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JUDICIAL BRANCH

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Testimony of
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Judiciary Committee Public Hearing
November 27, 2007

Good afternoon Senator McDonald, Representative Lawlor and members of the Judiciary Committee. My name is Barbara Quinn and I am the Chief Court Administrator of the Connecticut Judicial Branch. I am here with Judge Patrick Carroll, the Deputy Chief Court Administrator, and Judge Patrick Clifford, the Chief Administrative Judge for Criminal Matters, to testify on several of the proposals that you are considering today. I am not going to address each proposal individually, but rather will address the themes that run throughout the proposals, with some references to specific provisions that merit individual attention.

Sharing of Information:

One of the areas of concern highlighted by the tragedy in Cheshire was the inadequacy of communication between the key players in the criminal justice system. Since that time, the Judicial Branch has been working with other criminal justice agencies to ensure that any information we possess and can legally share gets into the hands of those who need it. I would like to take a moment to update you on this effort. We have established a computer link with the Connecticut Department of Correction (DOC) and the Board of Pardons and Parole (BPP) that will allow information on

offenders who are on probation to be shared electronically beginning in January 2008. We are calling this system the Judicial Electronic Bridge (JEB), and it will replace the existing time-consuming system of transmitting information manually, by fax or phone.

The Judicial Electronic Bridge will allow Department of Correction and Board of Pardons and Parole staff to access information from the Court Support Services Division data bank about offenders who are currently on probation, as well as those who were on probation in the past. It will provide a great deal of information about each individual. The other agencies will have access to any pre-sentence investigation reports that were prepared. The Judicial Branch plans to explore expanding access to the Judicial Electronic Bridge to state and local law enforcement agencies in early 2008, so that public safety may be further enhanced.

Turning now to the specific proposals, it is understandable that many of you are very concerned about the poor state of access to criminal justice information. Toward that end, Senator McDonald and Representative Lawlor have proposed in § 12 of Proposal # 4 the creation of a comprehensive, state-wide information technology system to address it, called the SHIELD Criminal Justice Information System. The Judicial Branch strongly supports the purposes of SHIELD. However, we may not need a new information system, because the state has been working on such a system for the past twelve years.

This is the Offender Based Tracking System (OBTS), operated by the Department of Information Technology (DOIT), begun in 1995. Since that time the state has invested a great deal of time, energy, and to date nearly $30 million dollars in developing an integrated repository of criminal information. The Judicial Branch suggests that perhaps it would be more prudent to continue to enhance the existing system than to create an entirely new system.

If the General Assembly decides to enact SHIELD, we would respectfully request that § 12 of the proposal be amended to include a representative of the Judicial Branch on the Criminal Justice Information System Commission, as the inclusion of Judicial Branch data would be critical to the success of SHIELD.

In addition, if enacted as proposed, there would be public access to SHIELD, subject to appropriate privacy protections. In order to implement this provision, the Judicial Branch would require additional staff to review and edit the data entered into SHIELD, to make sure that information that cannot be disclosed pursuant to statute is not included.

There are two other provisions of Proposal # 4 that the Judicial Branch wishes to address. The Branch supports § 19, which would require us to make available on the internet all Violation of Probation warrants. In addition, we are happy to participate in the study mandated by § 17, which would require the Board of Pardons and Parole and the Court Support Services Division to examine the feasibility of making information about persons released into the community on probation and parole available on the internet. We point out one technical change that we request. Both sections should refer to the Judicial Branch, of which the Court Support Services Division is a part. Any effort to make additional information available on the Internet is a multi-faceted exercise that involves several of the Judicial Branch's divisions, not only CSSD.

Sentencing Issues

Many of the proposals before the Committee today relate to the sentencing of a criminal defendant. New mandatory minimum sentences appear in most of the proposals.

Before commenting on these proposals, I would like to take a step back and speak generally about sentencing for a moment. Sentencing a defendant is a difficult, complex responsibility for a criminal judge. Many factors come into play and an open mind is required. This is why the Branch has not supported mandatory minimum sentences in the past; it eviscerates the discretion of the judge to tailor each sentence to most justly fit the crime and reposits all discretion in the prosecutor. We would hope that the legislature would refrain from adding additional mandatory minimum sentences to our statutes and instead rely upon the judgment of our experienced judges who have the defendant in front of them at the time of sentencing.

There are other proposals, which while well-intended, would have a negative practical effect upon our dockets, both during sentencing and at others times. These are the proposals that would require a judge to make a statement of the various facts and circumstances relied upon at sentencing and at bail hearings. Our G.A. courts take in well over 100,000 cases each year. The arraignment docket in a G.A. is perhaps the busiest docket in our entire court system. As anyone who has witnessed the arraignment docket can attest, it is a seemingly infinite procession of criminal defendants, counsel and intake staff. The presiding judge must maintain order in the courtroom, advise the defendant of his or her rights, and set conditions of release pursuant to statutory criteria. Judges do carefully consider all of the factors required by the statutes. But to require them to enunciate each factor relied upon with the attendant finding would have a negative impact on the court system with many longer hearings, and increased backlogs without any increased benefit to public safety. In addition, if such statements are to be noted in the court file, additional resources may be necessary to ensure that all statements are either captured by the clerk, or derived from the court reporter's record of the proceedings. We would therefore respectfully request that such provisions not be codified.

State v. Bell

Several of the proposals deal with the problem presented by the Supreme Court's recent decision in *State v. Bell*, which held the various persistent offender statutes unconstitutional because they require the judge, rather than the jury, to find that imposing a period of extended incarceration would best serve the public interest. According to the Court, that finding, under Connecticut case law, must be determined by a jury. The exact language of a proposed statutory change is clearly a policy decision that must be made by the Legislature. We do wish, nonetheless, to state respectfully that we prefer the language in Proposal # 4, which removes all reference to an opinion that "such person's history and character and the nature and circumstances

of such person's criminal conduct indicate that extended incarceration ad lifetime supervision will best serve the public interest".

Sex Offender Beds

We appreciate and understand the impetus behind § 25 of Proposal # 4, which would require the Judicial Branch's Court Support Services Division to contract for an additional one hundred beds in staff secure residential sex offender treatment facilities. There are not any such beds now in our state and they are needed. Nonetheless, we do not believe that we are the most appropriate entity to undertake the task of providing sex offender treatment beds, and would request that that responsibility reside with an Executive Branch agency. We will certainly cooperate fully with whatever agency is given this responsibility.

We remain more than willing to work collaboratively to find a solution to the difficult problem of ensuring that sex offenders who are living in the community are doing so in the most appropriate settings. To that end, the Judicial Branch, in collaboration with the State Department of Correction (DOC) and the Department of Mental Health and Addiction Services (DMHAS), has issued a Request for Proposals (RFP) from qualified organizations or individuals to provide expert consultation and support in the design, development, and implementation of a statewide RFP for housing, residential treatment and support services for those charged with or convicted of sexual offenses.

GPS

Several of the proposals mandate the use of global positioning systems (GPS) for various categories of offenders who are released into the community. While GPS can be a valuable tool, it is a tool that has significant limitations. It does not provide the 24-hour active surveillance that many people believe it does.

To give some examples, GPS signals can be lost or masked, either purposely or by limitation of the surroundings, much like a cell phone. Even if a GPS signal is

working and the device knows the subject's locations, it relies on cellular coverage to transmit this data to the monitoring center. Most importantly, despite the public impression, a GPS device cannot pinpoint a client's exact location, because it is only capable of tracking to within 300-500 foot range. Someone who is being monitored by GPS could be several houses away and the system would not recognize this as a violation.

Then there remains the added need for additional staff to monitor the information. The information does little good unless there is someone to receive it and act upon it. Providing this intensive level of monitoring can be extremely costly and may not be necessary in many of the cases mandated by some of the proposals. We would respectfully suggest that while GPS can be an effective tool in many cases, it is not a panacea and its use should be limited.

Miscellaneous Provisions:

Sentence Review: Section 11 of Proposal #4 would allow the Commissioner of Correction, the Chairperson of the Board of Pardons and Paroles or the Executive Director of the Judicial Branch's Court Support Services Division to file for a sentence modification on behalf of an inmate. We are opposed to allowing the Executive Director of CSSD to file this application. CSSD is an administrative division within the Judicial Branch. If it petitioned for sentence modification, the division would be in the untenable position of advocating against the findings of the sentencing judge. In addition, since many incarcerated individuals will never be on probation, this would place CSSD in a advocacy position for individuals who will never be under their supervision. For these reasons, we do not believe CSSD should have a role in sentence modification.

We also question whether the proposal will have the results we believe are intended. Under current law, the court may review the sentence of an incarcerated defendant, and if good cause is shown, reduce the sentence, discharge the defendant, or order the defendant discharged on probation or conditional discharge. In instances

where the defendant is serving a definite sentence of more than three years, the state's attorney must agree to a review of the sentence before any reduction may be contemplated by the court. Typically, sentence review applications are filed by the defendant; and very rarely is a reduction in sentence actually granted. Sentences are constructed based on many factors such as the type of offense committed by the defendant, whether the crime was violent, whether he or she had a prior record and the attitude of the victim. Judges weigh these often complex variables to arrive at a just sentence. In addition, an adequate mechanism to review whether an inmate can be suitably supervised in the community is already in place -- namely the Board of Parole.

Effective Date: Nearly every proposed section is "effective upon passage". While we are fully aware, and share, the sense of urgency felt by many to enact meaningful changes to our statutes, many of these proposals will need significant time to implement. We would respectfully request that any final document be carefully reviewed to see which sections can be implemented immediately, and which would require a period of time to implement.

Number of Criminal Trials: I would like to take a moment to address a topic that, while not explicitly before the Committee, has been the subject of some discussion -- the perception that there are fewer criminal trials taking place in our courts because of an increased reliance on plea bargaining. The data available does not demonstrate an increased reliance on plea bargaining to the detriment of cases taken to trial.

I have reviewed data concerning the number of criminal trials taking place in our G.A's and J.D.'s since 1985. This data do not reflect any appreciable decrease in the percentage of cases taken to trial. In our G.A.'s, the number of cases added and disposed and criminal trials has remained fairly consistent over the years, with some fluctuations from year to year. However, in our J.D.'s, one will see a decrease in the number of trials from 1985 to the present. For example, in 1985, 248 cases were disposed of with trial, while in 2006, that number was 165. But for a complete

comparison, one must also look at the number of cases added and disposed of in the J.D.'s each year. This number has dropped from 4,179 cases added and 4,240 disposed in 1985, to 3,136 cases added and 3,049 disposed in 2006 -- a reduction in excess of 1,000 cases when the two years are compared. This explains the decrease in the number of trials. Frankly, with this drop in the number of cases, one might have expected even fewer trials in 2006 as compared to 1985.

Aside from the numbers, I can tell you from my personal experience that I have not seen a steep decline in matters taken to trial. Trials will always take place, as will plea bargaining. Plea bargaining can be an integral tool in resolving cases; sometimes the prosecution's case isn't as strong as the prosecutor would wish, and sometimes the crime victim refuses to testify or trial. However, even if a matter is plea bargained, the judge still retains the ultimate responsibility in determining whether the proposed agreement serves the cause of justice.

Turning to the remaining issues briefly: Among the proposals is a technical, but important one which the Branch has submitted. This is **Proposal #1, *An Act Concerning the Participation of Probation Officers in Warrant Squads***. We are requesting this legislation because we wish to allow specially trained probation officers to participate in the Marshal Service's Ad Hoc Fugitive Task Force. The mission of the Task Force is to seek out and arrest persons who have unexecuted state or federal warrants lodged against them. The Judicial Branch has agreed to participate in this effort because it is an important public safety measure that facilitates the removal of some serious offenders from the community, and it will provide us with the assistance of federal, state and local law enforcement officials in reducing our backlog of unserved violation of probation warrants. We have determined that statutory language may be necessary in order to make it clear that the probation officers who participate in the Task Force's apprehension teams are acting within the scope of their state employment.

We did draft the proposal before you; however, after further analysis we believe that it does not quite accomplish our purpose. To correct this, we have attached to our

testimony a proposed amendment to the language and would respectfully request that you incorporate it into any language that may move forward.

Suggested Amendments:

I would like to suggest some additional ideas to address the issues presented, which I believe could be added as an amendment to any of the bills. They address some fiscal issues and areas of interagency cooperation which would enhance public safety, in our opinion. They include:

- Amending C.G.S. § 53a-30(e) to increase the covered cost of electronic monitoring from a limit of $5.00 per day to "the contractually approved cost rate" for electronic monitoring and GPS system equipment, so that more of the actual cost of the equipment can be paid for by the offender. The cost of GPS monitoring exceeds $5.00 a day.
- Providing specific statutory authority for probation officers to detain probationers who are caught in a criminal act as well as probationers for whom an outstanding arrest warrant exists, until the police arrive. Detention would occur only after consultation with and approval by the appropriate Chief Probation Officer.
- Modifying C.G.S. § 53a-32 to allow a probation officer in specific circumstances to notify a police officer, after consultation with and approval by the appropriate Chief Probation Officer, when a probationer is in violation of probation, so that the police officer can make an arrest. This authority currently exists for sex offenders; this provision would expand it to all probationers, but only in the limited circumstance where obtaining a warrant would be impractical.
- Clarifying that probation officers have the authority to possess and store illegal contraband that they obtain in the course of their official duties. This occurs when they encounter contraband such as guns, drugs, drug paraphernalia and child pornography during a visit with a probationer. This would allow them to seize the contraband.

Fiscal Impact:

It goes without saying that many of these proposals will require additional resources for the Judicial Branch. We have reviewed the fiscal impact statements prepared by the Office of Fiscal Analysis and agree with the vast majority of their conclusions. I have to commend them for doing a very thorough job of analyzing the various proposals – I'm sure it was not an easy task. As the process moves forward, we will work closely with OFA to fine-tune the fiscal implications of the various proposals.

Conclusion:

Thank you all very much for your patience. I know that I have taken a lot of your time, but felt it was important to address the major issues presented by the various proposals before you today. I appreciate having had the opportunity to testify, and welcome any questions you may have.