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Testimony of the Division of Criminal Justice

Joint Committee on Judiciary

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The Division of Criminal Justice commends the Judiciary Committee for holding today's hearing and we thank you for inviting the Division to submit proposals for your consideration. It is incumbent upon all who serve in the criminal justice system to address the very serious issues that were brought to light by the terrible tragedy this past summer in Cheshire. The Division joins with all of the people of this state in extending our deepest sympathy to Doctor Petit and his family for their loss.

The Division also commends all of the legislators and agencies that have offered the various proposals that appear on today's agenda. You have before you an impressive list of ideas and concepts that provide an excellent starting point from which to craft comprehensive legislation. It is our hope that this situation develops in the same fashion as the debate in the last session over what became known as "Jessica's Law." All of the various parties worked together in a unified effort to do the best job possible, and the quality of the final legislation speaks to the success of those efforts. The Division of Criminal Justice stands ready to work with all legislators, all agencies and all other involved parties to craft the same type of comprehensive response to the issues at hand today.

In response to the Judiciary Committee's invitation, the Division of Criminal Justice has submitted An Act Concerning Burglary and Persistent Offenders, which is listed as Item Number 2 on today's agenda. We would strongly urge the Committee to incorporate the basic concepts of this bill in any comprehensive plan to reform the criminal justice system. This proposal is the result of a painstaking review undertaken by veteran prosecutors to examine the shortcomings of the existing laws and to address those shortcomings in a fashion that meets constitutional muster and the interests of justice.

Specifically, we believe that we have properly dealt with the finding of our Supreme Court this year in the case of *State v. Bell*. Additionally, the bill revises both the definition of and penalties for burglary to more appropriately address what is commonly referred to as a "home invasion." It would create a new offense of Aggravated Burglary in the First Degree and classify

both this new offense and the existing crime of Burglary in the First Degree as violent offenses for the purposes of parole. As such, an individual convicted of either of these crimes would have to serve 85 percent of his or her sentence before being eligible for parole. This is the same “truth in sentencing” provision that now applies to other crimes classified as violent offenses. Finally, the bill revises the definition of and penalty for individuals convicted as a persistent dangerous felony offender, persistent serious felony offender and persistent felony offender. Again, we would respectfully and strongly urge that any final bill incorporate the provisions dealing with the *Bell* decision and other constitutional and legal issues that have arisen in the interpretation and application of the persistent offender statutes.

With regard to the other bills on the agenda today:

1. An Act Concerning the Participation of Probation Officers in Warrant Squads. The bill appears to be technical in nature and as such the Division would take no position on the bill.

2. An Act Concerning Burglary and Persistent Offenders. This Division of Criminal Justice bill is addressed above.

3. An Act Concerning Home Invasion Protection. This proposal was drafted by the previous Victim Advocate. The Division believes the concepts raised in this proposal are more effectively addressed in the language we have presented in Agenda Item No. 2, An Act Concerning Burglary and Persistent Offenders. We would also publicly extend our congratulations to the new Victim Advocate, Michelle Cruz, Esq., on her appointment and we extend our willingness to work with her on this and other issues.

4. An Act Concerning Home Invasion, Career Criminals, Community Supervision and Information Sharing Resources. The Division commends the Co-Chairs of the Judiciary Committee for this proposal, which sets a strong foundation for what we hope will eventually become a comprehensive package. In particular, the Division cannot overstate its strongest support for the proposal to address the serious problems with Information Technology and Information Management that exist not only within the Division of Criminal Justice, but throughout the criminal justice system. We simply cannot communicate or manage information with ourselves and with other agencies. It is not a question of improving an existing system, but rather the lack at this time of any system whatsoever. If you were to ask a State’s Attorney today how many murder cases were pending his or her Judicial District, they could not tell you. To get the answer they would have to literally thumb through paper files. This is but one example of the inadequate tracking ability that we have and why we so strongly support the concept of the “SHIELD” system proposed in the Judiciary Co-Chairs’ bill.

However, we would add an important caveat – we do not need to start from scratch and re-invent the wheel. As the Committee is aware, there is an existing Criminal Justice Information System project and the associated Offender Based Tracking System, or OBTS. We believe the I.T. system should build upon the many years of effort and the substantial resources already invested in CJIS and OBTS. We would also urge the Committee to approach this particular matter with extreme caution and learn from the recent negative experience with the COLLECT

(Connecticut On Line Law Enforcement Communications Teleprocessing) upgrade. All agencies must be involved in this process so that a truly comprehensive system results. We would also call to the Committee's attention the need for Section 30 of the bill, which deals with costs, to apply to the maintenance of the SHIELD or similar system.

Speaking to other points of this proposed bill:

- The new offense of "home invasion" would be a class B felony. The Division believes our proposal for the new class A felony of Aggravated Burglary in the First Degree is a better approach with a more appropriate penalty.
- The bill makes Burglary in the Second Degree apply only to the entry of a "dwelling," eliminates the element "at night" and has moved the occupied dwelling section to the Burglary in the First Degree statute. The Division's proposal would make entry into an occupied dwelling Burglary in the First Degree, a class B felony.
- With regard to the persistent offender statutes, the Division supports the provisions to remove the offending *Bell* language from the statutes and to add the crime of Burglary to the persistent dangerous felony offender section. The bill does not, however, remove all of the obfuscating language in the persistent offender statutes, which the Division believes is imperative and which the Division's bill addresses.
- The Division also supports the proposal to provide a domestic violence victim advocate in every courthouse and the provision of adequate facilities and services for inmates with mental health issues and for the treatment of sex offenders. Finally, the Division also would strongly support Section 28 of the bill, which corrects a problem with the existing DUI statutes to allow the use in court of blood alcohol reports obtained at a hospital.

5. An Act Concerning Reform of Criminal Sentencing, Parole Release, Community Supervision and Death Penalty Appeal Procedures.

- The bill would leave the determination of character and public interest determination to the jury/factfinder. The Division does not see this as an effective way to address the Bell decision. It would not facilitate the use of the persistent offender laws and, in fact, would likely make them more difficult to impose.
- The bill creates a new definition of "dangerous felony," and imposes a penalty of life imprisonment without the possibility of release for a third dangerous felony. This is a modified "three strikes and you're out" proposal. A better approach might be to add a "two-strikes" provision, such as a mandatory minimum sentence of twenty-five years for a second dangerous felony conviction.
- With regard to the provisions for increasing mandatory minimum sentences for Burglary, the Division believes the revisions that we have submitted are more comprehensive and include a 10-year mandatory minimum for entering an occupied dwelling when armed, or entering with intent to commit a felony against a non-participant in the dwelling. For Burglary in the Second Degree and

Burglary in the Third Degree, the Division would elevate a second offense to the next higher degree of felony.

- The Division has reservations about Section 16 of the bill, which would give a presumption of reasonable belief to use deadly physical force in defense against home invasion. We certainly can understand the reasoning behind this proposal, but we would urge the Committee to examine all ramifications very carefully and to proceed with extreme caution in this area. Section 53a-20 of the General Statutes provides for the use of physical force and deadly physical force in defense of premises and seems to have worked well for many years.
- The Division supports the underlying reasoning behind Sections 17 and 18 of the bill. The never-ending series of appeals in criminal cases, particularly capital cases, amount nothing less than punishment for the innocent victims of crime and their survivors. While we strongly support the concept of setting time frames in capital cases and bringing an end to the never-ending flood of totally unfounded petitions for writs of habeas corpus, we do have concerns that the time frames as currently included in the bill are unrealistic. We would stand ready to assist in addressing this issue and working with the Committee to develop more reasonable time frames. The Division also has proposed comprehensive habeas reform and would encourage the Committee to facilitate discussions among all of the concerned parties to bring about effective action on this important issue.

6. An Act Concerning Home Invasion. This bill would make a burglary into an occupied dwelling, whether or not the offender knew it was occupied, a class A felony.

7. An Act Concerning Criminal Sentencing and the Parole Process.

- The bill would establish a “three strikes” system without a significant “two strikes” predecessor. Whether a third conviction for Burglary in the Second Degree or Stalking should result in life imprisonment is a policy decision for the legislature to make. However, the Division believes that should the legislature deem that appropriate, it also provide for a strong “second strike,” i.e., mandatory minimum sentences for a second conviction.
- The bill retains special parole as part of the sentence the court can impose on a persistent dangerous sexual offender. A better approach would be to make a period of probation part of the sentence in that it would not run out the sentence that is hanging over the offender, as special parole does.
- The Division supports the expansion of the Board of Pardons and Paroles. The bill would increase number of members on the board. The Division believes the Committee should proceed with caution on any proposal to shift the administration of the Board from one agency to another, taking into account the overall mission and focus of the agencies involved.
- Section 14 of the bill would require the prosecutor and court at any sentencing hearing to make a statement on the record regarding the offender’s history, character and nature of the criminal conduct involved. From a practical point of view, we would recommend that if this step were taken it be limited to cases

where the sentence is more than two years since they are the only ones that qualify for parole eligibility.

8. An Act Strengthening Criminal Laws Concerning Persistent Offenders, Burglary, the Justifiable Use of Deadly Force and Parole Release:

- The Division has presented a comprehensive proposal (Agenda Item No. 2) concerning the changes to the Burglary statutes proposed in this bill.
- The Division has reservations about Section 12 of the bill that provides for a presumption of reasonable belief to use deadly physical force. Again, we can understand the reasoning behind this idea, but we would urge the Committee to examine all ramifications very carefully and to proceed with extreme caution in this area. We would also note, as stated above, the existing provisions of Section 53a-20 of the General Statutes.
- The Division also would recommend that the establishment of any new or expanded offender registry, such as that envisioned in Section 13 of this proposal, be accompanied by sufficient resources. This is especially important given the expanded responsibilities placed upon the Department of Public Safety concerning the Sex Offender Registry, both as a result of actions taken by this Legislature and the Federal government.

9. An Act Concerning the Board of Pardons and Paroles and Reentry Furloughs. The Division of Criminal Justice takes no position on this bill.

10. An Act Concerning Persistent Burglary Offenders. This bill would create a new category of persistent burglary offender that would include those who are charged but not convicted of subsequent offenses. The Division of Criminal Justice believes the comprehensive proposal we have submitted (Agenda Item No. 2) is the preferable approach.

11. An Act Concerning Information Provided to the Board of Pardons and Paroles. The Division of Criminal Justice supports the concepts incorporated in this bill and, in fact, has been working with the Board of Pardons and Paroles, the Connecticut State Police and municipal police departments and other appropriate agencies to address what is proposed.

12. An Act Concerning the Release of a Person on Parole or Other Supervised Community Release. The Division of Criminal Justice has submitted (Agenda Item No. 2) a comprehensive revision of the Burglary statutes incorporating what is proposed in Section 3 of this bill. The Division supports the concept of Section 1 and is, in fact, in the process of implementing with the appropriate agencies what is proposed.

13. An Act Concerning Nursing and Mental Health Staff at Correctional Facilities and Other State-Operated Institutions. The Division supports the provisions of the bill to provide adequate mental health staffing in the Department of Correction.

14. An Act Concerning the Justifiable Use of Deadly Force in the Defense of Premises. The Division has reservations about this bill, although we can certainly understand the

reasoning behind it. We would urge the Committee to examine all ramifications very carefully and to proceed with extreme caution in this area. We would also note, as stated previously, the existing provisions of Section 53a-20 of the General Statutes.

15. An Act Concerning the Supervision of Certain Offenders. The Division supports the concept of this bill and recognizes the need to provide rehabilitative services to appropriate offenders, particularly younger offenders.

The Division thanks the Committee for this opportunity to provide our input into this process and we stand ready to answer any questions or provide any additional information the Committee might desire.