State of Connecticut

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Testimony of Christine Perra Rapillo, Chief Public Defender
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Committee on Judiciary - Public Hearing March 18, 2019

Raised Bill 1055

An Act Establishing a Task Force to Study the Juror Selection Process, Providing Access to Certain Records Possessed By the Department of Mental Health and Addiction Services, Connecticut Valley Hospital and the Psychiatric Security Review Board and Concerning Sentencing of Persistent Larceny Offenders And Nonfinancial Conditions For Pretrial Release.

The Office of Chief Public Defender supports this bill and thanks this Committee for raising it. ***House Bill 1055*** will assist in assuring fairness and the provision of effective and competent legal representation as required by the state and federal constitutions.

Section 1 would create a Task Force comprised of certain state agencies, bar associations and law schools to examine jury selection and whether the current process assures a fair-cross selection of the community. The language of Section 1 is similar if not identical *to H.B. No. 5414, An Act Concerning the Establishment of a Task Force to Study the Juror Selection Process* which was supported by the Judicial Department and passed the House during the 2018 session. Unfortunately, it did not get called in the Senate during the short session.

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to an impartial jury selected from a fair cross section of the community. In Connecticut, criminal defendants lack any means of enforcing this important constitutional right because the Juror Questionaries' are not retained by the Judicial Department for an appropriate amount of time. The Task Force would be able to review how other states collect and maintain complete juror demographic information. The retention of the demographic data produced by the juror questionnaire is necessary to enforce the constitutional guarantee to a jury selected from a representative cross-section of the community.

Currently C.G.S. § 51-232(c) provides that the questionnaires filled out by prospective jurors must ask for race and ethnicity but must also indicate that providing this information is optional. The intended purpose of this statute was to ensure that jury pools are representative of the community as a whole. However, relatively few prospective jurors fill in their race and ethnicity when given the option. As a result, the statute does not fulfill its purpose of accurately documenting the demographic makeup our jury pools and thereby ensuring that our jury pools are inclusive and truly representative of our communities. The federal courts, including those in Connecticut, require prospective jurors to furnish their race and ethnicity on their questionnaires.

This enforcement mechanism is important to expose and correct errors that may unintentionally exclude whole groups of people from jury service. This is aptly illustrated by two Connecticut federal court cases in the 1990s. See United States v. Osorio, 801 F.Supp. 966 (D. Conn. 1992); United States v. Jackman, 46 F.3d 1240 (2d Cir. 1995). In those cases, the defendants asserted that their jury pools were not representative of the community. When the situation was investigated, it was discovered that computer programming errors had omitted any residents of Hartford or New Britain from the mailing lists used to summon federal court jurors. This in turn caused racial disparities, which the federal court held violated the guarantee of a jury selected from a fair cross-section of the community. This exclusion of entire communities from jury service was only discovered and corrected because the federal courts had required jurors to furnish their race and ethnicity. Examining that data is what led the parties and the courts to discover the problem and investigate further.

Section 2 directly addresses the lack of oversight and review of the media recordings produced by Whiting and CVH pertaining to PSRB acquittees. In most cases, the PSRB acquittees are represented by counsel appointed and employed by the Division of Public Defender Services. The clients regularly report incidents to our attorneys and tell them to "check the videotape". DMHAS has not allowed the lawyer representing the acquittees any access to those tapes, even when they have a release from the acquittee and directly request them. Further, descriptions of these incidents are reported to the PSRB at administrative hearings as evidence justifying continued placement in the most restrictive setting; leaving the acquittee with no access to the only objective evidence which would exonerate them and no way for their counsel to effectively defend and represent them.

This proposal would give counsel for the acquittee the right to review the tapes, upon request, with the acquittee's release. The acquittees are provided with counsel throughout their commitment to the PSRB. It makes no sense to hinder the lawyer's ability to advocate for and protect this very vulnerable population against information that is being used against them in hearings at the PSRB. The lawyer should have access to the tapes both to

defend the client's rights and to ensure that they are being properly treated and not abused. This proposal would not impact upon access to such media recordings in criminal prosecutions which is governed through the discovery rules in accordance with the Connecticut Practice Book.

The Office of Chief Public Defender has been engaged in discussions with DMHAS and is hopeful that language can be agreed upon to permit access to such to counsel for the acquittee in these proceedings.

Section 3 would amend the persistent larceny statutes to mirror the persistent felony offender statutes by permitting an enhanced sentence as authorized for the next more serious degree of larceny. For example, the persistent felony offender statute provides an enhanced penalty to the next felony classification if a defendant has been twice convicted of a felony, other than a class D felony.

Under current law, a person who has been found to be a persistent larceny offender is one who stands convicted of a larceny 3rd degree larceny pursuant to 53a-124 prior to October 1, 1982 or larceny in the 4th, 5th or 6th degree (misdemeanors) and who has been convicted twice on separate occasions of a larceny. Anyone so convicted may be sentenced for a class D felony, which can include a sentence of incarceration of up to 5 years. This penalty can be imposed regardless of when the prior convictions occurred and regardless of the value of the items the subject of the larceny.

As a result, a person convicted of larceny of items the value of which would amount to a 6th degree larceny which carries a maximum sentence of 3 months can be convicted and sentenced to a felony for up to 5 years. (***Attached is a chart which demonstrates the classification of the larceny statutes, the value of the items for each classification and the penalty for a conviction of such.)*** A person sentenced pursuant to the proposed bill would be sentenced in accordance with the next misdemeanor classification if twice convicted of a misdemeanor larceny.

Lastly the proposal provides for a lookback of 10 years for the underlying misdemeanors so that petty larceny charges from more than 10 years ago cannot provide a basis for the enhanced penalty. By amending this statute, the proposal provides fairness to those who have committed a larceny, sometimes merely to provide for their families.

Section 4 would amend the statues to provide discretion to the court to impose as a nonfinancial condition of release, that a defendant not engage in the use of alcohol or

controlled substances. By eliminating this current condition from the statutes, the proposal does not eliminate the court's discretion to impose such. Instead the court would have the discretion to impose such a condition if relevant to the offense(s) charged. In addition the court would need to consider whether compliance with the condition is practical in light of the defendant's circumstance. For example, if the defendant has a substance abuse addiction currently, the imposition of such a condition could set the defendant up for failure. This ensures that each order in a sentence is narrowly tailored to the individual offender and is consistent with a public health approach to corrections and rehabilitation. The Office of Chief Public Defender requests that the Committee vote favorably on this bill.