



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

Joint Committee on Judiciary – March 12, 2008

The Division of Criminal Justice appreciates this opportunity to submit our input and recommendations on the bills on the agenda for today's public hearing. With regard to the several bills dealing with persistent offenders (i.e., the so-called "three strikes" proposals) the Division would recommend the Committee's Joint Favorable Substitute Report **H.B. No. 5035, An Act Concerning Repeat Violent Offenders, Burglary and Pardons and Parole.**

The Division of Criminal Justice would recommend that Section 1 of the bill be amended to (1) correct a technical problem and (2) to provide for discretion on the part of the court in imposing a term of life imprisonment.

An example will illustrate our concern. Take an individual convicted of two burglaries at age 19 who does not offend again until he gets into a barroom brawl 15 years later and breaks someone's rib. Should this person spend the rest of his life in prison? We do not think so. This would be the same penalty as that for arson murder, which this Legislature has long considered among the worst of the worst of offenses. Some element of discretion clearly is required.

In addition to the element of judicial discretion, the Division would recommend a technical correction to Section 1, the addition of the words "or a federal system," following the word "state," in line 12 of the bill. This would correct an apparent oversight and treat prior federal convictions the same as convictions from other states; and

The Division strongly supports the revisions to the burglary statutes incorporated in sections 2 and 3 of the bill. The Division included similar provisions in our 2008 Legislative Recommendations to the General Assembly to correct inconsistencies in the statutes as amended during the January Special Session on criminal justice reform.

We would recommend that the bill be further amended:

- To repeal of the specific crime of Burglary in the Second Degree with a Firearm (Section 53a-102a of the General Statutes) in that this specific offense has been incorporated into other crimes with the passage of Public Act 08-01 of the January Special Session;
- The addition of "subsection (a) (1) of" between the words "under" and "this" in line 63 of the bill. This change would remove the mandatory minimum sentence of three years in prison for a first-time offender convicted of the daytime burglary of an unoccupied building. The Division believes the court should have discretion in imposing sentence in such a case.

The Division believes this fine-tuning of the burglary and persistent offender statutes is the most appropriate action at this time. It has been less than two weeks since the changes to the persistent offender laws that were included in Public Act 08-01 of the January Special Session became effective on March 1, 2008. Not enough time has passed for any meaningful evaluation or assessment of the effectiveness or even the frequency of application of the revised law. The Division of Criminal Justice would respectfully suggest that the Committee revisit this issue in the 2009 Regular Session when we have at least some experience on which to judge the actions taken earlier this year. Accordingly, the Division would recommend the Committee take no action on the remaining bills dealing with the persistent offender, or "three strikes" issue.

With respect to the other bills on today's agenda:

H.B. No. 5916 (RAISED) – An Act Concerning Racial and Ethnic Impact Statements on Legislation and Certain Offenses Committed Near Schools or Child Day Care Centers: The Division of Criminal Justice opposes sections 1 through 4 of this bill and would respectfully recommend that the Committee consider substitute language for sections 5 through 7. Sections 1 through 4 of the bill require that a "racial and ethnic impact statement" be attached to any bill considered by the General Assembly that would increase or decrease the prison population. This is essentially asking someone on your staff to determine in advance who is going to commit a crime. The conditions this bill imposes are much too speculative and would prevent the passage of beneficial legislation. Sections 5 through 7 of the bill would reduce the so-called "drug-free zones," which include the area within a 1,000-foot radius of a school or child day care center. The bill as now written would apply to enhanced penalties for narcotics violations committed in such a zone to the time when the day care center is open for business or the school is in session. We would respectfully request that the Committee adopt substitute language to take into account the times when school is not in session but the building is in use for student activities or programs.

Somebody dealing drugs at a high school basketball game should certainly be subjected to the enhanced penalties.

S.B. No. 639 (RAISED) An Act Concerning Services Provided by the Department of Mental Health and Addiction Services to Arrested Persons

The Division would recommend that class A and class B felonies and sex offenses be removed from the list of offenses for which the Department of Mental Health and Addiction Services (DMHAS) would have to do a clinical assessment to determine whether the person would benefit from community based mental health services. In those types of cases, courts rarely, if ever, order community based mental health services.

H.B. No. 5877 (RAISED) An Act Concerning Terms of Probation

The Division of Criminal Justice sees an apparent *Apprendi* problem with this legislation as currently drafted. We are willing to work with the Committee and the other parties involved to draft language that would carry out the intent of H.B. No. 5877, which the Division supports, while resolving the issues resulting from the United States Supreme Court decision in *Apprendi* and the decision of the Connecticut Supreme Court in *State v. Bell*.

H.B. No. 5533 (RAISED) An Act Concerning Sexual Assault in the Third Degree

The Division supports this bill. Although the bill may no longer be necessary in light of the recent decision of our Supreme Court in *State v. John F.M.*, 285 Conn. 528 (2008), the bill would clarify the law and represent a clear statement of the General Assembly's intent.