



**State of Connecticut**  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

**S.B. NO. 952 AN ACT CONCERNING A SECOND CHANCE SOCIETY**

JOINT COMMITTEE ON JUDICIARY  
February 11, 2015

S.B. No. 952, An Act Concerning a Second Chance Society, would deem the possession of any quantity of any narcotic or controlled substance a misdemeanor offense, effectively deem that every convicted criminal is presumptively entitled to a pardon and establish insufficient standards for the parole board to apply in determining who is suitable to be released. This legislation makes these dramatic changes to the criminal justice system without any thorough analysis that would justify them and factually support the wrongful assumption that the system is now sending large numbers of people to jail who should not be there.

The Division of Criminal Justice strongly supports and fully endorses the need to provide treatment, training, employment and other assistance to those who are re-entering society from the correctional system. There is no question that failure to do so contributes to recidivism. As such, the Division would submit that the “second chance society” should focus on rehabilitation and re-entry rather than to simply deem that what has long been recognized as unacceptable and dangerous conduct to no longer constitute criminal conduct or a threat to public safety. While one component of such an approach may include revision to the pardons and parole system, it should not be essentially the wholesale abolition of a system that has long existed to protect the public safety while offering the “second chance.”

By its very title, S.B. No. 952, An Act Concerning a Second Chance Society, is a misnomer for it implies that the criminal justice system currently does not offer a “second chance.” For the vast majority of offenders, this is simply not the case. Most are offered not only a second chance, but multiple opportunities to avoid a criminal record. The Division would contend that careful analysis of the prison population – going beyond merely reading the “controlling offense” on which a particular inmate is held – would refute the oft-stated claim that we are locking up first-time offenders for non-violent drug offenses.

The reality is that persons who commit criminal acts, including possession of illicit drugs, are given multiple opportunities, some as the result of diversionary programs created by this very legislature and some as a result of the careful consideration of the prosecutor, to avoid criminal convictions.

Prosecutors routinely give persons who have committed non-violent crimes the opportunity to avoid a criminal conviction by performing community service, attending counseling, complying with other conditions for a period of time. If the person does what the prosecutor asks the person to do the prosecutor will enter what is called a *nolle prosequi* – a decision not to prosecute that with rare exceptions leads to dismissal of a case. Sometimes a prosecutor will even enter a *nolle* without requiring the person to do anything simply because the prosecutor feels the criminal act did not warrant the individual getting a criminal record.

Even if a case does proceed, most offenders are eligible for a host of diversionary programs which, if successfully completed by the offender, will result in the dismissal of the criminal charges. Many of those programs can be used more than once; for instance, the pretrial drug education and community service program can be used three times by an individual to avoid a conviction for a possessory drug offense. Similarly, legislation was enacted recently allowing some offenders to participate not once, but twice, in Accelerated Pretrial Rehabilitation – despite the fact that one of the longstanding criteria for qualifying for A/R was a finding that the offender is not likely to offend again. These programs provide individuals charged with crimes a dozen or so opportunities to avoid convictions.

Instead of changing the classification of crimes or making it easier to nullify convictions once they are obtained, the Division would again respectfully recommend that the General Assembly undertake a comprehensive and thorough study of the existing “second chance” programs to see if they are producing the intended results. Among the questions the General Assembly might want to ask are:

- (1) How many people are using these programs?
- (2) How many people are using the same program more than once?
- (3) How many people are using multiple programs?
- (4) How many people fail to complete a program?
- (5) Why do people fail to complete a program?
- (6) How many people using each program are subsequently arrested and convicted of other crimes?
- (7) If people are subsequently arrested and convicted of other crimes, of what type of crimes are they convicted?
- (8) What is the cost and benefit of these programs? In addition, if it is concluded that the programs are not being successful an evaluation should be undertaken to see why that is.

The Division further would dispute the often-stated contention that those convicted of non-violent drug offenses constitute a large percentage of the prison population. Our experience shows that it is common for persons charged with purely possessory offenses to receive multiple suspended sentences with the condition that the person receive drug treatment and/or a fine before incarceration is imposed. In determining the number of people who are incarcerated for drug possession only one cannot look solely at the controlling offense listed on the Department of Correction records. The controlling offense is often the result of a plea bargain whereby the state elects to forego a more serious offense in return for the individual’s plea to a possessory offense. With drug related offenses, for example, the state will sometimes allow an individual to plead to a possessory offense even though the individual was engaged in the sale of narcotics

or clearly possessed the narcotics with the intent to sell. In fact, the state may forego any number of charges in return for a guilty plea to a possessory offense. When the state engages in this kind of plea bargaining the defendant gets the benefit of having a conviction that carries less of a stigma than other crimes for which he might have been convicted. The state saves the expense and delays resulting from proceeding to trial.

Given these realities, the Division would respectfully recommend the Committee proceed with extreme caution with regard to those sections of S.B. No. 952 that would eviscerate the drug possession statutes and reclassify a host of serious crimes as misdemeanors. The legislation is not only ill-advised, it is also poorly written. The provision that “any quantity” of any narcotic, controlled or hallucinogenic substance other than marijuana, or possession of one-half ounce or more of a cannabis substance, is a class A misdemeanor could be read to mean that a conviction of possession with intent to sell could not be based solely on the quantity of the drugs involved. Thus, unless there was some other evidence proving intent to sell, a person who possessed a kilogram of cocaine might only be convicted of a misdemeanor offense.

The Division opposes and urges the rejection of those sections of the bill that would give the Board of Pardons and Parole the right to grant pardons to persons convicted of all nonviolent crimes without a hearing if the victim does not object.

The current law is intended to offer a person the opportunity to obtain a pardon without a hearing only in situations where it is relatively noncontroversial, i.e. when the person was convicted of a misdemeanor that has since been decriminalized or a crime for which he would have been eligible for and likely would have received a diversionary program had the diversionary program been in effect at the time of the conviction, or the person was convicted of a misdemeanor while under the age of 21 or a possessory drug offense but has demonstrated good behavior over a period of years. This proposal would expand the right to obtain a pardon without a hearing to a substantial number of crimes that, while not violent per se, are extremely serious in nature and which arguably could in fact be considered violent by the victim or others. Among the crimes for which a person could get a pardon without a hearing are Employing a Minor in and Obscene Performance, Promoting a Minor in an Obscene Performance, Importing Child Pornography, Voyeurism, Risk of Injury, Intimidation Based on Bias or Bigotry in the Second Degree, Stalking, Possession of a Dangerous Weapon in a Correctional Institution, Escape from Custody, Perjury, Bribing a Juror, Tampering with a Juror, Tampering with Evidence, Bribery of a Public Servant, Bribe Receiving by a Public Servant, Forgery, Larcenies of millions of dollars, some forms of Burglary, and others. These crimes are too serious to warrant a pardon without even a hearing.

Another major problem with the bill is that it fails to provide for an opportunity for the State’s Attorney in whose jurisdiction the crimes were committed to have input in the pardon decision; in fact, the bill does not even require that notice be provided to the State’s Attorney. This is ill-advised in that it opens the door for the Board of Pardons and Parole to grant pardons without any consideration at all of the facts underlying a particular conviction. Because the state might be in possession of information that is not otherwise known to the Board of Pardons and parole giving the state the opportunity to be heard is necessary to ensure that mistakes are not made. We would point to the recent decision (since reconsidered) to grant parole to Gary Gerald

Castonguay (DOC Inmate #38371), who was convicted of Capital Felony for the execution-style slaying of Plainville Police Officer Robert Holcomb. Our review of the parole proceedings indicates that certain information provided to the board by the inmate clearly contradicts the factual record in the case.

There will undoubtedly also be instances where the victim is notified chooses not to appear before the board, perhaps because he or she does not want to “relive” the crime or simply no longer has interest. Will any case in which a victim does not request to be notified or does not respond to a notice be considered victimless and thus not require a hearing? Requiring the State’s Attorney to be notified of all pardon and parole applications and guaranteed the opportunity to be heard would help to assure that the board has all relevant information concerning the underlying conviction. Even when the victim does attend, there will be instances where the State’s Attorney has access to relevant information not available to or otherwise known by the victim. The State’s Attorney is in the unique position to relate the facts of the case as determined in the court proceedings that produced the conviction.

The Division also would note that there is no limitation on the number of crimes for which a person can receive a pardon. For example, the Division is aware that even under our current system one individual received pardons for twenty-two separate nonviolent crimes, including several felonies, a second received pardons on sixteen different crimes, including four felonies, and a third received pardons on multiple DUI convictions. The fact that these individuals would be eligible to obtain pardons without even a hearing, and without input from the Division of Criminal Justice, should be a concern to the citizens of the state.

At a very minimum, S.B. No. 952 should be amended to define specifically those crimes for which a pardon can even be considered without a hearing and then only after the State’s Attorney has been notified of the application and afforded an opportunity to be heard, either at the hearing where one is required or through written submission in the case of a truly non-violent, victimless crime where no hearing would be required.

The Division is also concerned with the standard to be used by the parole board in determining whether an eligible offender is suitable to be released. The existing law, which would be continued under this bill, contains a two-part standard providing that an offender may be released if “... it appears ... that there is a reasonable probability that such inmate will live and remain at liberty without violating the law ...” and “... that such release is not incompatible with the welfare of society.” General Statutes Section 54-300c, enacted by this Legislature in 2010, describes the sentencing policy of the State of Connecticut: “(1) The primary purpose of sentencing in the state is to enhance public safety while holding the offender accountable to the community, (2) sentencing should reflect the seriousness of the offense and be proportional to the harm to victims and the community, using the most appropriate sanctions available, including incarceration, community punishment and supervision, (3) sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment and the provision of meaningful and effective rehabilitation and reintegration of the offender, and (4) sentences should be fair, just and equitable while promoting respect for the law.” The two-pronged standard in S.B. No. 952 is too narrow to require the parole board to properly balance these principles.

In conclusion, the Division of Criminal Justice respectfully recommends the Committee proceed with extreme caution and not pass S.B. No. 952 in its present form. We would like to thank the Committee for affording this opportunity to provide input on this important matter and we would be happy to provide any additional information the Committee might require or to answer any questions you might have.