

TESTIMONY OF THE CONNECTICUT ASSOCIATION OF PROSECUTORS

IN SUPPORT OF:

S.B. No. 880 (RAISED) AN ACT INCREASING FAIRNESS AND TRANSPARENCY IN THE CRIMINAL JUSTICE SYSTEM.

JOINT COMMITTEE ON JUDICIARY

March 25, 2019

The Connecticut Association of Prosecutors (CAP) is the bargaining unit representing 248 Deputy Assistant, Assistant, Senior Assistant and Supervisory Assistant State's Attorneys within the Division of Criminal Justice. Charged with the responsibility for the investigation and prosecution of criminal matters in the State of Connecticut, under the supervision of the Chief State's Attorney and the thirteen state's attorneys, Connecticut's prosecutors handle thousands of cases per annum. The Connecticut Association of Prosecutors strongly supports the concept of S.B. No. 880, An Act Increasing Fairness and Transparency in the Criminal Justice System, and respectfully recommends the Committee incorporate revised language drafted by the Office of Policy and Management. CAP has worked with DCJ management, legislative leaders, OPM, the ACLU and Governor Lamont's office to bring front line input to this legislation. It is CAP's hope that if this legislation is enacted, that significant funding will be provided to the DCJ for the staff and equipment necessary.

By law prosecutors are subject to a variety of rules and regulations in their work. Like all attorneys, we are subject to the Rules of Professional Responsibility, and the Connecticut Practice Book which governs practice in Connecticut courts. We are subject to the policies of the Division of Criminal Justice. We are subject to the Connecticut General Statutes. Additionally, as prosecutors we are subject to the special rules for prosecutors within the Rules of Professional Responsibility. We are charged with upholding the state and federal Constitutions. As prosecutors, we are charged with upholding the rights of both criminal defendants and victims of crime while endeavoring each day to make our communities safer.

Quite often many do not recognize or understand the role of the prosecutor in the criminal justice system. While CAP welcomes the collection of data in order to understand what it is that we do on a daily basis for the citizens of Connecticut, we do have concerns about certain data being collected and data that is not being collected. This is especially true when it comes to the role of the plea negotiation process in the criminal justice system. The current form of this bill requires that data be collected about plea bargain offers. The data to be collected is the last pre-trial offer from the prosecutor. The collection of that particular piece of information without additional data or information regarding the plea bargaining process fails to recognize all the information and factors that go into plea-bargaining. Specifically, it is the position of CAP that the collection of that particular data point is an attempt to quantify something that is unquantifiable.

There are numerous factors that go into the plea negotiation and subsequently plea agreement process. The collection of this data, without taking into account numerous other factors will render this information either useless or subject to a variety of interpretations.

Plea negotiations and agreements are based on a variety of information including, but not limited to, the relative strengths or weaknesses of the state's case, the availability of forensic evidence, the availability and credibility of witnesses, the willingness of witnesses or victims to testify at trial, the criminal history, or lack thereof of the defendant, and the criminal history of witnesses or victims. Agreements take into account whether an offender is on probation or parole at the time of an offense or if an offender has been previously incarcerated. Agreements take into account if the defendant has utilized diversionary programs, or if the defendant is ineligible for those programs. Agreements take into account if the defendant is a persistent felony offender, or a persistent dangerous felony offender or a registered sexual offender. Sometimes charges are dropped by the prosecutor, or additional charges are added, or substituted in the negotiation process. As written, this bill would not take into account the number of files or cases pending in the same jurisdiction or in multiple jurisdictions. The collection of a prosecutor's last offer would not reflect offers or counter offers from defendants or their attorneys or the prosecutor. Additionally, this data collection does not reflect the input of a judge who ultimately controls the sentence should a defendant decide to accept or reject a plea offer.

CAP agrees with intention of this bill that is to be transparent and open. The equally important stated goal of fairness, cannot be attained without gathering additional information and an understanding of what goes into a plea negotiation, offer and acceptance process. Again, it is CAP's position that the entry of a plea bargain offer, into a computer field, with no context or explanation, and no request for clarifying information, is an attempt to quantify the non-quantifiable.

We thank the Committee for affording this opportunity to provide input on this matter and would be happy to provide any additional information the Committee might require or to answer any questions that you might have.