



State of Connecticut
Division of Criminal Justice

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary
Oversight Hearing - January 19, 2010

The Division of Criminal Justice expresses its appreciation to the Joint Committee on Judiciary for providing this opportunity to report on the progress that has been made with regard to implementation of the criminal justice reform legislation enacted during the 2008 January Special Session and 2008 Regular Session of the General Assembly. The Division is pleased to report that significant progress has been made in several areas despite a continuing and acute lack of resources, yet we must at the same time warn that much remains to be done and additional resources must be provided if the objectives envisioned in the 2008 initiatives are to be realized. Without a doubt, the most critical item that remains on the "to do" list is the modernization of information technology systems within the Division of Criminal Justice to enable our agency to manage its investigative and prosecutorial caseload and to share essential information with other law enforcement agencies and agencies within the criminal justice and judicial systems.

In order to fully appreciate where the Division stands today, it is helpful to begin with a review of the specific provisions 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*. These acts provided for significant reforms to the criminal laws, including increased penalties for certain crimes and serious repeat offenders, as well as procedural and systemic changes. The acts also appropriated additional resources, both in terms of the operating and capital budgets.

In terms of resources, it should come as no surprise to the committee that the state's ongoing fiscal crisis has severely impacted the Division in terms of what was envisioned in 2008 and what exists today. The 2008 reform legislation provided for seven additional positions in the Division of Criminal Justice, yet as of today the Division has 48 unfilled vacancies representing nearly 10 percent of our total authorized positions. Specifically, Public Act 08-51 provided three-fourths year funding for an Information Technology Manager position; a Director of Organizational Development and five prosecutors in addition to \$188,000 to maintain the Regionalized Infraction Adjudication Program (RIAP).

A total of \$681,000 was appropriated to the Division for these seven positions and associated costs (other expenses, equipment and training and education). Of the \$681,000, \$22,768 was appropriated for the expert witness expenses of the Division. The appropriation for personnel did not provide for fringe benefits and as result the date for filling any positions had to be delayed. Not long after the funding was scheduled to be available on October 1, 2009, the state's fiscal situation began to deteriorate. This, coupled with a large deficit in the expert witness account and deficits in the other expenses and Medicaid fraud accounts, left the Division with no choice but to request Finance Advisory Committee approval to transfer \$601,000 from the Persistent Violent Felony Offender Account to those accounts in deficit. The FAC request was approved in April 2009. Subsequently the General Assembly adopted a budget for FY 10 that eliminated in total the special account for Persistent Violent Felony Offender and transferred funds to other line items within the agency budget. Of the seven positions envisioned in P.A. 08-51, only one, that of Information Technology Manager, was filled last March. The other vacant positions were eliminated from our current budget.

It is in the critical area of information technology and information sharing that the Division may be able to provide the best example of how through intensive management of resources we have been able to accomplish much with the very little in available resources. Through the hiring of the Information Technology Manager and other efforts by the administration of the agency, the Division has made significant progress to address the critical shortcomings long noted by the Division and recognized by the General Assembly in the 2008 reform legislation.

Specifically:

- The Division has essentially resolved the backlog in providing sentencing transcripts to the Board of Pardons and Paroles as required by then-Section 51-286f. In 2009, the Division recommended, and the Judicial Branch agreed to, language adopted in the budget that transfers to the Judicial Branch the responsibility (and associated funding) for providing these transcripts.
- The Division worked in partnership with the Board of Pardons and Parole to develop a system to electronically supply certain other documents (police reports and warrant applications) to the Board of Pardons and Paroles in the cases where transcripts of sentencing proceedings are required (where the sentence is two or more years to serve, i.e., two or more years of the sentence is not suspended by the court). The Division accomplished this with no specific funding provided for this purpose.
- The Division, again with no specific resources, established a process for providing motor vehicle history reports in serious motor vehicle prosecutions to the State's Attorneys' offices in electronic format on a daily basis. This was accomplished with the enthusiastic support of the Judicial Branch, and we publicly thank them for their assistance. This initiative involves documents related to the prosecution of more serious motor vehicle offenses such as driving under the influence (DUI) and reckless driving. This solution will provide a significant cost savings to the Judicial Branch and

the Department of Information Technology (DOIT) as they will no longer have to physically print the reports, separate them, deliver them statewide by courier, and place them into the court files. The Division has made a significant commitment of time and staff to implement, train, and modify our business process in each of the State's Attorney's offices at the Geographical Area (G.A.) court locations to implement this system. Further, the Division has implemented access to the Judicial Branch Criminal Motor Vehicle (CRMV) system utilizing Division technical staff with no additional funding. This has required that technical staff go to each of the Division's fifty locations to implement and provide onsite training for users.

- The Division has upgraded the memory on more than 400 computers utilized by employees at work locations throughout the state, allowing us to get extended life and additional production from these older units, many of which are between four and seven years old. Also, IT information is being migrated from Judicial District locations to the central office in Rocky Hill, physically moving the server or servers to the Office of the Chief State's Attorney. This gives the small IT staff available to the agency the ability to support the multiple requirements of the 50 offices in a more efficient and consistent manner. The migration has been completed for the State's Attorney's offices in 10 of the 13 Judicial District locations and nine G.A. locations. Again, this has been done through our own initiative and with no specific resources provided.

- The Division has created a central expert witness repository, which makes profiles, testimony and other information about expert witnesses available electronically to all offices on the agency network. Plans call for making this available to prosecutors, investigators and support staff statewide if and when all locations are able to communicate directly via the agency's statewide network.

- The Division has completed the essential groundwork for the establishment of a case management system. We cannot understate the importance of a case management system. Without such a system the Division cannot participate in an information sharing system serving the criminal justice system as a whole. An initial \$75,000 appropriation for this purpose has long been exhausted, but through the painstaking management of existing resources the Division has been able to complete much of the work needed to move to the development and implementation of the actual system. A 50-page page Context Diagram was developed identifying all information that comes into the agency, including data, documents, etc., as well as all information that is sent out from the agency. "As-is" business models have been developed for most functions of the agency (only two remain) and business functional requirements are complete for the warrant application process and Part B (G.A.) and Part A (J.D.) criminal cases, which constitute the vast majority of the agency's caseload.

While much has been accomplished, much remains to be done. As stated here, the Division must have a modern case management system that allows it to fully participate in the Criminal Justice Information System (CJIS) project. Further, many other aspects of our IT system are woefully inadequate if not totally nonexistent. For example:

- The Division of Criminal Justice servers are running on the Novell NetWare 6.5 Operating System, which was released in 2003. Microsoft Windows is the State of Connecticut's standard server operating system. DOIT will no longer approve the purchase of Novell Netware, yet this obsolete or soon-to-be obsolete version of this software is the foundation of our system.

- The agency is running three different email programs. There is no access to the global or agency wide address books and there are limitations with POP mail. We cannot take advantage of the functionality of Exchange. There is no remote access to email, and email needs to be stored on a central server that can provide necessary backup and retrieval functionality.

- There is no consistent standard for Office Suite software throughout the agency. Desktops are running a mixture of different programs and various versions of those programs. For example not only is there is a mixture of WordPerfect and Microsoft Word used by staff, but there are many different versions of both of those programs in use. This makes it extremely difficult to support users in fifty different locations with a five-person IT staff. It also makes it difficult to work with outside attorneys and other government agencies. We have instances where we have been unable to open documents from other state agencies because of the age of our software.

The Division requires a framework that will allow for the electronic storage and retention of critical data. The agency must move its data to a central location to allow for the creation of a disciplined environment with consistent processes and practices. Clearly, the development of a modern IT system remains one of the single most important priorities of the Division of Criminal Justice. The 2008 criminal justice reform legislation provided \$5 million in bond authorizations for the CJIS system, however, to date none of this funding has been allocated. We are hopeful, however, that initial funding for the upgrade of our IT infrastructure is forthcoming in that the Office of Policy and Management has notified the Division that it has identified approximately \$3 million in potential federal grant funding that OPM will work with the Division to pursue.

Despite these difficulties and these critical areas aside, the Division is proud to report that we have made progress toward implementing the intent of the legislature embodied in the 2008 criminal justice reform acts. Not only have we made strides toward the systemic reforms as already outlined, but we have also moved forward in the utilization of the revisions to the criminal laws that were adopted two years ago.

P.A. 08-1, January Special Session, established the new offense of Home Invasion, which has since been codified as Section 53a-100aa of the General Statutes. According to the Judicial Branch, as of January 8, 2010, a total of 287 individuals had been arrested for Home Invasion since the statute took effect on March 1, 2008. The average effective sentence in those cases that have been resolved is more than 12 years, according to the Judicial Branch statistics.

The other major revision to the criminal law that was provided by the public acts of the 2008 sessions is the revision of the persistent offender statutes. Neither the Judicial Branch (which provided the statistics above) nor the Division can provide definitive statistical data on the number of cases in which individuals have been charged or convicted pursuant to Section 53a-40, the persistent offender law. The Judicial Branch does not provide for collection of this information. Short of physically checking each of the thousands of criminal files maintained by the State's Attorneys throughout the state, the Division of Criminal Justice has no means to compile these - or any other - case statistics.

Compounding the difficulty is the fashion in which an individual is charged as a persistent offender. The prosecutor prepares a "Part B" information, which is then placed in the individual file of the defendant, but not entered into the official court record as is the underlying, or "Part A," information that charges the immediate offense for which the individual is being prosecuted. Often the "Part B" information will never become a part of the official criminal record as the mere fact of the potential for being charged and sentenced as a persistent offender is an effective tool in securing an appropriate sentence through plea agreement where the "Part B" information would not be subsequently prosecuted.

Although we cannot provide specific data on the number of pending persistent offender prosecutions, our informal survey of the State's Attorneys supplies anecdotal evidence that the revised persistent offender statute is being utilized by prosecutors to carry out the intent of the legislation. It is safe to say that the State's Attorneys are in agreement that the existence of the persistent offender statute and the ability of the prosecutor to file the "Part B" information is an invaluable tool in resolving cases with appropriate sentences through plea agreement. In fact, one State's Attorney estimates that the sentences proposed in plea negotiations are roughly 50 to 100 percent greater when the defendant is eligible for prosecution as a persistent dangerous felony offender.

It is important to note that the number of cases where the defendant is eligible for prosecution as a persistent dangerous felony offender is only a tiny fraction of the overall criminal caseload. We must be careful not to leave the wrong impression and needlessly alarm the public in this regard. That said, it also must be stressed that as limited as the numbers may be, when warranted this sanction is being utilized. We have trained prosecutors on the changes that have been made to the law and they are using it.

Yes, much progress has been made, but it is also becoming apparent there is a limit to what can be accomplished within ever-diminishing resources. The 2008 reform measures cannot be examined in a vacuum. They must be reviewed in the context of the ever-increasing demands being placed on the Division of Criminal Justice and the criminal justice system by society in general and the General Assembly in particular. At the same time that the Joint Committee on Judiciary is examining our ability to carry out the mandates of 2008 legislation, a separate task force is studying the issues related to the investigation and prosecution of domestic violence cases. Already a suggestion has been raised that specialized dockets for domestic violence cases be established in additional court locations. Yet this suggestion comes at a time when the Division is

hard-pressed to fund the positions of those prosecutors assigned to the existing domestic violence dockets. In fact, the Division for at least three years has requested the pickup in the general fund of domestic violence prosecutor positions for which federal funding is expiring. Despite these requests, these positions have not been transferred to the general fund. Quite frankly, the days when the Division could "find the money" to fund these positions are running out.

A similar area of concern are the demands placed on the Division with the enactment of the "Raise the Age" legislation, which extended the jurisdiction of the Superior Court for Juvenile Matters to include most criminal offenses committed by 16-year-olds. Current law calls for the further extension of "Raise the Age" to classify 17-year-olds as juveniles as well. These changes have resulted in a significant number of cases being moved from the courts responsible for the prosecution of adults to the juvenile courts - with no additional funding whatsoever provided to the Division. While the Division may be able to get by with existing resources for the initial stage of this process - the inclusion of 16-year-olds as juveniles - we cannot say that the same will hold true when 17-year-olds are brought into the juvenile courts. This is also another area where we must stress that not all of our needs are financial. Serious questions about matters of law regarding the prosecution of 16-year-olds - particularly in instances where a 16-year-old is charged both as an adult and a juvenile - have gone unanswered despite numerous attempts by the Division for direction from the General Assembly. These issues must be seriously examined and resolved at the soonest possible time.

The "Raise the Age" legislation underscores the fact that the criminal law and the criminal justice system that must administer that law is an evolving entity. It did not take long after the popularity of computers exploded that we saw the first computer crimes. "Sexting" did not follow long after the advent of "texting." On a positive note, technology has also greatly enhanced our ability to investigate criminal activity and to solve crimes that at one time may have been considered unsolvable. The Division of Criminal Justice has taken a leadership role in the use of DNA analysis and other forensic advances in our search for justice. Each of these developments - whether positive or negative - comes with a price. We must be prepared to take advantage of technology to the benefit of society and to utilize it to detect and deter those who would use technology for illicit purposes. The Division is proud of its record of securing grant funding in this area. But, again, there are limits to the outside sources available. At the very least a training officer should be provided through the general fund to coordinate our efforts to maintain professional competency in investigative techniques and matters of law.

One final area the Division must address today is the issue of habeas reform. We would respectfully again ask that the General Assembly give serious consideration to critically needed reform of the habeas process, i.e., the process by which the courts decide petitions for writs of habeas corpus filed by convicted criminals. We cannot even hope to begin to address other critical needs of the criminal justice system if we are going to continue to waste a tremendous and growing portion of our resources on frivolous habeas petitions. The number of new habeas petitions continues to increase

annually, with an average of 582 new petitions filed each year over the last five calendar years, or more than one new case for every day of the year.

At the end of 2009, more than 1,000 habeas cases were pending in the Superior Court. We can show you page after page of successive and unsuccessful petitions filed by the same inmate. The Division recently received a petition from an inmate convicted more than twenty-five years ago – a case that has already been through the system time and time again. These cases are completely without merit, yet they continue to flood the system. The lack of any substantive controls on the number of petitions – and appeals from petitions – that an inmate may bring represents the single largest waste of resources in the criminal justice system. The Division estimates that our costs to the state for habeas cases exceed \$4.3 million per year, or more than \$4,200 for each case. And this is only the cost incurred by the state on behalf of the Division of Criminal Justice. It does not include the cost to the Judicial Branch or the Division of Public Defender Services, which we would expect are also significant.

This situation not only draws resources from other investigative areas – including the prosecution of persistent dangerous offenders – but it also detracts from our ability to focus on the very small number of habeas petitions where valid claims are in fact presented. Justice is delayed, if not even denied, to these petitioners while we waste our time and resources on frivolous petitions. Our commitment to justice is unwavering. It is not undermined, but rather strengthened, by our strong support for meaningful habeas reform to end the costly abuse of the system. It must be noted that the three cases where individuals who were convicted of crimes have been deemed to be actually innocent of those crimes were resolved completely independent of the habeas process. In these cases the Division voluntarily agreed to requests from defense counsel to review evidence. The Division pursued this review and the thorough re-investigation of these cases by the police and our Cold Case Unit. Based upon the findings of these reviews, the Division agreed to defense requests that the convictions be vacated. The Division is currently a partner with the Connecticut Innocence Project of the Division of Public Defender Services in a federally grant-funded program to test evidence in certain cases where physical evidence exists that may indicate actual innocence of convicted defendants. Habeas reform will give us more resources to address these cases.

In conclusion, the Division of Criminal Justice again expresses its appreciation to the Committee for providing this opportunity for important public discussion and examination of these issues. We would reiterate our belief that we have accomplished much to carry out the intent of the legislature in the 2008 reform legislation, and that we have done so despite the tremendous fiscal challenge that is confronting not only all in government but our society as a whole. Yet we have reached the point where we can no longer provide assurances that we will continue to make progress without additional resources. For the first time in memory, our agency is projecting a deficiency. Unfilled vacancies are placing even greater pressures on our employees whose dedication and commitment has made possible the progress we have made. We respectfully ask the General Assembly to work with us to preserve the gains that we have made and to continue to support the system so that it may serve the people of our state and the interests of justice.