the intent of Section 52-470 has essentially been unfulfilled, resulting in a great and unnecessary burden on the Division.

At present a party seeking to appeal from the judgment of a habeas petition must seek permission to appeal from the trial court. If permission is denied the party takes an appeal anyway and both parties must brief not only the question of whether or not permission should have been granted but also all of the other issues the party wishes to raise

S.B. No. 1387 seeks to address this needless drain on resources while preserving the right of the petitioner to be heard by the courts. What the bill does is to effectively make appeals from decisions on habeas corpus petitions a two-step process. The first step, if this bill is enacted, will be to appeal solely the issue of whether or not the court erred when it denied permission to appeal; in other words, whether or not there is an issue in the

case that is worthy of an appeal. This would be by way of a motion for review rather than a full appeal. This would not require full briefing or oral argument as motions for review are not argued, but rather are decided "on the papers." Such a change would have a significant positive impact on the tremendous demand on resources that is now created by such appeals. This bill would not only provide needed relief to the Division of Criminal Justice and the prosecutors who deal with appeals of habeas matters, but also to the Office of the Attorney General and the Division of Public Defender Services, which also deal with these matters. If the appellate court decides that permission to appeal should have been granted, then an appeal can be taken.

Virtually every habeas disposition today is challenged by the unsuccessful petitioner, usually in a direct appeal to the Appellate Court. Appeals from habeas judgments appear to comprise about one-quarter to one-third of the current active appellate caseload in the Division of Criminal Justice. According to our review of court records, in 2006 the Appellate Court heard sixty-two habeas appeals from the Division of Criminal Justice. The petitioner (defendant) was given a remand for additional fact-finding by the habeas trial court in just three of those cases. The Appellate Court found no merit in any of the other appeals. Of the 73 appeals now pending in our Post Conviction Unit in the Judicial District of Fairfield, 35 are habeas cases. There are another 90 habeas cases pending from the Judicial District of Fairfield, all of which we fully expect will become appeals. In 2005, the Fairfield Post Conviction Unit filed seven habeas briefs; in 2006 the number had increased to 17 briefs. We are dealing with appeals on appeals. In each case, the matter must be fully briefed, usually requiring a legal brief of up to thirty-five pages – and all for cases where there is rarely any merit whatsoever.

This results in a needless drain on resources that are already strained by an ever-increasing number of other cases. Resources are wasted on frivolous appeals at the expense of legitimate cases. Individuals who may have a valid claim must wait for their day in court while the courts spend time on matters that have already been resolved decisively.

As the statement of purpose for this bill states, it is necessary to "provide for a more effective utilization of limited state resources." The Division of Criminal Justice would respectfully request the Committee's Joint Favorable Report. We would be happy to provide any further information or to answer any questions the Committee might have.

Thank you.