



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN SUPPORT OF:

**S.B. NO. 871: AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES  
CONCERNING THE CRIMINAL JUSTICE SYSTEM**

JOINT COMMITTEE ON JUDICIARY  
March 4, 2013

The Division of Criminal Justice respectfully requests the Committee's **JOINT FAVORABLE REPORT** for S.B. No. 871, An Act Concerning Revisions to Various Statutes Concerning the Criminal Justice System. This legislation is among the Division's 2013 Legislative Recommendations. The bill is best explained by its various sections:

SECTION 1 of the bill revises the procedures utilized for *in rem* proceedings governed by Section 54-33g of the General Statutes to bring them in line with the procedures utilized in drug asset forfeiture proceedings. The *in rem* process is a potentially powerful but greatly underutilized tool that allows a civil action to be brought seeking the forfeiture of property used to facilitate crimes other than drug offenses. An example might be a motor vehicle used as the "getaway car" in a bank robbery or a vehicle driven by the repeat drunken driver who injures someone. The shortcomings of the current *in rem* procedure and the limited scope of the law have resulted in this procedure being used in only a very small number of cases. Among those shortcomings is the requirement that an *in rem* case must be brought within ten days of the seizure of the property. This is a very short period within which the police must draft a summons, serve it and advise prosecutors of the action. The court then must schedule a hearing within six to twelve days of service of process. These deadlines and ad hoc scheduling have made it difficult to utilize the *in rem* procedure.

Section 1 revises the 54-33g *in rem* process to mirror the drug asset forfeiture process outlined in Section 54-36h of the General Statutes, which provides for a 90-day filing envelope, allowing notice by certified or registered mail and establishing more appropriate scheduling provisions. Additionally, the bill expands what constitutes nuisance property to include the proceeds of criminal activity. In one notable case the Division was unable to proceed with an *in rem* action against prostitution enterprises involving the seizure of hundreds of thousands of dollars because the law only allows forfeiture of property used as the instrumentality or means of committing the crime and not the proceeds of the criminal activity. Additionally, S.B. No. 871 allows the court in an *in rem* proceeding involving the seizure of money to make a discretionary award to law enforcement, providing an incentive for police departments to invest the time and effort required to prove a proceeds case. There also would be a positive fiscal impact to the state in those cases where proceeds are deposited to the general fund.

SECTION 2 of the bill makes a largely technical, but significant change to Section 54-36p of the General Statutes, which now limits asset seizure based on the sale or exchange of child pornography to cases where the sale or exchange takes place "for pecuniary gain." The experience of the Connecticut Computer Crimes Task Force confirms that the majority of child pornography cases involve private collectors as opposed to commercial enterprises operating "for pecuniary gain," as was also recognized by the United States Supreme Court in *United States v. Williams*, 553 U.S. 285, 128 S.Ct. 1830 (2008). We would further note that the inclusion of the wording "for pecuniary gain" appears to have been inadvertent and the result of an oversight in the drafting of Section 54-36p (Public Act No. 10-112, An Act Concerning the Forfeiture of Money and Property Related to Child Sexual Exploitation and Human Trafficking, the Possession of Child Pornography and the Siting of Residential Sexual Offender Treatment Facilities).

SECTIONS 3 THROUGH 5 of the bill strengthen the laws dealing with the crime of voyeurism, and, in particular, what at one time would have been referred to as a "peeping tom." The bill provides stronger, more appropriate penalties for repeat offenders and for incidents where the victim is under age sixteen. Additionally, the bill revises the statute of limitations in voyeurism cases to allow for prosecution for incidents where the photographing, filming, video or other recording is not discovered until more than five years after the actual act occurred. The Division is aware of specific incidents where victims did not learn that they had been recorded until the five year statute of limitations had expired. The bill still requires prosecution within five years of the discovery that the incident had occurred. The Division would call the Committee's attention to the wording of section 5, which would appear to extend possible sexual offender notification to all incidents of voyeurism. It would appear to be more appropriate to exclude subdivision (1) of subsection (a) of Section 53a-189a from the act since it involves recording "with malice" but not recording "with intent to arouse or satisfy the sexual desire" of the person making the recording. The sexual offender registration requirements should still apply to subdivision (2) of subsection (a) as well as to the new subdivision (3) of subsection (a) in S.B. No. 871.

SECTION 6 of the bill repeals the requirement that a party in a criminal proceeding give at least 21 days' notice of the intent to introduce DNA evidence in that proceeding. This is a matter that should be handled by the Judicial Branch under its rule making authority rather than by statute, and it is. The rules set forth in the Practice Book establish detailed requirements for both the state and defense for the giving of notice, the timing and content of the notice and permit sanctions, including the exclusion of evidence, if the rules are not complied with. Section 54-86k has its origins in Public Act 94-246, which was enacted nearly twenty years ago at a time when DNA evidence was relatively new and considered almost revolutionary. That time has long since passed. The special statutory notice requirement for DNA evidence in Section 54-86k is no longer necessary.

SECTION 7 of S.B. No. 871 extends the authority to set bail in the course of serving a warrant for Violation of Probation to the probation officer(s) serving the warrant. It is probation officers, who are employed by the Judicial Branch, who prepare these warrants and who in many cases are responsible for their execution. However, due to a narrow interpretation of Section 54-63c of the General Statutes there are situations where probation officers are not being allowed to either put a bond on a warrant or allowing release on a promise to appear in instances where the judge who signed the Violation of Probation warrant leaves the bond/release issue to law enforcement. Almost every court has a probation officer who serves as the warrant officer and serves Violation of Probation warrants on individuals who are either brought to court for that specific purpose or who are

in court for another reason. Probation officers should have the authority to set bail on Violation of Probation warrants, as police officers already do.

SECTION 8 of S.B. No. 871 conforms Section 53a-182b (Harassment in the First Degree) to changes made to Section 53a-183 (Harassment in the Second Degree) pursuant to section 13 of Public Act 12-114, An Act Concerning Domestic Violence. The bill (1) replaces an obsolete and limiting reference to a "telephone call" with the more generic "communication" and also states that prosecution can be initiated based upon where the communication originated or where it was received. These changes are necessary with regard to Harassment in the First Degree for the same reasons for which they were made last year with regard to Harassment in the Second Degree. The new language reflects the ongoing development of technology, which unfortunately has provided additional means of harassment beyond the telephone (e-mail, for one example). It also recognizes the complications that can arise in prosecution of these cases given the nature of the modern telecommunications system where state and even national boundaries are meaningless in terms of where the actual data that constitutes the communication may have originated.

In conclusion, the Division of Criminal Justice requests and recommends the Committee's JOINT FAVORABLE REPORT for S.B. No. 871. The Division wishes to express its appreciation to the Committee for its consideration of this legislation and for the opportunity to present this testimony. We would be happy to provide any additional information the Committee might require or to answer any questions you might have. Thank you.

