



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 16, 2009

In support of:

- **H.B. No. 6664 An Act Concerning Revisions to Various Statutes Concerning the Criminal Justice System**

The Division of Criminal Justice would respectfully request the Committee's Joint Favorable Report for H.B. No. 6664, An Act Concerning Revisions to Various Statutes Concerning the Criminal Justice System. This bill was requested by the Division in our 2009 Legislative Recommendations to the General Assembly. Some sections of the bill propose substantive changes to the statutes while others are essentially technical in nature.

Sections 1 through 8 would designate all Juvenile Prosecutors and Supervisory Juvenile Prosecutors as Assistant State's Attorneys. From the early days of our judicial system, state prosecutors in Connecticut were appointed by the judiciary. This changed in 1984 when Article 23 of the Connecticut Constitution was adopted creating the Division of Criminal Justice as an independent agency of the executive branch of state government. The constitutional amendment also established the Criminal Justice Commission as the appointing authority for most state prosecutors. Juvenile prosecutors, however, continued to be appointed by the judiciary until 1996 when they were transferred to the Division of Criminal Justice. The appointing authority, however, has remained with the State's Attorney for the judicial district where the prosecutor serves.

H.B. No. 6664 would complete the integration of the juvenile prosecutors (i.e., those employees in the job classification of Juvenile Prosecutor and Supervisory Juvenile Prosecutor) into the Division of Criminal Justice and the executive branch. It would "grandfather" all existing employees into the system by deeming them as appointed by the Criminal Justice Commission as Assistant State's Attorneys. This would provide additional flexibility to the Division of Criminal Justice since Assistant State's Attorneys are now permitted to represent the state on both the regular (adult) dockets and in juvenile matters, while Juvenile Prosecutors can work only on juvenile matters.

There is no difference in the qualifications for prosecutors hired for either the adult system or the juvenile system, and, in fact, the current policy of the Division of Criminal Justice is to have all new prosecutors hired for the juvenile courts to be appointed by the Criminal Justice Commission as Deputy Assistant State's Attorneys (i.e., "adult" court prosecutors). Although the details of this change would be subject to collective bargaining, the Division believes any fiscal impact would be minimal and absorbed within current appropriations. Please also note that the substantive change proposed in H.B. No. 6664 occurs in Section 1; sections 2 – 9 are essentially technical and simply bring conformity to the statutes by eliminating references to juvenile prosecutors. It should also be noted that the Division strongly supports this change regardless of whether there is any delay in the scheduled implementation of the increase in the age of juvenile court jurisdiction. In fact, given the

current fiscal constraints, the added flexibility in assigning personnel that would be afforded by this change is critical.

Section 9 of the bill would expedite the provision of sentencing transcripts utilized by the Board of Pardons and Paroles for the purposes of deciding parole. The bill would place the responsibility for providing these transcripts with the Judicial Branch. Since the production of court transcripts is strictly a function of the Judicial Branch, we see no reason why the Division of Criminal Justice should serve as a "middleman" in the provision of transcripts to the Board of Pardons and Paroles. This added step only increases the possibility of cases "falling through the cracks" when a prosecutor is left to handle what is exclusively a judicial function and a task that can be handled more easily and expeditiously by the court itself. This change would apply only to future sentencing proceedings; the Division of Criminal Justice would process all transcript requests pending prior to the effective date of the act.

Section 10 of the bill makes what is essentially a technical, but critical, revision to the section of Public Act 08-1, January Special Session, creating a state-of-the-art information technology system for the criminal justice system. This section would protect the confidentiality of police reports or witness statements, the improper disclosure of which could (1) compromise and even threaten the safety of witnesses, and/or (2) reveal the identity of confidential informants and/or (3) compromise ongoing investigations. One needs look no further than the tragic deaths of Karen Clarke and Leroy Brown, Jr., in 1999 to see the tragic consequences that can result from the disclosure of legitimately confidential information. It would make *absolutely no change* in the way the system operates right now and *will not change in any way* the obligation that prosecutors presently have under the federal and state Constitutions and state law and rules of practice to provide information to the defense. We cannot overstate the need for stringent controls on access to the information that will be collected, stored and processed through the new IT system now being developed. While it is essential to link all agencies in the criminal justice system electronically, it is equally important that in doing so we maintain the confidentiality of what can be very sensitive information.

Sections 11 and 12 clarify the laws dealing with the crime of failure to appear. This language would make it clear that an individual can be charged with failure to appear at any court hearing held pursuant to Section 53a-32 (Violation of Probation). This specific legislation was generated by a ruling in New Haven where the Court dismissed a charge of Failure to Appear for an individual who appeared for the initial hearing under Section 53a-32 but did not appear for subsequent hearings after the case was continued.

Section 13: Presently under 53a-70 (a) (2), Sexual Assault in the First Degree is defined as sexual intercourse with a person who is under age 13 by an actor who is more than two years older than the victim. Under 53a-70 (b), if the victim is under ten years of age, ten years of the sentence imposed may not be suspended or reduced by the court. In *State v. Kirk R.*, 271 Conn. 499, 515-16 (2004), our Supreme Court held that the legislature intended, in effect, that 53a-70 (b) operate as a separate aggravated offense, where the victim is under ten years of age. Consequently, the court concluded that the victim's age as under ten years is an element of this aggravated offense, which the state is required to prove to the fact finder beyond a reasonable doubt. This holding is not clearly reflected in the statute as it is presently drafted.

The purpose of the proposal is to amend 53a-70 to expressly embody the holding of the court in *State v. Kirk R.* by making it clear that sexual assault of a person under ten years of

age is a separate aggravated crime. This is reflected in new subsection (5). This leaves no doubt that the age of the victim as under ten is a statutory element. The bill preserves the existing crime reflected in subsection (2), by classifying the age of the victim as more than ten years, but less than thirteen years, and the age of the actor as more than two years older.

Section 14 amends subsection (b) Section 53a-70 to allow judges to suspend the mandatory ten-year sentence if the defendant is under the age of 18 or whose mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution. There is precedent for such a change since this bill would create a sentencing scheme similar to that already provided for certain drug violations under Section 21a-278.

Section 15 deals with the testimony of a young child victim of assault, sexual assault or other abuse. This same language was proposed last year in S.B. No. 699, An Act Concerning the Sexual Abuse of Children. This section would give the trial courts the discretion to allow an adult who is a witness in a case involving a child victim of abuse and who under present law would be sequestered from the courtroom to remain in the courtroom to support the child while the child is testifying if the court finds pursuant to Section 54-86g(b) that the adult should be allowed to sit in close proximity to the child while the child testifies.

Section 16 addresses the longstanding problem of "no-show" jurors, those individuals who do not respond to summonses for jury duty. This section would establish a non-criminal procedure through which a civil penalty (fine) would be assessed for failure to respond to a summons for jury duty. Enforcement of this would rest with the Judicial Branch or another appropriate agency, such as the Office of the Attorney General, which represents the State in non-criminal legal matters. Similar civil procedures are already utilized in many other states. The State of Connecticut for some time has lacked an effective mechanism for dealing with those individuals who ignore their civic duty to serve as jurors. Criminal prosecution is not possible because there is no feasible way to prove beyond a reasonable doubt that an individual actually received the summons. A substantial increase in personnel and other investigative resources would be required to even attempt to successfully prosecute these cases. Further, the Division of Criminal Justice believes a civil enforcement procedure is preferable since the process for summoning prospective jurors is in no way a prosecutorial function. It is exclusively a judicial function and as such all aspects should be carried out within the Judicial Branch. Implementation of this change could actually have a positive fiscal impact by establishing a means for collecting some sort of financial penalty for failure to answer a jury duty summons.

Section 17 would make an important revision to the definitions section of our Forgery statutes. We would cite two cases, *State v. Raffa*, and *State v. Robert Kuchta*, where prosecution was barred under the current definition. This section would make it clear that an individual commits a crime when he or she signs a written instrument fraudulently representing that they had authority to sign in the capacity in which they did. The cases in question involved public officials who were charged with "signing off" on official building inspection reports when they did not have authority to do so.

Section 18 of the bill would make Youthful Offender records available to law enforcement and prosecutorial officials conducting criminal investigations. This language is similar to Section 46b-124(d) dealing with the confidentiality of juvenile records and would apply to youthful offender records. It would allow the prosecutors and law enforcement officers to

have access to otherwise confidential youthful offender records when conducting an investigation. The section brings greater conformity to the statutes in the wake of the revisions to the Youthful Offender laws.

In conclusion, the Division of Criminal Justice respectfully requests the Committee's Joint Favorable Report for H.B. No. 6664. The provisions in this bill are the product of many hours of review and deliberation by prosecutors and investigators statewide and would enhance the ability of the Division to fulfill its constitutional mission. We thank the Committee for this opportunity to present this legislation and would be happy to provide any additional information the Committee might desire or to answer any questions you might have.