



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**Testimony of the Division of Criminal Justice  
Joint Committee on Judiciary**

**March 29, 2012**

**S.B. No. 446: An Act Concerning the Amount of Bond that May Be Set for Misdemeanor and Violation Offenses**

**H.B. No. 5505: An Act Concerning Indecent Exposure to Persons under the Age of Sixteen**

**H.B. No. 5360: An Act Prohibiting Certain Persons from Allowing Minors to Possess Alcoholic Liquor in Dwelling Units and on Private Property**

**H.B. No. 5547: An Act Concerning Release from Arrest Without Further Criminal Complaint**

**H.B. No. 5552: An Act Concerning the Penalties for Failure to Report Child Abuse**

**H.B. No. 5555: An Act Concerning Diversionary Programs**

The Division of Criminal Justice respectfully opposes the above bills for the following reasons:

**S.B. No. 446, An Act Concerning the Amount of Bond that May be Set for Misdemeanor and Violation Offenses:** The Division of Criminal Justice respectfully recommends the Committee take NO ACTION on this bill. The bill would place artificial limitations on the amount of bail for certain classes of crimes with no justification for doing so. Bonds in excess of the limits proposed in the bill are rare. In most misdemeanor cases the bond is usually low if not a promise to appear. The bill is not necessary since the factors that would have to be considered by the court or bail commissioner in setting a higher bail are already those considered in setting bail. This bill could impinge on the judge's discretion to set bond, which in any given case could prevent the court from setting a bond which is both reasonable and necessary. The Division of Criminal Justice is not aware of any instance where an individual was held on bond for a prolonged period on a misdemeanor count only. If there are such cases we would ask that they be brought to our attention so that we may review the circumstances. The language of the bill is also problematic. By requiring the court to make "specific findings of fact," rather than merely stating its reasons on the record, the question arises of whether some type of evidence or

hearing would be required, resulting in the need for additional prosecutors, investigators and court or other staff.

**H.B. No. 5505, An Act Concerning Indecent Exposure to Persons under the Age of Sixteen:** The Division of Criminal Justice questions the need for this bill. The bill proposes to establish a new crime of Indecent Exposure in the First Degree, which would be designated a class D felony. It would appear that the conduct that would be deemed a class D felony under this legislation is already proscribed by section 53-21 (a) (1), Risk of Injury to, or Impairing the Morals of, Children, which is a class C felony. Accordingly, the Division would recommend the Committee take NO ACTION on H.B. No. 5505.

**H.B. No. 5360, An Act Prohibiting Certain Persons from Allowing Minors to Possess Alcoholic Liquor in Dwelling Units and on Private Property:** The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE SUBSTITUTE Report for this bill to revise subsection (a) to incorporate substitute language that we understand is being submitted to the Committee by Representative Frey. As we stated in testimony to the General Law Committee, the present language of subsection (a) would amend the social host law by limiting the liability for underage drinking to a person having possession of, or exercising dominion and control over, any dwelling unit or private property, "while being physically present in such dwelling unit or on such private property." This would seem to absolve a parent from liability or responsibility if he or she leaves the home before the drinking begins. It would seem to say that if the parent leaves and goes on vacation, goes to the grocery store or even goes to visit another person in a different apartment in a multi-unit building, he or she would not be responsible for the underage drinking that occurred in their dwelling, even if they were aware of it, as long as they were not physically present. Further, it would appear to absolve from liability a landlord who rents a unit to one or more students under age 21 or a group or organization that includes persons under 21. If at some point the landlord has knowledge that underage drinking is going on in the unit, as long as he/she is not physically present, the landlord would have little, if any, liability or responsibility for the activity. It is our understanding that the substitute language prepared by Representative Frey would address our objections and accomplish what was originally intended by this bill.

We would further recommend the Committee amend section 2 of the bill to designate the offense as a class A misdemeanor (or other class of misdemeanor as deemed appropriate by the Committee) rather than specifying a specific maximum fine and term of imprisonment as proposed in the bill and as is the current law for a subsequent violation. To assign a specific class of misdemeanor is consistent with the recent efforts to classify crimes when possible as opposed to maintaining unclassified misdemeanor offenses, building upon the work of the Sentencing Commission and the Judiciary Committee through the Committee's approval of H.B. No. 5145, An Act Concerning the Recommendations of the Sentencing Commission Regarding the Classification of Unclassified Misdemeanors.

**H.B. No. 5547, An Act Concerning Release from Arrest Without Further Criminal Complaint:** This bill is another case where it would appear that good intentions can have very bad results. The Division would respectfully recommend the Committee take NO ACTION on this bill. It would appear that the bill is being offered to provide a means for the police to release an individual who should not have been arrested. While that may be the intention, the untold

potential for abuse if such a procedure existed would far outweigh any potential benefit in what we believe would be a miniscule number of incidents. It is not hard to imagine an instance where the police officer could find himself or herself under pressure to "undo" the arrest of a politically or otherwise "connected" individual. The current system providing for review by the prosecutor and/or the courts assures the proper checks and balances.

There are also other problems with this bill. The provision that "no entry or other record shall be made to indicate that the person has been arrested or charged" (lines 38-39) is problematic. First, this may easily be construed as mandating that no paper (or electronic) trail of the matter exist, which could seriously hamper an internal or external investigation into an allegedly improper "catch and release." How can one determine if the decision to release is justified if there is no record? This is precisely the type of event that should be documented in order to be able to police abuses. Second, what happens in a case in which an entry or record *is made* before the "release" determination is made? Per section 1-215, such a record "shall be a public record from the time of such arrest ...." An "oops" determination by the police does not trigger the erasure statute, nor does it necessarily compel destruction per section 1-216 as an uncorroborated allegation. If there is a specific incident that was the basis for this bill, the solution might be better training for the police officers. The Division would be happy to work with the Committee to examine any such incidents and determine a more appropriate course of action.

**H.B. No. 5552, An Act Concerning the Penalties for Failure to Report Child Abuse:** The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE SUBSTITUTION Report for this bill. The Division believes the reclassification of this offense as a class A misdemeanor provides for a more appropriate maximum penalty than the current penalty of a fine only. The Division would recommend that the Committee amend the new section (a) (3) in lines 12-14 to read "intentionally and *unreasonably* interferes with or prevents the making of a report of suspected child abuse or neglect required under section 17a-101a, as amended by this act, or (4)" (*Emphasis added*). This revision seeks to strike a balance between assuring that reports are filed while not causing an overreaction out of fear of penalty for failure to report. The overriding goal, though, must be to encourage reporting since it is the Department of Children and Families (DCF), the police and other appropriate authorities who must ultimately determine if in fact abuse or neglect has or is occurring and how to respond. The Division also would reiterate our longstanding position that any revision to the mandated reporter statutes and related procedures include a strong educational and training component to advise those who are required report of their responsibilities and how to carry them out. One concept worthy of consideration is providing for a greater penalty for those who have had training and still do not report an incident.

**H.B. No. 5553, An Act Concerning Substance Abuse Programs:** The Division of Criminal Justice respectfully opposes Section 1 of the bill. This would reduce from six years to two years the time before a three-time Driving While Intoxicated (DWI) offender could seek a hearing before the Department of Motor Vehicles Commissioner to request reversal or reduction of license revocation. The Division does not believe a two-year revocation is appropriate. This section also raises questions regarding the treatment of a three-time offender who is arrested for driving while intoxicated after the new two-year window is put in place. Would that individual then be deemed "eligible" for reinstatement and as such subject to the lesser penalty provided

for in section 14-215 (a) rather than the more stringent penalties of 14-215 (c) for driving while license is revoked?

**H.B. No. 5555, An Act Concerning Diversionary Programs:** The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE SUBSTITUTE Report for this bill to delete section 3 of the bill. Section 3 would allow an individual charged with Sexual Assault in the Second Degree under section 53a-71(a)(1) to take advantage of Accelerated Pretrial Rehabilitation program. This General Assembly has made the determination that this offense is a class B felony - a serious crime - and it should be regarded as such. To allow Accelerated Pretrial Rehabilitation for this crime would be inappropriate. The Division would note that only egregious conduct would be prosecuted as a class B felony since where appropriate the option remains for substituted lesser charges that would be eligible for Accelerated Rehabilitation.

In conclusion the Division extends its appreciation to the Committee for affording this opportunity for input on these bills. We would be happy to provide any additional information the Committee might request or to answer any questions. Thank you.