State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN OPPOSITION TO:

S.B. NO. 18 AN ACT CONCERNING A SECOND CHANCE SOCIETY

H.B. No. 5642 (RAISED) AN ACT CONCERNING THE RECOMMENDATIONS OF THE JUVENILE JUSTICE POLICY OVERSIGHT COMMITTEE

JOINT COMMITTEE ON JUDICIARY
March 23, 2016

The Division of Criminal Justice fully recognizes and respects the intent of S.B. No. 18, An Act Concerning a Second Chance Society, but cannot support the legislation as it is now written. Simply put, the bill jeopardizes public safety by allowing individuals who are otherwise treated as adults for most purposes to avoid meaningful consequences holding them accountable to the community for serious and violent criminal offenses. If this bill passes, very serious crimes will be treated as juvenile offenses and remain in the juvenile court – including:

- Manslaughter in the First Degree;
- Robbery in the First Degree where the victim is seriously injured or the perpetrator threatens the use of a dangerous instrument;
- Burglary in the First Degree where the perpetrator inflicts or attempts to inflict bodily injury on another;
- Kidnapping in the Second Degree;
- Sexual Assault in the Second Degree;
- Importing Child Pornography in the First Degree.

While allowing a younger adult who makes a serious mistake from incurring consequences of that mistake for the rest of his or her life may be a laudatory goal, S.B. No. 18 pursues that goal at much too great a risk to public safety and with little regard for the equally serious and lasting consequences suffered by the innocent victims of these crimes. Individuals who are legally deemed adults with the right to vote, own property, enter into binding contracts and make other major life decisions that carry with them major consequences to themselves and others will escape any meaningful consequences for committing very serious crimes. The same person who can escape accountability of very serious crimes at age 18 is considered a peer of other adults and, thus, is eligible to sit as a juror, charged with the responsibility of determining whether another person is guilty of a crime.

In an attempt to determine the impact this bill would have on public safety the Division examined the current Department of Correction population of inmates ages 18 to 20:

- More than 350 of these inmates, the majority of whom would be treated as juveniles under this bill, are currently serving sentences for the crime of Robbery in the First Degree committed after the person turned 18 but before the person turned 20.[1] Keep in mind, Robbery in the First Degree is a crime that can result in serious physical injury to another person.
- 170 are sentenced for other Robbery convictions;
- 310 are incarcerated for assaults;
- More than 200 are sentenced for burglary. (Note: Joshua Komisarjevsky was 19 when he committed a burglary in Bristol.);
- 76 are incarcerated for sexual assault;
- 42 are sentenced for manslaughter; and
- More than 200 individuals are sentenced for firearms/weapons offenses.

Other than some of the individuals convicted of Robbery in the First Degree as noted above, none of these individuals – all convicted of serious and often violent crimes – would be treated as an adult if this legislation were to pass.

The "one size fits all" approach proposed in this legislation extends provisions that now apply to individuals under age 18 to adults up to age 20 for whom those provisions may not be at all appropriate. These are very different populations. Much of the accountability that exists for those subject to the juvenile justice system stems from the fact that the juvenile is legally not an adult and is thus to some extent under the control of some person (parent or guardian) or entity (school system). This does not automatically apply once the individual turns 18 since the parent no longer has legal authority and, in all likelihood, the individual is no longer accountable to the school system.

Not every case handled in the juvenile court involves a misguided child who simply needs "redirection" that can be accomplished by a lecture, community service or a letter of apology. Many of the cases involve individuals who have no interest in school or in training for a job and from whom the public needs to be protected while the system attempts to address the causes of their criminal misconduct. This will undoubtedly be more common among the proposed, older "young adult" population of 18-, 19- and 20-year-olds.

Even many of the most serious cases – crimes such as those referenced above – will remain in the juvenile court because the bill does nothing to change the current system that already makes it virtually impossible to transfer some of the most serious crimes to the adult docket. Existing law requires the court to find that such a transfer is in the "best interests" of the "child," regardless of any threat to the public safety or whether the adult system is the more appropriate place to dispose of those cases. Domestic violence cases raise particular concerns in this regard. The adult court system, with specially trained staff and crisis intervention programs, is better

[1] Public Act 15-183 provides for the automatic transfer to the adult docket for the charge of Robbery in the First Degree only in incidents where the subject "is armed with a deadly weapon," i.e., Section 53a-134 (a) (2).

equipped to deal with domestic violence cases, but most of those cases would be classified as juvenile offenses as S.B. No. 18 is now drafted.

Since these serious cases would remain in the juvenile court for 18- to 20-year-olds, the bill also would effectively eliminate meaningful sanctions for these offenders. First, the maximum "sentence" that can be imposed in juvenile court is a commitment to DCF not to exceed four years for even the most serious offenses, and DCF jurisdiction ends at age 20. This is not only the limit established in Section 46b-141 statute, but it is also in Section 46b-140 and in the DCF statute, Section 17a-8, applicable to the commitment of a "child" or "youth." Given the stated intention to close the Connecticut Juvenile Training School (CJTS), this leaves no secure facility to which violent 18-, 19- and 20-year-old offenders could be committed. Further, because the court's authority to commit an individual to DCF ends when that individual attains the age of 20, the question immediately becomes what happens to someone committed for the maximum period at age 18, 19 or 20. In addition, since commitment is not an option after age 19, the court effectively lacks any meaningful sanction for an 18- or 19-year-old who violates the terms of probation.

Another obvious problem is the unquestioned fiscal impact that this legislation would have on all components of the criminal justice system. Unlike the earlier "raise the age" program, which moved most cases involving 16- and 17-year-olds into the juvenile courts, the incidence of crime, and especially serious and more violent crimes, is higher among 18-, 19- and 20-year-olds. Programs would have to be developed and staffed to serve this unique population. For the reasons noted above, current programs would be inappropriate. Absent any major infusion of new resources, DCF is not at all equipped to deal with the 20-year-old who is committed.

In the short term, affording Youthful Offender (Y/O) status to these "young adults" effective as of October 1, 2016, will create severe logistical problems for the courts and other agencies. Hearings on all matters involving arrestees who qualify for Y/O status must be held individually, in a closed courtroom. Adding hundreds of case to the Y/O docket will be incredibly time consuming and severely impair the court system's ability to process criminal cases efficiently.

Whether juvenile or "young adult," the questions left unanswered by this legislation arise long before the case gets to court. The existing inconsistency in what is classified as a juvenile offense as opposed to an adult offense will continue to create difficulties for the police when they are attempting to enforce the law. For instance, what do the police do with a person who commits both adult and juvenile offenses? For example, possession of marijuana is a juvenile offense but possession of alcohol or tobacco is an adult offense; what if the individual has both?

Given the state's current fiscal situation, the potential fiscal impact of this legislation is reason alone to take pause and not simply pass a bill now and leave the details to be decided by others later on. At the very least, should the committee decide to move forward with this legislation, the Division of Criminal Justice would respectfully recommend that it be amended (1) to provide for a meaningful discretionary transfer statute for serious crimes, and (2) to provide for appropriate sanctions for those who are deemed adults responsible for making their own decisions in so many other important aspects of their lives. These and other important *policy* decisions must be made by the legislature and not simply passed on to the Juvenile Justice Policy

Oversight Committee (JJPOC) as envisioned in S.B. No. 18. The Division would respectfully note that the discretionary transfer statute was essentially rendered useless through a recommendation that originated with the JJPOC. The monumental *policy* changes proposed in S.B. No. 18 are not matters of mere "oversight" that should be delegated to the JJPOC. For this reason, and the past experience, the Division also must oppose H.B. No. 5642, An Act Concerning the Recommendations of the Juvenile Justice Policy Oversight Committee.

Like S.B. No. 18, H.B. No. 5642 proposes policy decisions that properly rest with the legislature, most significant among them being the provisions to effectively strip the juvenile justice system of the ability to hold a juvenile in detention. The bill eliminates three of the six grounds on which the police can request a judge to hold an individual in detention or a judge can continue detention once an initial order is granted. Specifically, the juvenile justice system would no longer have the authority to detain a juvenile or "young adult" if:

- there is a strong probability that the individual will run away prior to the court hearing or disposition; or
- there is a strong probability that the individual will commit or attempt to commit other offenses injurious to himself or herself or to a specific individual (not the entire "community") prior to the court disposition; or
- the individual violated one or more of the conditions of a suspended detention order, other than by the commission of a new crime. This would be a person arrested for a crime, placed in detention and then released by the judge with conditions such as curfew, attend school, remain alcohol and drug free, not associate with gang members, etc., and the person violates those conditions without committed a new criminal offense.

Further adding to the confusion with regard to detention, neither H.B. No. 5642 nor S.B. No. 18 specifically address where a "young adult" would be detained. S.B. No. 18 deletes references to "juvenile detention center" for the placement of "young adults." The bill would authorize "young adults" to be "detained" by the police upon arrest and by the court after a hearing, but apparently they would be "detained" somewhere other than a "juvenile detention center." Where that would be is not specified. This again raises serious concerns given the greater incidence of serious and violent crimes by these older offenders and the obvious resulting need for detention to protect both the individual and public safety.

With regard to the second component of S.B. No. 18, that being the question of bail for individuals arrested for misdemeanor crimes, the Division would respectfully recommend NO ACTION. This bill is, at the very least, premature. It seeks to address the same issues that were the subject of a request from the Governor to the Connecticut Sentencing Commission for a detailed study and analysis of the bail system and other conditions of release for individuals arrested for misdemeanor crimes. The Sentencing Commission is only in the initial phase of its consideration of the Governor's request. It should be allowed the time it needs to undertake a thorough collection and analysis of individual cases and why bail in each of those cases was set as it was. This bill seeks to make sweeping changes without having the data requested from the Sentencing Commission to justify any changes.

Again, a look at statistics from the Department of Correction may provide some insight. When the Division recently inquired, DOC reported 683 people being held on bonds under $25,000. Of that, 38 were being held for violations of special parole or civil commitments (failure to pay child support arrearages); 104 for Violation of Probation; 50 with the primary charge being a Violation of a Protective Order/Restraining Order/Standing Criminal Protective Order or Violation of Conditions of Release; and 71 with the primary charge being Failure to Appear. Of the remaining 420 people, 85 were being held for crimes punishable by 10 years' incarceration or longer. If we factor out those individuals, there are 335 being held for other charges, including 74 for Burglary, 12 for Robbery, 5 for Sale of Controlled Substances, 8 for firearms offenses, 52 for Assault, 8 for Strangulation, and 2 for Failure to Register as a Sex Offender.

Of the remaining 420 individuals, most were charged with family violence crimes, had other cases pending in which felony charges or failures to appear were pending, or were subject to enhanced (felony) sentences as persistent offenders. For example, one person who was listed as being held on bond for a single misdemeanor actually was in custody because he had 11 other cases pending, including one in which there was a Failure to Appear. Clearly, at the very least more analysis of each individual case, as originally requested of the Sentencing Commission by the Governor, is in order before any sweeping policy changes are made.

As now drafted, the bill would seem to require the court to release a person charged only with a misdemeanor (other than a family violence crime or a failure to appear) on a written promise to appear (PTA) or a non-surety bond unless the court made a specific finding on the record that the person posed a risk to the safety of another person. It would require the court to release the defendant on a PTA or non-surety bond even if the defendant told the court that he was going to flee the jurisdiction or the court became aware that the defendant had 20 prior failures to appear.

Such a statute actually may be setting up for failure the very individuals it purports to protect. Individuals who are taken into custody on drug crimes might be detoxing and/or looking for a fix. While we would like to believe that a person charged with a crime is, always going to get into a treatment or rehabilitation program right away the reality is that residential treatment options might not be available at the time of arraignment. If the court is required to release the defendant on a promise to appear, it is likely that the person will seek to obtain drugs immediately upon his or her release. A defendant who is out using drugs is certainly a danger to him or herself, as the recent spate of heroin related deaths demonstrates, and to others and is also more likely not to return to court.

As far as the provision relating to cash bonds, it is unnecessary. The Connecticut Practice Book already provides that in setting the conditions of release the court should consider the possibility of a cash bond before setting a surety bond. Therefore, if the court sets a surety bond it has done so because it already has decided that a ten percent cash bond is not appropriate. If the legislature does not believe that judges are doing what the Practice Book provides they should simply amend Section 54-64a of the General Statutes to require the court to consider the possibility of a ten percent cash bond before setting a surety bond. They could still require the court to say why a ten percent bond should not be accepted. That would be much simpler. This

approach, too, however, could also end up hurting the very people it is designed to help. Because bondsmen can take people out on the payment of a portion of the fee with the balance to be paid down the road, it is quite possible that fewer people will get out if paying the ten percent cash bond was the option.

Experience shows that the courts are carefully exercising discretion in setting bail. Without any analysis of how the courts are exercising that discretion, this bill would take that discretion away. The bill makes no acknowledgement whatsoever of the tremendous amount of thought and effort that already goes into the setting of bail on the part of the judge, the bail commissioners, the prosecutor and defense counsel. Given this experience and absent the solid data that the Sentencing Commission has been asked to produce, S.B. No. 18 must be seen as an attempt to fix something that has not been shown to be broken. Until we know for sure all of the reasons why those held on bonds below a certain amount are being held, it makes no sense to restrict the court's discretion in setting bail.

For all of the reasons stated herein, the Division of Criminal Justice would respectfully recommend the Committee take NO ACTION on S.B. No. 18, An Act Concerning a Second Chance Society. We thank the Committee for affording this opportunity to provide input on this matter. We stand ready to assist the Committee in its further examination of the important questions and policy decisions raised in this legislation so that appropriate action can be taken once those questions are answered and policy decisions are made.