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Testimony of Michael Alevy, Senior Assistant Public Defender
Office of Chief Public Defender
Judiciary Committee Public Hearing – March 24, 2014

***Raised Bill No.5586, An Act Concerning Revisions to Various Statutes
Concerning the Criminal Justice System***

The Office of Chief Public Defender (OCPD) supports sections 14 and 15 ***Raised Bill No.5586, An Act Concerning Revisions to Various Statutes Concerning the Criminal Justice System*** but has concerns with respect to sections 3,4, and 5.

The Office of Chief Public Defender supports passage of sections 14 and 15 of this bill. Both of the proposed changes are the product of the work of a subcommittee of the Connecticut Sentencing Commission tasked with examining statutory classification issues. As a member of Commission and the subcommittee this office worked collaboratively to achieve consensus with respect to these changes. We ask this committee to act favorably as to sections 14 and 15.

Section 14 of the bill increases the penalty for violation of *C.G.S. §53a-127(b), Fraudulent use of an automated teller machine* from a class C misdemeanor to a class A misdemeanor. **Section 15** increases the monetary thresholds use to determine the degree of penalty associated with the differing degrees of violation of *C.G.S. §53a-128, Issuing a bad check*.

Section 3 of the bill expands the conduct that constitutes the crime of *Voyeurism*, in violation of *C.G.S. §53a-189a*. The bill creates two new forms of felony voyeurism. Language amending subdivision (3) of subsection (a) creates what has been referred to as a “Peeping Tom” provision, where simple trespass and voyeuristic conduct committed for a sexual purpose constitute the elements of a new offense.

Subdivision (4) of subsection (a) creates the second new offense of particular concern to this Office. Beginning at line 152, the bill creates a new offense when;

“with intent to arouse or satisfy the sexual desire of such person or any other person, such person knowingly photographs, films, videotapes or otherwise records the genitals, pubic area or buttocks of another person or the undergarments or stockings used to clothe the genitals, buttocks or pubic area of another person.”

It is clear that the new language is intended to criminalize conduct known as “upskirting”.¹ The issues regarding this type of activity have been the subject of significant media coverage, particularly in light of the recent Massachusetts Supreme Court decision *Commonwealth vs. Robertson*, 467 Mass. 371 (2014), which was released on March 5th of this year.

Despite the apparent intent of this bill, the Office of Chief Public Defender is concerned that, as drafted, the current proposed language is overbroad and would criminalize conduct in a manner not intended by proponents. For example, there is no exception to criminal liability in the case of consensual conduct between parties. Moreover, it is unclear why photographing and video recording that occurs in a public place and in plain view, where a member of the public does not have a reasonable expectation of privacy, might lead to a prosecution for a violation of the voyeurism statute.

As a result, the Office of Chief Public Defender urges this Committee to take no action on this bill until the language of subdivision (4) can be more narrowly tailored to achieve the purpose for which the bill is intended.

Section 4 of the bill would impose increased periods of probation supervision for violations of any voyeurism offense committed for a sexual purpose. Currently, voyeurism is a class D felony regardless of the intent possessed by the actor. If convicted, a defendant may be placed on a period of probation for up to five years. The proposed bill would require that a defendant convicted of voyeurism with a sexual intent, if placed on probation, be supervised for a period of ten to thirty-five years. Such an expansion of the period of probation supervision in cases of voyeurism is unwarranted.

Currently, only the most serious cases of felony sexual assault and child pornography are subject to such lengthy periods of supervision. This Office believes that there is a meaningful distinction to be made between crimes of violent sexual assault and child pornography and those in which there may be no contact between the perpetrator and the victim as in the case of voyeurism. It is unknown whether data exists that demonstrates that longer periods of supervision of persons who have engaged in voyeuristic (non-contact) behavior are useful or necessary in protecting victims or enhancing public safety. If the committee is inclined to permit expanded probationary periods for these offenses this Office would respectfully request that the minimum ten year limit be removed and that courts be allowed the discretion to impose an appropriate period of supervision based on the facts of the case.

Section 5 makes the new voyeuristic crimes created in subdivisions (3) and (4) “nonviolent sexual offenses” pursuant to *C.G.S. §54-250* and would require a person so convicted to register on Connecticut’s Sex Offender Registry. The Office of Chief Public Defender remains opposed to categorizing these non-contact offenses as crimes that require sex offender registration. Registries tend to treat all sex offenders the same way, without reference to

¹ Upskirting is the practice of secretly photographing underneath a woman’s dress or skirt. See Horstmann, Protecting Traditional Privacy Rights in a Brave New Digital World: The Threat Posed by Cellular Phone-Cameras and What States Should Do to Stop It, [111 Penn. St. L. Rev. 739, 739 n.1 \(2007\)](#) (“Upskirting’ generally refers to the practice of taking unwanted pictures up a woman’s skirt or dress”); Zeronda, Street Shootings: Covert Photography and Public Policy, [63 Vand. L. Rev. 1131, 1132-1133 \(2010\)](#) (“upskirt photography involves taking pictures of women up their skirts. *Commonwealth vs. Robertson*, 467 Mass. 371 (2014).”)

the severity of their offenses or a realistic current assessment of the risk offender poses to the public. As noted in OPM's 2012 report, *Redivism Among Sex Offenders in Connecticut*, "individuals who have committed sex offenses do not constitute a single, homogenous population. Together they exhibit a wide range of criminal behaviors that may or may not include violence or contact with other persons. As a consequence, the risk, or likelihood, of committing new sex crimes is not consistent across all sex offender types." This Office believes that the failure to distinguish, within the sex offender registry process, the severity of offenses and the potential risk offenders present to the community undermines the possible public benefit of the registry.

Thank you for your consideration.