



State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

**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 Division of Criminal Justice 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's JOINT FAVORABLE SUBSTITUTE REPORT to incorporate revised language drafted by the Office of Policy and Management. The Division wishes to express its appreciation to Governor Lamont and OPM for their leadership and willingness to work with all concerned parties to draft this legislation.

S.B. No. 880 deals with the collection of data concerning the processing of cases through the criminal justice system and in many ways represents something of a culmination of years of effort on behalf of the Division of Criminal Justice to gain the capability to collect and analyze much of the information referenced in this bill. In many ways, it could be the Division of Criminal Justice itself that is most interested in much of the data that would be collected under S.B. No. 880. We have historically been forced to rely on anecdotal evidence or statistical information compiled by other agencies (the Judicial Branch and Connecticut State Police, notably) for much of the data we need to track and analyze arrests and other information critical to the operation of our own agency. In most cases, when it comes to internal DCJ records other than financial information, it is a long and arduous trip through reams upon reams of paper in any attempt to collect any meaningful statistics.

Acting in the aftermath of the tragic Cheshire home invasion, the Division has worked with other agencies on the development of an internal Case Management System (CMS), the Connecticut Information Sharing System (CISS) and the Criminal Justice Information System (CJIS) to develop a comprehensive system for the prompt and efficient collection and transfer of all information and data involved in the criminal justice system. This has been a long and difficult task, in part because of insufficient resources, but through the hard work and persistence of many we stand today on the brink of beginning actual deployment of our CMS. If all goes according to plan, much of the data envisioned to be collected under S.B. No. 880 would be readily available through one or more of these new systems once they are all fully operational.

That being said, we still must express concerns about the scope of the data collection proposed in S.B. No. 880. The stark reality is that if the bill were to pass in its present form (and not the latest substitute draft presented by OPM), it could prove very difficult, if not impossible, to collect some of the information. We would literally be talking about having an employee sit down, sift through paper files, and then manually input the information into a database of some sort. Manually documenting each step in the tens of thousands of cases that go through the system each year would be a monumental task indeed. Even after CMS is fully operational, the Division will be strained to collect and compile this data without additional personnel to assist our severely limited Information Technology staff (five employees stationed in Rocky Hill to serve approximately 450 employees in more than 50 locations statewide). Recognizing this, the Division has again requested of the Appropriations Committee the additional resources necessary to properly bring CMS online and fully operational.

The Division stands ready to work with the General Assembly, OPM and others concerned to carry out the underlying concept of S.B. No. 880, that being to collect relevant data to give a better picture of how the criminal justice system functions and to guide future decision-making to make that system function better to serve the interests of justice. While we agree that collection of certain data will help enlighten both the Division and other decision-makers with meaningful statistics, we must point out that the collection of non-quantifiable editorial information from every case will unduly burden front-line prosecutors, staff and those at OPM charged with analyzing the data. It will not produce information that is amenable to study on a system-wide level and becomes data collection for its own sake. Editorial commentary on individual determinations based on a myriad of case specific factors is ill suited for the type of system-wide analysis the bill envisions.

It is very important to realize that while data is very helpful for some purposes, it can also lead to misleading and erroneous conclusions if it is analyzed out of context or superficially. Bail recommendations, plea offers, sentence recommendations and indeed, even the decision whether or not to charge are based on many different but important factors such as quality and strength of the evidence, availability of witnesses at the time the case is to be tried, original history of the defendant and impact of the conduct on a victim. Justice and fairness must be based on the facts and circumstances of each individual case. Justice cannot be achieved if prosecutors and judges do not have discretion to handle each and every case properly.

The Division believes it is also important to note that while data collection may be lacking, there is, in fact, a high degree of transparency for the criminal court process as a whole. Yes, there are stages such as pretrial conferences and plea negotiations that are conducted confidentially, but this is largely to protect the rights of the accused who is innocent unless and until proven guilty. We do not conduct criminal investigations in public because to even acknowledge the existence of an investigation in and of itself is some implication that someone, who by law is still presumed innocent, has done something wrong. When an investigation produces the evidence to support an arrest, the fact of that arrest and supporting documentation are public record. The same is true for plea negotiations; any plea or a refusal of a final plea offer is preceded by the judge's canvass of the defendant and is heard on the record in open court.

The Division also would be remiss if we did not state for the record our sincere gratitude to the dedicated public servants who serve the public as prosecutors, inspectors, investigators and support personnel. We would not want to leave the impression that we believe data collection is warranted because of any concern that they are not fulfilling their sworn duty. To even suggest that the system operates in secrecy with no oversight is unfair and untrue. Every single case is presented in court. In terms of cases involving crimes, there is a defense lawyer in the vast majority of the cases, and certainly in the more serious cases. Oversight not only exists in this process, but also in the appeal process, sentence review and the ability to file a petition for a writ of habeas corpus or petition for new trial. With rare exceptions, all criminal court proceedings are open to the public and records of disposed cases subject to the Freedom of Information Act.

Just as it is important to have an independent judiciary, it is also important to have an independent public prosecutor to investigate and prosecute crimes. Connecticut, in fact, is the birthplace of public prosecution, that is the concept that a crime is not only a wrong inflicted against a victim but also a wrong committed against society. The prosecutor serves as the representative of that society. As our Supreme Court has stated:

“[t]The state's attorneys, who are responsible for prosecuting violations of the criminal laws of this state, are executive branch officials.... There can be no doubt that [t]he doctrine of separation of powers requires [other branch] ... respect for the independence of the prosecutor.... Prosecutors, therefore, have a wide latitude and broad discretion in determining when, who, why and whether to prosecute for violations of the criminal law.... This broad discretion, which necessarily includes deciding which citizens should be prosecuted and for what charges they are to be held accountable ... rests largely on the recognition that the decision to prosecute is particularly ill-suited to [other branch] ... review. ... [D]eference to the decisions of these executive officers ... also stems from a concern not to unnecessarily impair the performance of a core executive constitutional function....” (Internal quotation marks omitted; internal citations omitted.) *State v. Kinchen*, 243 Conn. at 699-700.

“[P]rosecutorial discretion is an essential component of the criminal justice system[,] ... and it often results in leniency. Additionally, prosecutorial discretion is not truly unbridled or standardless; rather, it is constrained by statutes defining ... crimes ..., ethical codes governing charging decisions and the strength of the evidence available in any given case to support a potential ... prosecution. Finally, the trial process and mandatory appellate review provide further checks against potentially improper pursuit and imposition of ... [criminal charges].” *State v. Rizzo*, 303 Conn. 71, 183–84 (2011). It is true, of course, that “‘the breadth of discretion that our country’s legal system vests in prosecuting attorneys carries with it the potential for both individual and institutional abuse.’ ... Defendant’s, however, are not ‘unprotected from the vagaries of prosecutorial discretion’ ... for courts will not tolerate the exercise of that discretion when it is shown to be discriminatory, vindictive or otherwise improper.” (Internal citations omitted.) *State v. Kinchen*, 243 Conn. at 701 n.11.

The collection of data as proposed in S.B. No. 880 will not only assist the Division of Criminal Justice and prosecutors in better carrying out their constitutionally mandated responsibilities, but also assist the criminal justice system as a whole and the agencies and bodies that fund and oversee that system. The Division respectfully recommends the Committee’s

JOINT FAVORABLE REPORT for S.B. No. 880. 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.