



STATE OF CONNECTICUT

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Testimony of Michelle Cruz, Esq., State Victim Advocate
Submitted to the Judiciary Committee
Wednesday, March 9, 2011

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised House Bill No. 6475, *An Act Concerning Mandatory Minimum Sentences*
Raised House Bill No. 6491, *An Act Concerning Erasure of Police Records Upon the Expiration of the Applicable Statute of Limitations and Service of Process on Certain Police Officers*

On July 23, 2007, two violent repeat offenders broke into a home in Cheshire, CT, terrorized, beat, sexually assaulted and ultimately killed three of the four family members; collectively, we have come to know this family very well, as Dr. William Petit has become a strong advocate for change. Not long after this horrific tragedy, the General Assembly passed sweeping legislation (Public Act 08-01, An Act Concerning Criminal Justice Reform) to address numerous failures within the criminal justice system as well as significant improvements, including the creation of the home invasion crime and for conviction of home invasion there is a ten year mandatory minimum sentence that cannot be suspended or reduced.

Raised House Bill No. 6475 proposes to eliminate ALL mandatory minimum sentences, regardless of the crime committed. Have our memories already faded from that fatal summer day in July of 2007. The availability of mandatory minimum sentences for certain crimes serves a vital role in our criminal justice process. First, although a defendant may be initially charged with a crime that carries a mandatory minimum sentence, more than ninety-five percent of all criminal cases are resolved through the plea bargain process. The plea bargain process includes an agreement between the state and the defendant to plead guilty to some of the charges, lesser charges or a substitution of the charges in exchange for a more favorable sentence than the defendant would otherwise receive if the defendant were to pursue a trial and be found guilty.

Second, as stated above, plea bargains are based on an agreement between the state and the defendant. The passage of **Raised House Bill No. 6475** will significantly limit the prosecutor's ability to negotiate plea bargains as the logical leverage is the fact that the defendant is exposed to a mandatory minimum sentence. Although Connecticut has an extremely high percentage of criminal cases resolved by plea bargain, the plea bargain process can be instrumental in resolving criminal matters that may otherwise face difficulties if a trial were pursued. This proposal will severely hamper the efforts of the state's attorneys to resolve certain criminal matters, while at the same time, provide defendants complete control within the plea bargain process.

It is obvious that there is a tremendous desire to significantly reduce the prison population in the state of Connecticut merely by the number of legislative proposals such as **Raised House Bill No. 6475**. However, at the very least, to ensure public safety this effort must be done responsibly. Many of the mandatory minimum sentences are for violent crimes; and yet, do we know how many

individuals are incarcerated at this time for a violent crime serving a mandatory minimum sentence? If the answer is no then we are putting the cart before the horse. In an effort to understand the logic of this proposal, I requested information from the Department of Correction regarding the inmate population, specifically the inmates serving a mandatory minimum sentence. As expected, the information is not readily available which leads me to believe that this Committee also does not have this information; information that is critical before deciding whether to support a proposal such as this. However, in researching the history of mandatory minimum sentences, we were right around this exact place when the tragedy in Cheshire occurred. The prison population is down at its lowest. Is there a magical number we are aiming at and just hoping to escape another tragedy? If you research mandatory minimum sentences and prison populations, you too will see that the state is placing all of its eggs in one basket and the end result is a blind sided view. We are spending money and resources to back up our desire to empty the prisons and at what cost? At this time, I strongly urge the Committee to reject Raised House Bill No. 6475.

Regarding Raised House Bill No. 6491, the OVA strongly opposes Section 1 of this proposal. The new subsection (h) requires the erasure of all records pertaining to any criminal investigation of an offense that an individual who is the subject of the investigation has not been charged with the offense within the statute of limitations relating to that offense. This proposal is wrought with flaws. First and foremost, this proposal will endanger the law enforcement community as they respond to incidents and are prevented from obtaining critical information about the history of an individual, residence, vehicle, business, etc. Especially in cases of domestic violence, it is absolutely essential that law enforcement have access to as much information about the individuals and residence they are responding to. Otherwise, law enforcement will be arriving on scene with blind folds on, as in the case of Newington Police Officer MPO Peter Lavery, killed in the line of duty on December 30, 2004 while responding to an incident of domestic violence.

Domestic violence victims often report crimes to law enforcement knowing full well that the abuser will not be arrested. For instance, a domestic violence victim has obtained a restraining order which prohibits the respondent from coming to the victim's home, and the respondent then shows up but leaves after the victim calls police and before the police arrive. Without corroboration of the victim's statement, law enforcement will likely not seek an arrest of the abuser but the information is important as it establishes history and an institutional memory of the abuser's behavior.

Likewise in the investigation of cold cases, though law enforcement may suspect an individual of committing certain crime(s), the law enforcement agency may be unable at the time to make an arrest based on the probable cause standard. If passed, this proposal will limit the investigation of cold cases and leave victims with little hope of ever realizing justice.

Additionally, once a crime has been reported to law enforcement, law enforcement may, if probable cause is found based on speedy information, arrest an individual on scene for the crime or begin the process of conducting a more thorough investigation. If the investigation leads to a finding of probable cause, the law enforcement agency will seek a warrant for the arrest of the individual. Many times, the law enforcement agency will not be in a position to even determine what charges, if any, will be sought unless and until their investigation is complete. Also, an investigation may reveal additional crimes not known at the start of the investigation. Further, the state's attorneys make the final decision regarding criminal charges, not law enforcement.

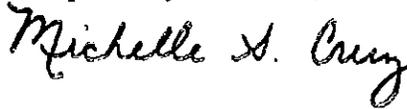
Moreover, it has been reported to the OVA by many law enforcement agencies that arrest warrants are being routinely denied by prosecutors, even when the probable cause standard has been

met. Many prosecutors are not willing to sign arrest warrants, based on probable cause, unless and until the investigation has reached the standard of beyond a reasonable doubt. This practice has significantly impacted law enforcement's investigation process as many law enforcement agencies have unwillingly adopted the standard of beyond a reasonable doubt before being willing to submit an arrest warrant application. Although, in a perfect world, every arrest would be based on the standard of beyond a reasonable doubt; in reality and law, that standard is probable cause.

There are a myriad of legitimate reasons for the delay in some law enforcement investigations, such as forensic testing, accident reconstruction and victim/witness injury. Section 1 of Raised House Bill No. 6491 will further complicate law enforcement's efforts to conduct complete and thorough investigations by establishing unnecessary time constraints. I strongly urge the Committee to reject Section 1 of Raised House Bill No. 6491.

Thank you for consideration of my testimony.

Respectfully submitted,

A handwritten signature in black ink that reads "Michelle A. Cruz". The signature is written in a cursive, flowing style.

Michelle Cruz, Esq.
State Victim Advocate

