

## Special Session on Criminal Justice

The tragedy in Cheshire spurred a call for a special session to enact tougher laws regarding probation and parole. There was a call from a group organizing around the Cheshire tragedy for a “Three Strikes” law in CT. The Republicans took up this call and attempted to call a special session on this issue every time the legislature came into session during the Fall. The Democrats, led by the Chairs of the Judiciary Committee, called for a process to investigate what contributed to the Cheshire crimes including hearings, proposed legislation, etc. This delay helped to allow the public to calm down and legislators to really take a close look at the issue. Judiciary held an informational public hearing in the early fall and a public hearing the week after Thanksgiving.

The informational public hearing was limited to experts invited by the chairs of Judiciary and the Commissioner of Corrections. It focused on three strikes, informational technology and prison overcrowding (exacerbated by the ban on parole instituted by the Governor in response to Cheshire and the release of a sex offender who re-offended while on parole.) It was agreed to by every one of the administration folks who spoke that the real failure that led to the release on parole of the suspects in the Cheshire killings was the inability of the different agencies to share information about people moving through the system.

There were 15 different proposed bills submitted by legislators and public officials before that Judiciary public hearing. Many people testified at the hearing about the need for more funds for good re-entry programs, diversion for people with mental illness, etc. There was little testimony in favor of “three strikes” except by the legislators who introduced the legislation. John Watson, a criminal defense attorney, testified for ACLU-CT.

In addition, the Governor appointed a task force to look at proposals to address the Cheshire tragedy. That task force adopted its final report on January 9<sup>th</sup>. On January 8<sup>th</sup> the Governor put forth her criminal justice plan. She called for new legislation re-defining home invasion, changes to the “persistent offender” law to conform to a recent Supreme Court decision that required the jury, rather than the judge, to impose an elevated penalty under the statute, and a “three strikes law” (an automatic life sentence for anyone committing three defined felonies. She also supported more re-entry funds, an updated IT system, a professional Board of Parole and Probation, more probation and parole officers, etc. but proposed that any items that required funding be postponed until the regular session.

Her task force’s report did not include a “three strikes” provision.

There seemed to be agreement around a new home invasion law, changes in the persistent offender law required by the *Bell* CT Supreme Court decision, and changes to the Board of Pardons and Parole. It was clear that at this point the fight was whether there would be a “three strikes” provision adopted and whether or not there would be proposals and funding for diversion, re-entry, etc. The bill that the Democrats raised for the special session did not include a “three strikes” provision and did include new funding for re-entry and a mental health diversion proposal that had been developed by the Court Services and Support Division of the Judicial. (CSSD).

There had been work done on a lawsuit around mental health diversion by NAMI-CT, ACLU-CT and CT Legal Rights Project. These groups had been in discussions with CSSD who runs the court diversion programs about the lack of opportunities available to people with psychiatric disabilities including those with co-occurring substance abuse problems. While there

were diversion programs that included or were primarily substance abuse treatment, most of these programs did not take people with a psychiatric disability. SB 1700 An Act Concerning Criminal Justice Reform included such a diversion program.

### The Mental Health Division Program

The bill creates a supervised diversionary program for people with psychiatric disabilities, which it defines as a mental or emotional condition, other than solely substance abuse, that (1) has substantial adverse effects on the defendant's ability to function and (2) requires care and treatment. People with these conditions who have been accused of non-violent crimes or motor vehicle violations that carry prison sentences are eligible unless they (1) are ineligible for accelerated rehabilitation due to the nature of the charges or previous participation in other diversionary programs or (2) have participated in the program twice before.

If the accused satisfactorily completes the program, he or she may apply for dismissal of the charges. CSSD must provide the court with information about the person's participation; the court must dismiss the charges if it finds that he or she satisfactorily completed the program. If a participant does not apply for a dismissal, the bill authorizes the court to dismiss the charges on its own motion if it finds satisfactory program completion. After dismissal, all records of the charges are erased, except for those in CSSD's database. Program participants whose applications for dismissal are denied can appeal that determination.

So this is a pre-trial diversion program which will be used primarily by people with co-occurring conditions. People can use this program twice and are not barred from using this program even if they had participated in other alternative to incarceration programs.

There was not enough funding in the bill to adequately implement it. DMHAS estimates it will take about \$6 million annually to fund the program.

### The Three Strikes Amendment

The amendment was offered by Rep. Cafero and Sen. McKinney, the minority leaders in House and Senate. The amendment established a mandatory sentence of life imprisonment for any person who is convicted of a certain crime after having been twice convicted and imprisoned for committing or attempting to commit similar crimes, with sentence review eligibility after 30 years of the sentence has been served.

The crimes included murder other than a capital felony, manslaughter, arson, kidnapping, robbery in the first or second degree, robbery involving an occupied motor vehicle, assault constituting a felony, sexual assault in the first degree, aggravated sexual assault in the first degree, sexual assault in the third degree, sexual assault in the third degree with a firearm, home invasion, burglary in the first degree, burglary in the second degree with a firearm or stalking in the first degree.

The amendment was defeated in the Senate on a vote of 15-21 with all the Republicans and Democratic Senators Hartley, Gaffey and Doyle also voting for it. The same amendment was also offered in the House and died on a vote of 48-91. Again all the Republicans voted for the amendment. The Democrats voting for the bill included Reps. Berger, Gentile, Graziani, Guerrero, Hamm Mazurak, Mikutel and O'Rourke. The Republicans have said they will try again to pass three strikes during the regular session.

## SB 1700 AAC Criminal Justice Reform

The bill passed the Senate on a unanimous vote and the House on a vote of 126-12. The no votes were members of the Black and Puerto Rican Caucus and Rep. Denise Merrill , Chair of the Judiciary Committee. The bill as passed:

1. creates the new crime of home invasion and increases the penalty for burglary of a dwelling at night by making it 1<sup>st</sup> degree, instead of 2<sup>nd</sup> degree, burglary;

2. makes someone convicted of 2<sup>nd</sup> degree burglary or home invasion ineligible for parole until he or she has served at least 85% of the sentence imposed;

3. eliminates a factual finding currently required to trigger enhanced sentencing under state persistent offender laws;

4. alters the composition, qualification requirements, and appointment process for the Board of Pardons and Paroles (BOPP); requires a training program for board members and parole officers; prohibits parole hearings from being conducted unless the chairperson has certified that all pertinent information has been obtained or is unavailable; and requires the board to hire at least one psychologist;

5. eliminates the parole administrative review procedure;

6. updates the crime victim notification law; gives the paroles board discretion to permit family members of living victims to make statements at pardons and paroles board hearings; and directs the Judicial Branch to (a) implement an automated victim notification system that, among other things, can notify interested victims when the court is considering whether to accept a plea bargain and (b) assign two victim advocates to assist crime victims appearing at BOPP hearings;

7. limits the reasons that the Department of Correction (DOC) can grant an inmate a furlough;

8. increases the number of reentry, diversionary, and staff-secure sexual offender beds;

9. requires the Judicial Branch to post certain arrest warrant information on the Internet;

10. requires global positioning system (GPS) monitoring of 300 more parolees;

11. affords BOPP members and employees and certain DOC employees access to juvenile and youthful offender court records in limited circumstances;

12. requires judges to state reasons for imposing conditions on people arrested for certain serious crimes when they release them from custody;

13. establishes a committee to study ways to create incentives for towns that allow community-based offender programs to be located in them;

14. changes administrative driver's license suspension periods when the driver's elevated blood alcohol level is determined by evidence provided by a hospital;

15. moves the effective date of a new consumer reporting law from February 1, 2008 to May 1, 2008;

16. requires probationers who are the subject of arrest warrants or notices to appear to continue to comply with their release conditions;

17. increases the responsibilities of the Criminal Justice Policy Advisory Commission;

18. expands membership in the Criminal Justice Information System (CJIS) Governing Board, directs that body to hire an executive director and design and implement a state of the art information technology system, and appropriates \$ 2. 25 million for these purposes;

19. creates a diversionary program for people with psychiatric disorders who have been accused of less serious crimes;

20. appropriates money for reentry and diversionary services in Bridgeport, Hartford, and New Haven;

21. by January 1, 2009, directs DOC to provide the BOPP with a secure video connection at each correctional facility for conducting parole hearings by videoconference (§ 15); and

22. requires DOC, BOPP, and the Judicial Branch's Court Support Services Division (CSSD) to develop a risk assessment strategy for offenders in DOC custody