



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE
DIVISION OF CRIMINAL JUSTICE
PUBLIC HEARING ON THE OVERSIGHT OF CRIMINAL JUSTICE REFORMS

Joint Committee on Appropriations
Joint Committee on Judiciary
October 16, 2008

The Division of Criminal Justice wishes to extend its appreciation to the Judiciary and Appropriations committees for this opportunity to address the implementation of Public Act 08-1 (January Special Session), *An Act Concerning Criminal Justice Reform*, and Public Act 08-51, *An Act Concerning Persistent Dangerous Offenders and Providing Additional Resources to the Criminal Justice System*. We again commend the General Assembly and the Governor for your comprehensive response to the issues addressed in these public acts and for your continued attention to the critical needs of the criminal justice system. We welcome your oversight of our agency and its programs and we look forward to working with you to better serve the people of Connecticut and the interests of justice.

One year ago next month, the Judiciary Committee held a public hearing on a variety of proposals that culminated in the enactment of Public Act 08-1 of the January Special Session and Public Act 08-51 of the Regular Session. These acts provided several significant reforms, including revisions to the criminal statutes governing certain crimes and repeat offenders as well as the equally important provision of additional resources to begin carrying out much-needed procedural and systemic changes. Most important among these needs – and this remains the fact to this day – is the need to modernize our information technology systems and the ability of our agency and others in the law enforcement and criminal justice system to readily share critical information.

For the purposes of the committees' oversight review, we would offer the following summary of the steps the Division of Criminal Justice has taken or is taking to implement P.A. 08-1 (January Special Session) and P.A. 08-53.

Implementation of the Revised Criminal Statutes

P.A. 08-1 (January Special Session) made revisions to the criminal statutes governing the crime of Burglary, including the creation of a new criminal offense, Home Invasion. This new offense (not yet codified) was established effective as of March 1, 2008, and is being charged where appropriate by police departments throughout the State. As of last week, forty cases charging Home Invasion have been brought. Of these cases, there has been one disposition – in the Fairfield Judicial District where the defendant was sentenced to a term of fifteen years incarceration, execution suspended after ten years served.

P.A. 08-1 (January Special Session) also amended the statutes governing persistent offenders. These amendments were further revised and refined with the enactment of Public Act 08-51, the provisions of which also are not yet codified. The most recent and thus applicable provisions were provided in P.A. 08-51, which became effective upon passage, which occurred on May 8, 2008, when the Governor signed the act. Prosecutors are reviewing cases and bringing persistent offender charges where appropriate. We would like to provide statistics today as to the number of cases in which the new law has been invoked, but we are unable to do so because of technological limitations and because of the procedure through which a defendant is charged as a persistent felony offender.

It may be helpful to explain the procedure through which a defendant is charged as a repeat offender. This process includes the filing of a two-part information, or charging document. The "Part A" information charges the immediate offense, and the "Part B" information charges the defendant with violating the applicable section of the persistent offender statutes. The prosecutor will notify the defendant that he or she may be charged as a persistent offender if convicted of the underlying predicate offense, but the prosecutor will not disclose this information to the court nor will the "Part B" information be entered in any official court record. Any physical record stays in the prosecutor's file where it remains unless and until the defendant is convicted of the underlying predicate offense. As such, the Judicial Branch has no records of "pending" persistent offender cases since there is no case until the underlying predicate offense results in a conviction, either by plea of other means. And since we get virtually all of our statistical information from the Judicial Branch, we in the Division of Criminal Justice have no statistics, either. The only way we could get this information would be to individually review each and every case file where such a penalty might apply. As you can imagine, such an endeavor would involve a tremendous amount of time and labor. That is why it is so critical that the Division establish its own case management system where we can produce statistics or generate other information that we need but that other agencies, such as the Judicial Branch, may not need or may in fact be precluded from knowing for legal or other reasons. We will speak to this point in greater detail later in this testimony.

While we cannot provide statistics today on how many persistent offender cases have been brought, we can tell you without hesitation that the Division is implementing and utilizing the new persistent offender laws. We have undertaken a comprehensive approach to educating the law enforcement community, both in terms of the police and prosecutors, with regard to the changes to the criminal law. The new persistent offender law was a featured topic for our Annual Prosecutors Training Conference held on June 26-27 and attended by 184 prosecutors from throughout the system (out of a total of approximately 250 prosecutors). The annual training program included a program entitled "Using the New Persistent Offender Law," which was presented by David Shepack, the State's Attorney for the Judicial District of Litchfield, and Michael A. Gailor, Executive Assistant State's Attorney in the Office of the Chief State's Attorney. Additionally, Mr. Gailor addressed the changes in the persistent offender law as well as the new crime of Home Invasion and related changes to the Burglary statutes as part of his Legislative Update delivered at the prosecutors' training conference. The explanation of the new laws also was published in our internal employee newsletter and through our internal intranet site.

With regard to the training of police, the provisions of the 2008 public acts were important components of our annual training program for police chiefs, the John M. Bailey Seminar on New Legal Developments Impact Police Policies and Practices. This training program is presented by the Division of Criminal Justice through the Office of the Chief State's Attorney in conjunction with the Police Officer Standards and Training Council (POST) and the Connecticut State Police, in accordance with Section 7-294m of the General Statutes.

Recommendation: Repeal Section 53a-102a

As a result of our continuing review of the criminal statutes and the applicable case law, it remains apparent to the Division that further refinement of the criminal statutes is in order. The Division would again respectfully request the Judiciary Committee's attention to the need to correct an inconsistency that now exists in the Burglary statutes as a result of the passage of the 2008 acts. As stated in our testimony submitted for the public hearing of March 12, 2008, section 53a-102a of the General Statutes must be repealed for the sake of consistency. This section establishes the crime of Burglary in the Second Degree with a Firearm, the elements of which were incorporated in their entirety into other sections of the statutes through P.A. 08-1 (January Special Session). What we are proposing here is essentially a "clean-up" amendment to the General Statutes, albeit an important one. The General Assembly must remove any doubt as to the intent of P.A. 08-1 (January Special Session); the retention of Section 53a-102a would leave such doubt and potentially subject the entire act to complex litigation that could easily be avoided.

Implementation of Procedural and Systemic Improvements

A second and much more important focus of the 2008 public acts was to address the need for procedural improvements throughout the criminal justice system. The difficulties we encountered in simply preparing for today's hearing underscore the extent and seriousness of our needs in this area. We could not even get the basic statistics for today's hearing without undertaking a labor-intensive and extremely time-consuming process of manually counting the cases. We still do not have the technical capacity to obtain even the most basic statistical information for any reason. The serious shortcomings of our information technology capabilities and the inability of the various agencies within the criminal justice system to share critical information remains as acute a problem today as it did one year ago. As stated earlier, we cannot provide you today with the number of cases where the new persistent offender statutes have been invoked. The Judicial Branch, the source on which we rely for most statistical information, does not keep this statistic. However, this is an important statistic that the Division of Criminal Justice would want to have and should be able to produce.

It is for these reasons that the Division is so appreciative of the actions taken by the General Assembly and the Governor in the 2008 public acts to provide additional resources for this and other critical needs. Fortunately, there is at least a glimmer of a light at the end of the tunnel. In the area of information technology, the Division is moving forward on two fronts: (1) we are working in conjunction with the Department of Information Technology to develop and implement an internal case management system; and (2) in conjunction with the Criminal Justice Information System Governing Board to implement the long-awaited CJIS system. We commend the Lieutenant Governor and the Chief Court Administrator for their leadership on the CJIS Governing Board and the recent appointment of an Executive Director, and we look forward to working with the Board and the new Executive Director to continue progress in this area. In the time we have waited for the development and implementation of CJIS, generations of computer technology have come and gone. We simply cannot wait any longer to see concrete results.

Closer to home, the Division is proceeding with the development and implementation of critically needed improvements to our own information technology capabilities. The Division has long recognized the need for improvements in this area. The 2006-2007 budget appropriated \$75,000 to the Division for the initial work on development of a case management system. The 2008 public acts appropriated substantial additional funding in this area. A DOIT employee is now working on-site at the Office of the Chief State's Attorney to move this process forward. The Division also is currently in the process of hiring an Information Technology Manager, another position funded through the 2008 public acts. We

expect to have this position filled and the new manager on board before the end of the year.

While we are pleased to report that we are moving forward, we do not want to overstate in any way where we stand today. Our critical information technology needs remain unmet and there can be no doubt that additional resources above and beyond those appropriated in the 2008 public acts will be necessary to complete this work and correct the shortcomings that have long plagued our agency and the criminal justice system.

The same warning must be issued with regard to the staffing needs of the Division of Criminal Justice. We wholeheartedly appreciate the additional resources provided to date. We fully recognize the economic realities of today and the tremendous challenge that lies ahead in the next session to address the state's fiscal situation. Nevertheless, the Division must again state for the record that the reforms initiated with the passage of the 2008 public acts cannot and will not succeed without sufficient resources. We would also warn of the obvious consequences of attempting to shift resources to one area from an equally critical area. For example, the Division is currently facing the elimination of grant funding for prosecutors and investigators for domestic violence cases. The potential consequences of failing to provide adequate resources in this area are just as dangerous as it would be to abandon the commitment outlined in the 2008 public acts to assure the effective prosecution of repeat violent offenders.

On a more practical note, the Division would offer one recommendation where we believe the system can be streamlined to improve efficiency and better coordination between agencies. We would respectfully recommend that the Board of Pardons and Paroles assume direct responsibility for obtaining from the Judicial Branch the transcripts of sentencing proceedings that are utilized by the Board in the parole process. Section 51-286f of the General Statutes currently requires the Division of Criminal Justice through the prosecutor to request and provide to the Board of Pardons and Paroles a copy of a transcript in any criminal case where there is a non-suspended sentence of more than two years imprisonment. We can see no reason for the prosecutor to serve as middleman in this process and believe the needs of the Board of Pardons and Paroles would be more efficiently met by having that agency assume this responsibility directly.

The Need for Further Reform

That is not to say that we cannot utilize our limited resources in more efficient and effective fashion. To do so requires a continued commitment to oversight and reform both on the part of the Division of Criminal Justice, the other executive and Judicial Branch agencies with the criminal justice system, and the Governor and

General Assembly. We stand today committed to working with all parties to make the system work more efficiently and to advance the interests of justice. The Division believes the priority in this area rests in reasonable and long-overdue reform of the process for the filing and disposition of writs of habeas corpus.

The filing of a petition for a writ of habeas corpus is the legal process available to defendants to challenge their conviction after the courts have denied their appeals. The writ of habeas corpus is a fundamental constitutional guarantee that is critical to ensure to all of us the freedom that is the very basis on which our country stands, but its improper use has caused litigation of some criminal cases to be unending and sometimes oppressive. The Division of Criminal Justice can provide numerous examples of meritless petitions that drain on the resources of the Division, the courts and the other agencies involved. This is not only absurd; it is inhumane to victims and their families because there really is no finality to criminal cases. It certainly is not justice. Under the current rules and procedures for habeas proceedings, clearly meritless cases have in fact been entertained by our state courts – and such petitions can be brought again and again by the same inmate no matter how many times his or her guilt is affirmed and no matter how much time has passed after the conviction.

Make no mistake about it. This abuse of the system does not only result in the waste of limited state resources. It also undermines the ability of the system to provide justice to the very small number of inmates who have legitimate claims that should be heard. The inmate who may in fact be innocent can wait in line for his or her day in court while the courts waste tremendous time, effort and resources on meritless cases from people whose guilt was never in doubt. Habeas reform must be a priority for the 2009 General Assembly. The Division of Criminal Justice would welcome the opportunity to work with the Judiciary Committee to immediately begin work on drafting reasonable legislation for the 2009 session that provides for the much-needed reform while preserving individual rights.

In conclusion, the Division of Criminal Justice again thanks the Appropriations Committee and the Judiciary Committee for this opportunity to present our input on these important issues and for your continued attention to the needs of the criminal justice system. We would be pleased to provide any additional information that you might request or to answer any questions that you might have.