STATE OF CONNECTICUT
DEPARTMENT OF CORRECTION

OFFICE OF THE COMMISSIONER

Dannel P. Malloy
Governor

Scott Semple
Commissioner

Testimony concerning House Bill 5237 – An Act Concerning Fair Chance Employment

The Department strongly supports the intent and overall purpose of House Bill 5237.

As you know, the Department of Correction has recently instituted many efforts to support the successful re-entry of ex-offenders as part of Governor Malloy's Second Chance Society initiative.

In April of last year we created the Cybulski Community Reintegration Center Reintegration at the Willard-Cybulski Correctional Institution in Enfield. Within the counseling and programming services of this facility, offenders also have an opportunity to address the causes and issues that brought them into incarceration. On February 1st, we opened a Reintegration Center at the York Correctional Institution, our women's facility in Niantic and we are planning on establishing one at the Manson Youth Institution in Cheshire as well as a hybrid model that will be designed for the mental health population.

The Department has supported and partners with several non-profit agencies to maximize existing funding and coordinate innovative rehabilitative and reintegration programs. An example is the "AJC at Whalley" program under which the Department provides space at the New Haven Correctional Center for a non-profit (Workforce Alliance) for an American Job Center. The Center will provide federal grant-funded employment readiness training as well as job search capacity for inmates from the area who are nearing a release from custody. With the anticipated decrease in offender population within our facilities, there will be a corresponding increase in the number of offenders who are supervised in the community. To this end, we have begun reorganizing our parole supervision function to adjust to the changing correctional paradigm. For example, this past fiscal year we completed a restructuring of the Parole and Community Services Division's Residential Services Unit to ensure a more efficient use of its contracted halfway house bed network and enable a more consistent presence by parole officers in these programs.

Obtaining employment is one of the most difficult challenge facing ex-offenders when they return to the community. The Department of Corrections, including its Parole and Community Services Division, is dedicated to supporting ex-offenders in this effort. However, the Department of Corrections does have concerns about several aspects of the bill because our agency has the largest hiring and promotional processes of any state agency. Our concerns are as follows:

Subsection (i)(1)

- Subsection (i)(1) would prohibit the Department of Correction from asking employees or prospective employees to answer questions about criminal history on an application until the employee or applicant has been made a conditional offer of employment. Although section (i)(2) does provide an exception for current or prospective correction officers, the Department of Correction hires and promotes many other job classifications. These other job classifications, particularly ones that are hazardous duty, are very time sensitive as they must be hired in time to attend the Department of Correction's Academy, which is only in session at limited times during the year. If the Department cannot ask prospective hazardous duty candidates about criminal convictions until after conditional offers of employment are made, it will greatly hamper the ability of the Department to hire non-correctional officer candidates in time to enter the Academy.

- In addition, if criminal background checks are moved to after conditional offers of employment, it will increase staff time and resources that have to be spent on the hiring process, which creates difficulty in this time of declining state revenue and human resources positions. This is of particular concern within the Department of Correction as it often faces the task of hiring for many positions at once on a very tight time frame. For example, the Department currently has over 20 correctional counselor vacancies, with another 20 correctional counselors eligible to retire by June. If approval is given to fill correctional counselor vacancies, the agencies will likely have to fill 20-40 positions at once with minimal notice. In the past, the Department has been able to meet its timeframes by being proactive and having candidates fully processed and ready to make offers to if and

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when the hiring approval arrives. The short turn around will not be possible in mass hiring scenarios if criminal background checks have not been processed ahead of time. Moving criminal background checks to the end of the entire process will, therefore, make it much more difficult for the Department to do mass hiring in the future.

Subsection (d)

- Subsection (d) prevents all employers (including the Department of Correction) from refusing to hire an applicant based on a prior arrest or conviction for a misdemeanor if more than two years have passed from the date of arrest, or a prior arrest or conviction for a felony if more than five years have elapsed from the date of such arrest or conviction. This is highly problematic for the Department, and is also in violation of current state law.

- There are many prior convictions that are job-related that cause grave concern to the Department. For example, a past conviction of assault, especially felony assault, raise serious questions as to an individual's ability to supervise inmates in a calm and rational manner and only use appropriate force on them if necessary. The same rationale is applicable to correction officer candidates and convictions for sexual assault and drug trafficking. A minor, older, larceny or embezzlement conviction is not as relevant to a correction officer candidate but may be essential to consider in hiring decisions regarding a fiscal candidate who has access to state funds.
- Correction officers and other hazardous duty professionals are, unfortunately, often the subject of allegations of excessive use of force or sexual assault. Most of the claims are untrue. However, even an innocent correction officer can be made to look guilty if he or she has a past conviction for similar conduct, which can potentially cost the state significant money in the form of jury verdicts and settlements that could have been avoided if the state had not hired an individual with a significant criminal history. It also leaves the state vulnerable to negligent hiring lawsuits if, for example, an individual previously convicted of sexual assault, sexually assaults an inmate or even another staff member.

- With respect to arrests, even arrests for misdemeanors can sometimes take more than two years to resolve through the criminal justice system. If the language of the section stays as it is, it is possible to envision a scenario where the Department is forced to hire an individual facing prison time, the knowledge of which can affect that individual's neutrality and judgment as he or she performs his or her duties within the correctional facility.

- The prohibition against disqualifying individuals with felonies more than five years old and misdemeanors more than two years old is also in violation of the Prison Rape Elimination Act, with which the Department is required to comply by state law (Conn. Gen. Stat. 18-81cc). PREA requires the Department not to hire or promote any employee with direct contact with inmates who: (a) engaged in sexual abuse in various confinement settings or (b) has been convicted of engaging in or attempting to engage in sexual activity in the community facilitated by force, overt or implied threats of force, or if the victim did not consent or was unable to consent or refuse. This PREA language does not contain any exception for these kinds of acts if they are older than two or five years.

There is already a law in place for state agencies that adequately protects individuals convicted of crimes that have no relationship to the job for which they are applying from having those prior convictions used to deny them employment. Conn. Gen. Stat. 46a-80(c) only permits the state to deny employment on the basis of a prior conviction after the consideration of the following: (1) the nature of the crime in relation to the job; (2) the degree of rehabilitation; and (3) the amount of time lapsed since conviction and release. This law strikes an admirable balance between ensuring a convicted individual's right to be fairly considered for a job, and the ability of the state to adequately safeguard its workforce. There is, therefore, no need for state agencies to be subjected to this additional law.