STATE OF CONNECTICUT
OFFICE OF POLICY AND MANAGEMENT

TESTIMONY PRESENTED TO THE JOINT JUDICIARY COMMITTEE
MARCH 25, 2019

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Chairman Stafstrom, Chairman Winfield, Senator Kissel, Representative Rebimbas, and members of the Joint Judiciary Committee, thank you for allowing me to testify in support of Governor Lamont's proposal, **SB 880, An Act Concerning Fairness and Transparency in the Criminal Justice System**.

SB 880 is a two-part bill that would improve data-driven criminal justice system policy and practice at the front and back end of the system. Attached to my testimony is substitute language that reflects the discussions that have taken place with stakeholders since the original bill was introduced.

The first part, Sections 1 and 2, concerns prosecutorial data. The purpose is to create a framework, timeline, and process for collecting, analyzing, and presenting information on prosecutorial decision-making. The approach created by the bill is to pull data from fields in case management systems that either already exist or are in development. Stakeholders have participated in several meetings to map which data would be needed to paint a picture of prosecutorial decision-making, which currently is a black box. Moreover, this approach avoids requiring specialized data entry by staff or sampling of cases. Instead, it pulls information from data that already is or will be entered. The goal of the bill is providing greater transparency to help increase the confidence that communities have in the criminal justice system and to enable prosecutors to tell their story using data in state policy, budget, and planning discussions.

Prosecutors play a crucial role in criminal cases from start to finish. The Vera Institute of Justice identified seven major decision-making points involving prosecutors: the screening and charging of cases, pretrial and bail recommendations, diversion to programs and non-judicial sanctions, case processing, plea negotiations, and sentencing recommendations.[1]

When prosecutors in Connecticut open a case containing criminal charges brought by police, they determine which charges, if any, to bring forward. They make recommendations to the court on pretrial release, whether to set bail and the amount of bail to set. They help determine eligibility for a variety of diversion programs, which may be run by the courts, law enforcement, community-based organizations, or the prosecutor's office itself. Prosecutors determine what and when to turn over information during discovery. Every decision a prosecutor makes impacts the timely resolution of a

case. They play a pivotal role in plea negotiations, which determine charges offered, the type of sentence and length, and supervision conditions. The vast majority of criminal cases never go to trial; they are resolved through a plea negotiation. Finally, prosecutors issue recommendations at the sentencing stage. Their intimate connection with the case and a potential victim is likely to have an influence on judicial determinations in disposing of the case.[2]

Despite the crucial role of prosecutors in the criminal justice system, few data are available on prosecutorial decision-making. This is not only true in Connecticut, but also in states across the country, as found in a 2018 survey conducted by the Urban Institute that received responses from 141 prosecutor offices of varying sizes. Connecticut's prosecutorial data limitations seem especially acute. According to Urban's survey, "except for small offices, almost all offices use at least one electronic case management system." In Connecticut, although prosecutors access Judicial Branch databases, they lack an electronic case management system. Prosecutors rely on paper files that are placed in folders inside buckets that are wheeled around courthouses on dollies. While Connecticut is generally rich in criminal justice system information, which is critical to supporting data-driven policymaking and budgeting, information about prosecutorial data is lacking or non-existent. The absence of the collection, analysis, and reporting of data puts prosecutors at a disadvantage when it comes to explaining and advocating for the work that they do, particularly as compared to other agencies, such as law enforcement, corrections, the courts, and public defenders.

Governor Lamont's proposed budget includes two information-technology investments to further prosecutors' efforts to launch an electronic case management system. First, the budget recommends funding for the case management system itself. Second, it provides $8.9 million in a capital budget request for the Criminal Justice Information System (CJIS), which is developing a single portal for credentialed criminal justice system professionals to pull information from 14 criminal-record source systems.

The effects of the lack of prosecutorial data plays out in numerous ways. First, Connecticut's prosecutors' lack of data constrains their ability to make to make efficient and effective management decisions, establish performance measures, and explain decisions using data.[3] Second, the absence of prosecutorial data impedes state policymakers' efforts to further data-driven prosecutorial decision-making with new policies, initiatives, diversion program funding, and training. Third, communities and constituents are increasingly looking for empirical data to explain the decision-making and outcomes of criminal justice system officials. Another likely consumer of prosecutorial data analysis is the Criminal Justice Commission (CJC), which is charged with appointing and reappointing state's attorneys, prosecutors, and positions in the Division of Criminal Justice (DCJ). SB 880 would require a routine presentation to be delivered to the CJC -- as well as the Joint Committee on Judiciary -- on data analysis. These presentations would help provide key stakeholders and policymakers increased knowledge of State's Attorney office outputs and outcomes across the state.

This legislation was developed with an awareness that the DCJ currently has little access to data. For this reason, the bill would leverage existing data collected by the Judicial Branch, whose data will provide an estimated three-quarters of the information needed, and other agencies. It also leverages the capacity of the CJIS to connect points across the criminal justice system. Finally, it leverages the expertise of Office of Policy and Management's Criminal Justice Policy and Planning Division (CJPPD) to carry out the analysis. To avoid staff and budget impacts, the legislation was developed to avoid requiring staff in prosecutors' offices or courts to make specialized entry of information, complete surveys, or enter text-heavy information.

Recognizing the data limitations, the bill sets effective dates in stages. By July 2020, the CJPPD would deliver a presentation consisting of existing data, i.e. largely existing court system data, to the CJC and the Joint Committee on Judiciary. Next, by February 2021, DCJ, in consultation with relevant agencies, would submit more detailed information to CJPPD, which would produce a presentation by July of that same year, and every year thereafter, containing this new information and analysis.

I extend my sincerest appreciation to the many stakeholders—DCJ, the Judicial Branch, CJIS, CJPPD, the ACLU, and more—that participated in development of this part of the legislation. Increasing criminal justice data analysis and reporting has gained momentum in states across the country, such as landmark legislation enacted last year in Florida, and it is compelling to see Connecticut develop its individualized approach to this effort.[4] I am especially grateful for the numerous hours that Chief State's Attorney Kevin Kane, Deputy Chief State's Attorneys Kevin Lawlor and John Russotto, and other prosecutors and staff gave to helping us develop this legislation. I am grateful also for the Ansonia-Milford State's Attorney for allowing me to shadow a prosecutor to better appreciate the office's daily work. I look forward to shadowing prosecutors in other offices next.

The attached substitute language reflects the work that has occurred with stakeholders since the original bill was introduced. It is my understanding that stakeholders support the bill in concept, and we have committed to continuing to work together in good faith to further refine and clarify the language where necessary. We will keep the Committee apprised of any additional changes to the language that are agreed upon going forward.

The second part of the bill, Section 3, charges the Chief Public Defender with establishing a pilot program to provide representation to indigent people awaiting parole revocation hearings. I would like to provide an overview of the impetus, design, and vision for the pilot while allowing for Chief Public Defender Christine Parra Rapillo to provide further details in her testimony.

Although defendants who qualify for appointed counsel may be represented at the criminal trial phase, counsel is not provided at scale to the population appearing at parole violation hearings. In 2015, Yale Law School's Samuel Jacobs Criminal Justice Clinic observed parole hearings and, in the following year, conducted follow-up interviews with the observed parolees. The clinic found that public defenders were assigned in three of

the 49 hearings observed, that more parolees facing revocation appeared indigent and "were at a significant disadvantage" due in part to a lack of adequate information and resources to understand and navigate the process. People with a mental disorder or who are low-functioning appeared at an even greater disadvantage.[5]

The clinic found that appointed counsel could provide valuable guidance to parolees to help them understand their rights, how to adequately contest evidence presented, contact witnesses, and present mitigating factors involved in their case. Additionally, counsel could help develop evidence for the Board of Pardon and Parole's (BOPP) consideration, which would be next to impossible for people incarcerated while awaiting their revocation hearings.[6]

This pilot is based on three years of planning, analysis, and coordination led by the Department of Correction (DOC) and (BOPP) in partnership with the clinic to improve the parole revocation process and increase fairness in our system. I applaud those agencies for their participation in the process.

This legislation is matched by $250,000 in funds included in Governor's proposed budget to the Office of the Chief Public Defender (OCPD) to establish this pilot unit. The funds would enable OCPD to hire two attorneys, a paralegal, and a secretary as well as provide office supplies. Because the BOPP holds all revocation hearings in its central office, using videoconference, the pilot unit could be co-located with the Board and provide representation to cases occurring around the state.

The pilot program requires the OCPD and BOPP to collect and report information annually on outputs and outcomes from cases. This information will help increase system transparency and our empirical understanding of parole violation hearings in Connecticut.

In conclusion, I respectfully recommend the Committee's JOINT FAVORABLE report on **Senate Bill 880, An Act Concerning Fairness and Transparency in the Criminal Justice System**. Thank you again for allowing me to provide testimony. I would be happy to answer questions from members of the committee.

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[1] The Vera Institute of Justice. "The Role of the Prosecutor." https://www.vera.org/unlocking-the-black-box-of-prosecution.
[2] Ibid.
[3] The Urban Institute of Justice. "How Prosecutors Collect and Use Data for Decision-making." https://www.urban.org/urban-wire/how-do-prosecutors-collect-and-use-data-decisionmaking. September 2018.
[4] Measures for Justice. "Florida Passes Historic Legislation to Help Close the Criminal Justice Data Gap." https://measuresforjustice.org/news/2018-03-11.html.
[5] Yale Law School Samuel Jacobs Criminal Justice Clinic. *Parole Revocations in Connecticut: Opportunities to Reduce Recidivism.* September 2017. https://law.yale.edu/system/files/area/clinic/document/cjc_parole_revocation_report.final.9.21.17.pdf.
[6] Ibid.

GOVERNOR'S BILL NO. 880

OPM's proposed edits after conversations with DCJ, Judicial Branch, DOC & ACLU

3/22/19

AN ACT INCREASING FAIRNESS AND TRANSPARENCY IN THE CRIMINAL JUSTICE SYSTEM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2019*) (a) Not later than July 1, 2020, and annually thereafter, the Office of Policy and Management shall make a presentation to the Criminal Justice Commission, established under section 51-275a of the general statutes, on existing prosecutorial data, and make such presentation publicly available to the chairs and ranking members of the joint standing committee of the General Assembly having cognizance of matters relating to judiciary and on the Internet web site of the Office of Policy and Management. The Office of Policy and Management shall include in any such presentation made on or after July 1, 2021, data described in subsection (b) of this section.

(b) Not later than February 1, 2021, and annually thereafter, the Division of Criminal Justice, in consultation with the Judicial Branch, the Department of Correction and the Criminal Justice Information System Governing Board, established under section 54-142 of the general statutes, shall provide to the Office of Policy and Management data collected under section 2 of this act for the previous calendar year.

Sec. 2. (NEW) (*Effective July 1, 2019*) (a) The Division of Criminal Justice, in consultation with the Judicial Branch, the Department of Correction and the Criminal Justice Information System Governing Board, established under section 54-142 of the general statutes, shall collect data from adult criminal cases for purposes of section 1 of this act under each of the categories described in subdivisions (1) to (4), inclusive, of this subsection, as follows:

(1) Disaggregated, case level data by docket number on:

    (A) Arrests, including data on citations, summonses, custody arrests, warrants, and on-site arrests;

    (B) Arraignments;

(C) Continuances;

(D) Diversionary programs, including data on program applications, program diversions, successful completions, program failures, and people in diversion on the first of the month;

(E) Victim contact, including data on cases involving victims on the first of the month;

(F) Dispositions, including data on pending cases and cases disposed;

(G) Non-judicial sanctions, including data on non-judicial sanctions applied, successful completion of non-judicial sanctions, failure of non-judicial sanctions, and persons on non-judicial sanction status on the first of the month;

(H) Plea agreements, including data on total plea agreements, agreements involving probation, agreements involving prison, other agreements, and prosecutor's last best offer;

(I) Cases going to trial, including data on cases added per month, pending trial cases, offers accepted per month, offers rejected, disposition by trial, disposition involving probation, disposition involving prison, and other dispositions;

(J) Demographics, including data on race, sex, ethnicity, and age;

(K) Court fees or fines, including those imposed by the court at the disposition of the defendant's case and any outstanding balance the defendant may have on such fees or fines; and

(L) Restitution amount ordered pursuant to subsection (c) of section 53a-28 of the general statutes, including any amount collected by the court and any amount paid to a victim.

(b) No information collected under this section that personally identifies a victim may be disclosed. No provision of this section shall permit a person access to any juvenile or youthful offender records maintained under seal by the court, unless otherwise provided by law, and no information from any such record that personally identifies a juvenile defendant may be disclosed.

Sec. 3. (NEW) (*Effective July 1, 2019*) (a) The Chief Public Defender shall, within available appropriations, establish a pilot program to provide representation to persons at parole revocation hearings. Not later than January 1, 2021, and annually thereafter, the Chief Public Defender shall submit a report to the Secretary of the Office of Policy and Management on cases served as part of such program during the prior calendar year. Such report shall aggregate information, including, but not limited to, the number of public defenders funded through the pilot program, the number of preliminary hearings and final parole revocation hearings served by such public defenders and the associated outcomes of such hearings.

(b) Not later than January 1, 2021, and annually thereafter, the Board of Pardons and Paroles shall report to the Secretary of the Office of Policy and Management and make available on its Internet web site the following information:

(1) Outcomes of preliminary hearings, including whether (A) probable cause of a parole violation was found and that the alleged violation was serious enough to warrant revocation of parole, (B) probable cause of a parole violation was found, but the alleged violation was not serious enough to warrant revocation, and (C) no probable cause of a parole violation was found;

(2) The number of (A) individuals remanded to the custody of the Department of Correction for criminal and technical violations, and (B) individuals held in custody beyond a preliminary hearing pending a final parole revocation hearing; and

(3) Outcomes of final parole revocation hearings, including whether there was a recommendation to (A) reinstate parole, or (B) revoke parole.