



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

IN SUPPORT OF:

**H.B. NO. 5586: AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES  
CONCERNING THE CRIMINAL JUSTICE SYSTEM**

JOINT COMMITTEE ON JUDICIARY  
March 24, 2014

The Division of Criminal Justice respectfully requests and recommends the Committee's JOINT FAVORABLE SUBSTITUTE REPORT for H.B. No. 5586, An Act Concerning Revisions to Various Statutes Concerning the Criminal Justice System. The basis of this bill is legislation offered as part of the Division of Criminal Justice 2014 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 an important 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 conduct additional investigation and 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. The present voyeurism statute prohibits only the photographing or video recording of another person. It does not prohibit merely watching, such as a "peeping tom" might do. This bill would expand the crime of voyeurism by covering such conduct as intentionally observing private conduct while trespassing (i.e. going into someone's backyard to watch someone in his or her bathroom or bedroom). Additionally, and this is an addition from the language proposed in past versions of this legislation, the bill addresses what the media has referred to as "upskirting." The inadequacy of our current statutes was identified following a recent ruling by the Massachusetts Supreme Judicial Court that found "upskirting" was not prohibited by that state's laws. The Massachusetts legislature has passed corrective legislation, and H.B. No. 5586 proposes the same course of action for Connecticut.

In addition to addressing the "peeping tom" and "upskirting" issues, Sections 3 through 5 provide stronger, more appropriate penalties for repeat voyeurism offenders and for incidents of voyeurism 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.

SECTION 6 of H.B. No. 5586 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 7 of H.B. No. 5586 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.

SECTIONS 8 THROUGH 13 of H.B. No. 5586 deal with the timing of blood alcohol tests in cases of suspected drunken driving and boating under the influence of alcohol and drugs. In Public Act 10-124, the General Assembly provided for an exception to the two-hour time limit for blood alcohol tests in intoxicated boating cases, but only when expert testimony is provided to establish that the test was a reliable determinant of the blood alcohol content at the time of operation.

As proposed by the Division of Criminal Justice, H.B. No. 5586 would extend the same exception to driving while intoxicated, i.e., results of tests conducted after more than two hours would be admissible but only if expert testimony was provided. This change is necessary to provide for the effective prosecution of DUI cases and the adjudication of administrative per se cases in the small number of instances where testing cannot be completed within two hours of vehicle operation. The reason that this may occur is simple: emergency personnel are focused on saving lives, not collecting evidence. In attending to the seriously injured, the emphasis must first be on emergency medical care and protecting public safety, which may prevent personnel from conducting blood alcohol testing. Again, tests conducted beyond the two-hour period would only be admissible when expert testimony was provided to establish the reliability of that test. This bill recognizes the need for emergency personnel to focus first on protecting the public health and safety while allowing for the effective prosecution and administrative disposition of DUI violations while providing adequate safeguards for the rights of the accused.

The Division would respectfully request the Committee's JOINT FAVORABLE SUBSTITUTE REPORT for H.B. No. 5586 to eliminate the proposed change to the wording adopted through Public Act 10-124 regarding boating while intoxicated and to apply the current wording of 15-140r to the DUI statutes, appropriately adjusted to reflect the operation of a motor vehicle as opposed to a boat or other vessel. Specifically, we would ask for the deletion of Section 7 in its entirety and that the language now slated to be deleted on lines 482 to 484 of section 7 replace the proposed new DUI language on lines 357 to 361, again adjusting to reflect the operation of a motor vehicle as opposed to a vessel.

The Division objects to the change proposed for the boating while intoxicated statute (and applying the same concept to driving while intoxicated) because the proposed language is both legally unclear and logically imprecise. First, the term "accurately indicate" has no established legal meaning, leaving courts without guidance as to the standard to be imposed. By contrast, the existing provision of 15-140r, which provides that the evidence is admissible if "expert testimony establishes the reliability of [the] test," establishes a familiar and workable standard.

Second, the test never establishes the "blood alcohol content at the time of the alleged offense," as the proposed language would require. The test establishes only the blood alcohol content at the time of the test. The issue really is one of relevancy, an issue which the courts are used to dealing with under the traditional rules of evidence. Expert testimony is needed to extrapolate the test results back to the time of operation to establish impairment. The existing provision in 15-140r, which specifically adopts this familiar legal standard, provides clear guidance to the court and the litigants.

SECTION 14 of H.B. No. 5586 would amend Section 53a-127b of the General Statutes to classify the fraudulent use of an automated teller machine as a class A misdemeanor, as opposed to its current status as a class C misdemeanor. This section is a recommendation from the Connecticut Sentencing Commission. The Division of Criminal Justice fully concurs in the Sentencing Commission's position that the change to a class A misdemeanor provides a more appropriate penalty for the conduct involved.

SECTION 15 of H.B. No. 5586 would revise the statutes governing the issuance of a bad check to correspond to revisions already made to the larceny statutes. This section also is a recommendation of the Connecticut Sentencing Commission. Public Act 09-138 increased the thresholds for the various degrees of larceny. There was no change made at that time, however, to the thresholds and corresponding penalties for issuance of a bad check, which is essentially a form of larceny. At present, for example, a person can commit Larceny in the Fourth Degree by the dollar amount, which is a class A misdemeanor, but if the same person commits the same crime by check and the state proceeds on the bad check count it is a class D felony. Historically this has always tracked the other degree of offense. Section 15 of this bill would raise the thresholds and corresponding classifications and penalties much in the same fashion that P.A. 09-138 did for the larceny statutes.

In conclusion, the Division would respectfully recommend and request the Committee's JOINT FAVORABLE REPORT SUBSTITUTE REPORT for H.B. No. 5586. We would be happy to provide any additional information or to answer any questions you might have.