

HB5253

PA 10-180

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

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DEPUTY SPEAKER O'ROURKE:

Motion is immediate transmittal to the Senate.

Without objection, all those items are
immediately transmitted.

Mr. Clerk, please call Calendar 345.

THE CLERK:

On page 41, Calendar 345, Substitute for House
Bill Number 5253, AN ACT CONCERNING REVISIONS TO
VARIOUS STATUTES CONCERNING THE CRIMINAL JUSTICE
SYSTEM, favorable report of the Committee on
Appropriations.

DEPUTY SPEAKER O'ROURKE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker. Good evening.

I move acceptance of the joint committee's
favorable report and passage of the bill.

DEPUTY SPEAKER O'ROURKE:

Motion is on acceptance and passage.

Will you remark?

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

This bill consists of five sections, which
represent unrelated issues brought to the attention of

the Judiciary Committee from the Division of Criminal Justice, in other words, the prosecutors. The first section deals with an issue, which is currently unclear under the law, and that is whether failure to appear for a violation of probation hearing constitutes failure to appear under the criminal statutes.

Apparently, there's some question about that since violation of probation technically is not a discrete crime and this would clarify that, whether you're going to court charged with an actual crime or you're supposed to be in court to respond to an allegation of violation of probation. Either way, a willful failure to appear is punished as a failure to appear and this is so that someone who doesn't show up can be charged with that violation and be brought into court to answer to that.

The second section makes what I think is a relatively important change in our process for dealing with people who fail to report for jury duty. Under the existing law, that -- the failure to report for jury duty is treated as an infraction and technically it would be the prosecutors who would initiate a violation or a summons in court to pay a fine for a

failure to report for jury duty. That has not worked very successfully in recent years.

In fact, it's very unusual that someone receives such a violation and, as a consequence, the Judicial Branch has a very difficult time ensuring there's enough jurors, prospective jurors coming to court so that they can go forward with jury selection. The proposal here is to switch it to civil violation and to vest jurisdiction in the attorney general's officer rather than the prosecutors office so they can pursue potential fines against people but not in the nature of an infraction or sort something like a criminal proceeding, instead more like a civil proceeding, a civil penalty.

The following section deals with some, again, lack of clarity in the existing forgery statute. I think we all understand forgery to be, you sign someone else's name to a check but there are -- and that is what is clearly covered under the existing law. What's not clearly covered is when you sign your own name to an instrument and you claim that you have the authority to sign it and in reliance upon that, for example, a check is cashed or some document is process.

Since you're signing your own name, there's a question of whether that constitutes falsely completing an instrument and this would clarify that if you do sign your own name but you clearly do not have the authority to do that. For example, you're claiming to be the power of attorney for someone when you're not. That would also be a form of forgery, which could potentially be punished under the criminal statutes. So, again, Mr. Speaker, I think everyone had always assumed this was covered. There's been some cases where it's not 100 percent clear so the prosecutors have asked for us to add that clarity into the statute.

Finally, Mr. Speaker, again, another issue where it's not been 100 percent clear, practice is different in different courthouses but the final section would clarify that as it relates to information contained in police reports relating to juvenile offenses. That those -- that information can be used in other criminal prosecutions as needed. So for example, if there was an investigation taking place into a particular incident and the police had reason to believe that someone might have been involved, they could go back and take a look at the reports from

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those other incidents even if some or all of the people in those reports might have been juveniles at that time.

Currently, it's not clear if that is allowed but what is clear is that there can be no public dissemination of that information. So the juvenile records are still absolutely confidential. The question is who inside the criminal justice system can review those in the context of other investigations if there might be some relevant information in those reports.

I think these are all important but not major -- important clarifications but no major policy changes here and in many cases, the existing practice has always been what -- what this -- these changes would clarify is, in fact, explicitly allowed.

Mr. Speaker, the Clerk has LCO Number 5075. I'd ask the Clerk to call and I be allowed to summarize.

DEPUTY SPEAKER O'ROURKE:

Mr. Clerk, please call LCO 5075 designated House Amendment "A."

THE CLERK:

LCO 5075 House "A" offered by Representative Fritz.

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DEPUTY SPEAKER O'ROURKE:

The gentleman has asked leave to summarize.

Representative Lawlor, please proceed.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

Mr. Speaker, this proposal, as is clear from the sponsor of the amendment, was brought to our committee by Representative Fritz and I can also point out that the prosecutors have also indicated that they strongly support this particular initiative. This is intended to deal with the situation, which we found in the recent past, that people convicted of very serious crimes, including murder, have turned out a number of years later to be actually innocent. And in -- in the situation where the original conviction of the innocent person might have been based upon perjured testimony or other obstruction of justice, for example, destruction of evidence by people seeking to convict the wrong person an innocent person or people who are just trying to avoid the conviction of the right person.

The question is in a murder case, what would the statute of limitations be in those situations. There is no statute of limitations in murder cases under the

current law. This would extend that same rule to people who engage in perjury in the context of a murder case or people who engage in other forms of obstruction of justice leading to the conviction of an innocent person in a murder case.

The reason for this is that it might be 10, 20, 30 years later, it turns out an innocent person was convicted. It turns out that there was perjured testimony or other forms of obstruction of evidence, which had been engaged in at the original trial. Can we bring to justice the people who participated in putting an innocent person in prison for many, many years. I think -- and there have some recent cases where that has, in fact, taken place, apparently. However, the current statute of limitations prohibits any prosecution for those crimes.

I want to be absolutely clear. It would be unconstitutional to retroactively extend the statute of limitations and reach back and capture people who -- for whom the statute of limitations has already expired. That cannot be done in criminal cases. So this applies prospectively only. This would apply to people who -- for whom the statute of limitations has not yet expired. For those people, should this become

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law, it would be -- the statute of limitations would be eliminated and in the future, people that engage in this type of conduct, in the future, there would be no statute of limitations.

In other words, Mr. Speaker, there's no statute of limitations for murder. There should be no statute of limitations for people who participate in convicting an innocent person of murder and covering up the guilt of the actually guilty person. I urge adoption of this amendment.

DEPUTY SPEAKER O'ROURKE:

Motion:is adoption of House Amendment "A."

Will you remark?

Representative Fritz.

REP. FRITZ (90TH):

Thank you, Mr. Speaker.

And I want to thank Representative Lawlor, too, because he's been a very big help with this issue. We continue to see cases through the Innocence Project coming forward where people have been convicted and sentenced to prison. In one case in Wallingford, a young man was sentenced at 18 and served 22 years. In a recent case in New Haven, we had two gentlemen who were sentenced and served 16 years and all of it was

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based on testimony that we subsequently found out had been perjured.

This is a very, very important thing that we don't send people down the wrong track. It also is very clear that there has to be a conviction and I would urge the chamber's support. Thank you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Thank you, Representative Fritz.

Will you remark?

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

If I may, a few questions to the chair of the Judiciary Committee.

DEPUTY SPEAKER O'ROURKE:

Representative Lawlor, prepare yourself.

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

I believe we had a hearing on a bill that was substantially similar, at least as I recollect, it was intended to get at the same issue, which is to say that testimony that is deemed perjured, that occurs in

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a context of a murder conviction and then years later that testimony, long after the conviction, is determined to be perjurious and the five year statute that currently applies to perjury has long since expired. That's my recollection and I just want to confirm that that is, in fact, what the purpose of this amendment is to achieve essentially the same goal as that piece of legislation that was heard by the Judiciary Committee. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

Yes, that is the case. We did have a bill. If my -- it wasn't voted on. If my recollection served, it was on the agenda on our -- on our deadline -- our JF deadline and, as was the case with many bills on the agenda that day, they were not acted upon but this did have a public hearing and it was extensively discussed in the committee. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

And I -- my recollection was that, in fact, the hearing on this particular bill that was similar to the amendment before us occurred on the very day after, I believe it was Judge Fuger, issued his decision in the habeas corpus matter in which the two gentlemen from New Haven who had been convicted and imprisoned for 16 years based principally on the testimony on one witness who then subsequently recanted her testimony and said that she had basically perjured herself, that that's when this happened.

And my recollection was that I asked the chief state's attorney, who was testifying on the favor of the bill, about the impact that having this extended statute of limitations might have on people who might otherwise recant their testimony and -- for example, if this law were in effect -- had been in effect at the time that these cases occurred in New Haven, would the lady, who recanted her testimony, be subject to prosecution for perjury. And he wasn't really clear or -- in his own mind about whether she actually would be or not but he couldn't rule it out.

So I guess the question I would ask of the chair of the Judiciary Committee is, under those circumstances, if they repeated themselves starting

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today and then 16 years from now, someone who had testified at a murder trial, that they saw these two fellows running out of the store with smoking guns in their hands or whatever her testimony exactly was, would that person be subject prosecution for having recanted her testimony. Through you, Mr. Speaker.

DEPUTY SPEAKER Q'ROURKE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

I suppose that it's possible but I'd point out that in the language of the amendment, there is an affirmative defense available if -- under the circumstance, one was coerced to engage in perjury. In this -- if I recall the allegations in this particular case correctly, the woman, who came forward, claimed that the reason that she testified falsely was because she was pressured to do so by some police officers who were -- I have no idea whether this is true or not -- this is, I believe, what she said.

She said that the reason she testified falsely was because police officers were offering her drugs to -- to testify in this fashion and offering her a free

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pass so that she, herself, would not be prosecuted for some offenses that -- I think she might have been charged with prostitution, possession of drugs, that type of thing. So I think that would certainly fit in to the affirmative defense provision here.

And I would say as a practical matter, that people, who on their own, come forward to volunteer information could certainly be assured -- given a grant of immunity for example in exchange for a truthful testimony in the present time. And I -- so in other words, it's more likely, under this bill, that it would be the police officers who would actually end up being prosecuted because they, too, even though they didn't testify -- I mean, again, I have no idea what is actually true in that particular case -- but let's assume for a moment police officers did conspire to obtain false testimony from a witness, we call supporting perjury. They would be prosecuted much more likely than the witness in this case.

And in the other states and including in Connecticut, where it turns out there was perjured testimony or hidden evidence, et cetera, used to convict an innocent person, I think in almost all those case, it was found by subsequent investigation

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by, let's say, more skillful investigators rather than witnesses coming forward and changing their story voluntarily, which appears to have been the case here. So I hope that answers the question. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

Yes, it does to an extent and I would like to just pursue what I believe the chair of the Judiciary Committee referenced, which are lines 42, 43 and 44 of the amendment, which is -- first off, I'd like to ask was this type of language contained in the bill if he recollects. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

I don't specifically recall. I do know that the discussion took place and whether or not there was affirmative defense in the original bill, I don't recall. But I do recall some discussion about what would happen if a witness was forced to, you know,

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given an incentive or pressured to testify falsely
and -- and the end result of that, I assume, is this
language. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

I think it's illuminating that the cochair of the
Judiciary Committee just used two words, one of which
is in the amendment and one of which is not. The word
coerced is in the amendment and I'm assuming -- and
I'm not an expert in criminal procedure or even the
substance of criminal law -- but I'm guessing that the
word coerced has a pretty well-defined and fleshed out
meaning, as far as when someone is coerced into
testifying and that sort of thing may -- maybe there's
not a complete definition -- a statutory definition
rather but by now the case law has -- has identified
what coerced means.

And my first question, therefore, would be, does
coercion in a criminal testimony context include
something like an incentive where someone is offered
money or, as was the news reports of the New Haven
case, drugs or I think a steak dinner was part of the

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inducement to get the woman in question to testimony falsely. Would those things that were actually given to her constitute coercion. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

I think that ultimately would be a question of the fact for a jury to conclude. After all, this is an affirmative defense, which would be present -- like self-defense, which would be presented to the jury and they would ultimately decide. I think the -- the factual questions would focus -- well, I think here coercion is analogous to the defense of duress and there's this balancing process that a jury is instructed about when someone claims a defense of duress.

And -- so for example, if you were being offered \$10 to testify falsely in a murder case and -- and you said well I need \$10 so I'm going to do it. I think that would not be coercion. If you were -- if you were a heroin addict going through withdrawals and the police were offering you some heroin to stop your withdrawals immediately, I think that might -- that

that would be the kind of duress or coercion that would cause you to change your -- to comply with the request.

This analysis also is applied in determining whether or not confessions or statements were voluntarily made. So I think we're all sort of familiar with the tactics, which could be used to elicit a false confession, depriving people of sleep, of food, of ability of going to the bathroom, that type of thing. So all of that sort of it sort of a factual decision that is made on a case-by-case basis by a jury and that's what would happen here if someone claimed such an affirmative defense.

So it would depend on the situation. Again, I have no idea what the facts really were in the case that's being referred to, the New Haven, but I do know that in the reports the witness claims to have been a -- I don't know what the best way to characterize it, as a heavy duty drug addict, who was in trouble with the law, who was being offered -- she claims being offered drugs and protection by the police and so depending on the exact circumstance, I think that certainly could constitute coercion within the meaning of this affirmative defense.

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So Through you, Mr. Speaker, that's the best I can do. It would be a factual determination and it would depend on the specifics of the case.

DEPUTY SPEAKER O'ROURKE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

But -- just if I could follow a bit further, so coercion would not necessarily be synonymous with duress. Is that correct? Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

I think it would be very close to duress if not synonymous. I think in this context they're essentially the same meaning. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative O'Neill.

REP. O'NEILL (69th):

Okay. And so, Mr. Speaker, there could be things that do not constitute an immediate threat to someone in terms of threatening their lives or property or the

lives or property of someone for whom they have some concern. It think of the famous case that was a Supreme Court case in Connecticut, where the state police, I believe, it was 50 years ago, told someone they should confess to the crime otherwise they'll have to go get his wife, who had a heart condition, and bring her to the police station and because he was afraid of his wife's health, he chose to confess to the crime. And that certainly in my mind is the kind of tactic where someone would be pressured, be placed under duress but that it goes beyond that.

For the purpose of this language that's in the amendment and it could include things that are -- giving money to a heroin addict who is in need a fix in order to avoid the withdrawal pains. That's what I heard earlier. So it goes beyond the kind of coercion or the kind of duress, the kind of thing that I think of as the pressure. I just want to be sure that -- that this is -- potentially could encompass what we are -- have read in the newspapers that the witness had as inducements to testify. That -- that those things might, in the opinion of the proponent of the amendment, constitute enough factual basis to be an affirmative defense.

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I'm a little concerned to make sure that -- that this does not come to be seen as a weight for people like that to be discouraged from coming forward and recanting their testimony. So that the facts of the lady in the New Haven case could be -- fall within the ambit of this section in terms of the affirmative defense. Is that correct? Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

I think so. Although, we don't know what really happened there so I'm reluctant to weigh in on a case that may end up pending before the court. You know, there's all kinds of exceptions to the statutes of limitations so who knows if anybody can be prosecuted in that case including the police officers involved.

But I think that the -- Representative Fritz's situation, if I recall the press reports about that one, I believe in that case, there's a suggestion that the witness deliberately provided false information to the police in order to ensure the conviction of a person they knew to be innocent, which is slightly different -- in order to protect a friend of theirs,

which is slightly different than the situation in New Haven.

But, again, all of these are a case-by-case basis and I think the intent here is to ensure that if someone deliberately testified falsely or withheld evidence or provided false evidence in order to convict -- although, it's not specifically required in the language of the statute -- I think that's the type of situation which would clearly fall within the ambit of this proposed new extension of the statute of limitations. Through you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

And I thank the cochair for his answers. I certainly think that if the -- and there are different circumstances. The one that arose in the New Haven case is peculiar but perhaps not as peculiar as we might think in terms of the likelihood that there are groups of people getting together privately to conspire to do these things, I'm guessing, is comparatively infrequent. Whereas, there are going -- we've seen, across the country, cases of prosecutors,

medical examiners, as well as police officers, doing things where they are basically withholding information, providing information that's false and so the people best positioned unfortunately to do this are people who are in the -- government's pay and they may induce a prisoner to testify falsely in exchange for something, whether that's a lesser sentence or better prison conditions or whatever it might.

But we've seen the cases all across the country and the number of cases where a small group of private individuals with no relationship to the law enforcement community get together and fabricate evidence in order to implicate a third person or a different person, I'm assuming is a relatively infrequent episode. So I hope that we're not making a mistake here by aiming at this case that is identified as belonging to the representative in Wallingford that is arising in her district and I certainly see the desirability of being able to pursue these perjury cases.

I would just point out that when this bill was being considered, I had my research intern go due research on perjury prosecutions and they are few and fair between and they usually involve somebody who was

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applying for some kind of license, who test -- who signs a form and that sort of thing where they falsify information. It seems like it almost never happens when someone testifies in open court, they are prosecuted for perjury thereafter even when later data comes forward, information comes forward to show that they were totally false in their testify.

But I believe that with the affirmative defense language that it would hopefully make sure that we do not discourage people such as the lady in the New Haven case who finally recanted her testimony and helped exonerate two, apparently, innocent individuals who had been held prisoner for 16 years. Thank you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Thank you, Representative.

The motion is adoption of House Amendment "A."

Will you remark? Will you remark?

If not, I'll try your minds. All those in favor of adoption of House "A," signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER O'ROURKE:

Those opposed, nay.

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The ayes have it. House "A" is adopted.

Will you remark on the bill as amended? Will you
remark?

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Along the vein of bringing people to justice, Mr.
Speaker, the Clerk has an amendment LCO 5070. May the
Clerk please call and I be allowed to summarize.

DEPUTY SPEAKER O'ROURKE:

Mr. Clerk, please call LCO 5070 designated House
Amendment "B."

THE CLERK:

LCO Number 5070, House "B" offered by
Representative Bacchiochi.

DEPUTY SPEAKER O'ROURKE:

The lady has asked and is granted leave to
summarize.

Please proceed, Representative.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Many people do not realize that there are no
legal repercussions for an adult, who witnesses a
horrendous crime against a child, such as a murder of

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a child and I'm hoping that through this amendment we can address that here today. The amendment would address the failure to report a murder against a child and I move adoption.

DEPUTY SPEAKER O'ROURKE:

Motion is adoption.

Will you remark?

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

I want to bring to the chamber's attention the following information. Some adults, actually 38 categories of professionals, are mandated to report crimes against children; teachers, doctors, police officers, members of the clergy, coaches, social workers. These adults are held to a degree of responsibility because it is our policy here in Connecticut to protect children. Our children are innocent and they need the protection from all adults not only the mandated reporters.

I believe that if I were witness a crime or a murder, I have a moral, an ethical and I should have a legal responsibility to report that crime. Mr. Speaker, several years in Nevada, a horrendous crime took place in a casino, where a man raped and murdered

a young child. Unfortunately, someone knew about this and, at no point, did they report that to the police and later when the police tried to arrest and prosecute the man who knew about the crime, they found that they were not able to so because their laws would not allow for that to happen.

Similarly in my own district, a young woman was raped and throughout the rape, unfortunately, the mother of the rapist was in the other room and was well aware that the crime was taking place for hours and when the family of the young girl, who was raped, asked the police why were they not arresting the mother of -- that was aware that the crime was taking place. They were told because there are no laws in Connecticut that would force that to happen.

This bill only addresses the reporting of a murder against a child. It does not address the other serious cases because I do understand it is a difficult -- a difficult bill to write. I told the family in my district that I would do everything I could to at least get this to floor of the chamber. It has had a public hearing in the Judiciary Committee and I am fulfilling my promise by bringing it here to my fellow legislators here today. Thank you, Mr.

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Speaker.

DEPUTY SPEAKER O'ROURKE:

Thank you, Representative Bacchiochi.

The motion is on adoption of House Amendment "B."

Will you remark?

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

First of all, let me congratulate Representative Bacchiochi on her advocacy on this issue because, as she stated, she was there in front of the Judiciary Committee and she helped us begin to try to think about how best to accomplish this goal.

I just wanted to relay to the chamber a couple of concerns I have about the potential unintended consequences of this amendment. You know, just a moment ago, Representative O'Neill was pointing out his concern potential unintended consequences and this is always a concern as we enact legislation. So according to the language of the bill, it makes failure to report the murder of child by someone who knows or should of known that that's actually taking place makes that a misdemeanor. My -- one of the potential unintended consequences here is that there

are many circumstances where someone could be in this type of situation where, in effect, they can be charged as an accessory, after the fact, to murder.

That particular crime carries a very lengthy penalty depending on the exact circumstances but could potentially be punishable by life imprisonment just by being an accessory to murder. So, for example, if you acted as a look out, you could be prosecuted as an accessory to -- as an accomplice if you helped act as a look out while someone is destroying evidence or disposing of a body, that kind of thing, you can be charged as an accessory.

The concern I have is that the possibility that the effect of adopting this would be to lower the -- to make it explicit that this type of conduct is, in fact, this new crime, which is a misdemeanor, as opposed to the general understanding of what would be an accessory, which has a much more significant penalty. So there may be situations where a person is clearly not an accessory after the fact and -- but could nonetheless be prosecuted under this statute were it to be enacted but I think in the vast majority of the situations where someone knows perfectly well that a child has been murdered and doesn't call the

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police, I think in most of those situations, there would have been some type of relationship between the murderer and this other individual. And in many of those situations, they would likely be prosecuted as an accessory if there was any evidence at all that they, in any way, acted as a look out or helped to hide evidence or that type of thing.

So that's my concern. I think this is very well intended but it does have some possible unintended consequences and I certainly think there may be a way to do this down the road. It is quite a bit different than the existing mandated reporter statute, which by the way carries a maximum penalty of \$500 fine. So it's not even a criminal offense, only to that fact that you're penalizing people for the failure to do something under certain circumstances.

So I think this may have some unintended consequences and unless and until we can determine that, I feel obligated to oppose the amendment. Thank you, Mr. Speaker.

DEPUTY SPEAKER O'ROURKE:

Thank you, Representative Lawlor.

Will you remark further on House Amendment "B?"

Will you remark on adoption of House "B?"

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If not, I'll try your minds.

All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER O'ROURKE:

Those opposed, nay.

REPRESENTATIVES:

Nay.

DEPUTY SPEAKER O'ROURKE:

The nays have it. The amendment is rejected.

Will you remark on the bill as amended? Will you remark?

If not, staff and guests please come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting by roll call. Members to the chamber please.

DEPUTY SPEAKER O'ROURKE:

Have all members voted? Have all members voted? Please check the board to ensure your vote is properly recorded. If all members have voted, the machine will be locked and the Clerk will take a tally.

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Mr. Clerk, please announce the tally.

THE CLERK:

House Bill Number 5253 as amended by House "A."

Total number voting 147

Necessary for adoption 74

Those voting Yea 147

Those voting Nay 0

Those absent and not voting 4

DEPUTY SPEAKER O'ROURKE:

Bill as amended is passed.

Mr. Clerk, please call Calendar 78.

THE CLERK:

On page 4, Calendar 78, House Bill Number 5324,

AN ACT CONCERNING DIVESTMENT OF STATE FUNDS INVESTED
IN COMPANIES DOING BUSINESS IN IRAN AND SUDAN,
favorable report of the Committee on Government
Administration and Elections.

DEPUTY SPEAKER O'ROURKE:

The Chair recognizes the chairman of the GAE
Committee.

Representative Spallone.

REP. SPALLONE (36th):

Thank you. Good evening, Mr. Speaker.

Mr. Speaker, I move acceptance of the joint

S - 610

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2010**

**VOL. 53
PART 13
3842 - 4128**

cd
SENATE

565
May 5, 2010

Thank you, Mr. President.

Calendar page 21, Calendar 559, House Bill 5407,
move to place on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 21, Calendar 562, House Bill 5253,
move to place on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 21, Calendar 563, House Bill 5340,
move to place on the consent calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 22, Calendar 567, House Bill 5516,
move to place on the consent calendar.

THE CHAIR:

Single-star item? Without -- without objection, so
ordered.

cd
SENATE

572
May 5, 2010

Calendar page 20, Calendar 556, House Bill 5498;
Calendar 557, House Bill 5270; 559, House Bill 5407; 562,
House Bill 5253; and House Bill -- Calendar 563, House
Bill 5340; Calendar 567, House Bill 5371; and Calendar
573, House Bill 5371.

Mr. President, I believe that completes the items

THE CHAIR:

Mr. Clerk, could you please give me on Calendar 567,
do you have 5516, sir?

THE CLERK:

What -- what calendar?

THE CHAIR:

567 on page 22.

THE CLERK:

It's 5516.

THE CHAIR:

Yes, sir. Okay.

Machine's open.

THE CLERK:

An immediate roll call vote has been ordered in the
Senate on the consent calendar. Will all Senators please
return to the chamber. Immediate roll call has been ordered in the Senate on the
consent calendar. Will all Senators please return to the chamber.

cd
SENATE

573
May 5, 2010

THE CHAIR:

Have all Senators voted? Please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent
Calendar Number 2.

Total number voting	35
Necessary for Adoption	18
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Yes, Mr. President.

Mr. President -- Mr. President, before moving to adjourn, I would like to ensure the entire chamber will wish Laura Stefon, Senator McDonald's aide, my former intern, a happy birthday.

And with that -- and with that, Mr. President, I would move the Senate stand adjourn

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 3
671 – 1026**

2010

11
rgd/gbr JUDICIARY COMMITTEE

March 3, 2010
11:00 A.M.

once.

EDWARD J. NADRICZNY: And the -- (inaudible) the only way our office would know that is there's a feature, through our collect system, where the officer, through their MBTs could run the person's driving history in the car to see if they're a multiple offender.

REP. FOX: Okay. Because I see that the penalty is different, though, for multiple offenders, as it currently exists. Right.

EDWARD J. NADRICZNY: Right. Yeah.

REP. FOX: Okay. Well, thank you. Appreciate it.

REP. LAWLOR: Are there further questions?

If not, thanks to both of you for coming up today.

EDWARD J. NADRICZNY: Thank you very much.

REP. LAWLOR: Next is Kevin Kane, Chief State's Attorney.

And we can ask Attorney Kane what he thinks when he gets up here because he's the head guy. Right.

Here's the head prosecutor. We'll find out right now.

A VOICE: (Inaudible).

CHIEF STATE'S ATTORNEY KEVIN KANE: Sorry. Should I say all that again?

My name is Kevin Kane. I'm the Chief State's Attorney. I'm here to testify in support of two bills. First of all, thank you,

SB 237
HB 5253
HB 5280

Representative Lawlor, Representative Fox, and the members of the committee who are here or are listening.

The two bills that I'd like to testify on in support of are Senate Bill 237 and House Bill 5253. Senate Bill 237 is a bill which would exempt from the -- or -- or remove from the statute of limitations -- well, here's the problem it deals with.

We are having -- we have set up in two areas of the state now -- hopefully we're going to expand it to -- to three and maybe more, cold case homicide units, units to investigate, primarily, cold homicide cases. There are about 700 unsolved murder cases in the state of Connecticut right now. That's an estimate. It may be even higher than that.

We have set up, through the cooperation of -- of police departments, with state and local police departments, two units that have -- where the police departments have assigned detectives that work with these units together. So we have created, basically, their task force of very experienced, capable detectives to work on old, unsolved homicide cases and violent sexual assault cases to try to solve them. We've solved over 27 cases, recently, that have led to arrests. And a number of those have led to convictions.

Our problem is there -- well, there's correctly and -- and very wisely, this Legislature has -- there's no statute of limitations on murder, crimes of murder, or capital felony. There is, however, a statute of limitations that would prevent prosecution of people who hinder prosecution or are what we call accessories after the fact, who for instance, help a murderer hide a body, or

but it's happened, that person is found to be actually innocent, we ought to be able to go back and prosecute anybody that's committed perjury during the course of that trial or during the course of the investigation.

These are two things, two methods to deal with serious crimes that have been committed that we're trying to solve or unsolve, solve and undo a conviction where our search for truth would -- would be assisted greatly and justice would be assisted greatly if we could eliminate the statute of limitations in those two cases. That's the purpose of that bill.

The second bill is 5253. It's a written title to revisions to various statutes. Last year we submitted a bill. This -- the -- the issues here were contained in a bill that was passed that was referred by this committee out, passed the House unanimously, and died at midnight in the Senate.

Some of the provisions of that bill have been reenacted last September during the budget Session. I don't understand the process. But whatever it is, things happened that worked and some of those provisions got enacted.

These provisions, again, were part of that bill. As I said, this committee referred it out -- referred it out. The House passed it unanimously. And at something, like, at three minutes of midnight, after everybody in the Senate was telling us, don't worry, it will get passed, it didn't get passed. Something happened and it died.

So we're asking this committee to refer this out again favorably.

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 4
1027 – 1359**

2010



**State of Connecticut
DIVISION OF CRIMINAL JUSTICE**

Testimony of the Division of Criminal Justice

In Support of:

**H.B. No. 5253 (RAISED) An Act Concerning Revisions to Various Statutes
Concerning the Criminal Justice System**

*Joint Committee on Judiciary
March 3, 2010*

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Report for H.B. No. 5253, An Act Concerning Revisions to Various Statutes Concerning the Criminal Justice System. This bill incorporates many of the provisions of H.B. No. 6664 of the 2009 Regular Session, which was fully vetted through the legislative process but unfortunately failed to pass in the final hours of the session for reasons unrelated to its content. In fact, two of the subject areas included in last year's bill were subsequently addressed by the General Assembly through provisions of budget implementation bills. The Division extends its appreciation to the Judiciary Committee and to the full General Assembly for your assistance on these matters.

The remaining sections of last year's bill which are now included in H.B. No. 5253 address a variety of important statutory revisions that would contribute to the efficiency and effectiveness of the criminal justice system. The Division would emphasize that the bill specifically requires that its provisions be carried out within available appropriations and there would be no cost to the state. In fact, at least one provision, that dealing with jury duty, could in fact result in a revenue gain.

Sections 1 and 2 clarify sections 53a-172 and 53a-173 of the general statutes dealing with the crime of Failure to Appear. The bill would make it clear that an individual can be charged with Failure to Appear at any court hearing held pursuant to section 53a-32, Violation of Probation. This provision is offered in response to a ruling in New Haven where the Court dismissed a charge of Failure to Appear for an individual who appeared for the initial hearing under section 53a-32 but did not appear for a subsequent hearing after the case was continued.

Section 3 amends subsection (b) of section 53a-70, Sexual Assault in the First Degree, to allow judges to suspend the mandatory ten-year sentence if the defendant is under the age of 18 or whose mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution. There is precedent for such a change since this bill would create a sentencing scheme similar to that already provided for certain drug violations under section 21a-278.

Section 4 addresses the longstanding problem of "no-show jurors" or those who individuals who do not respond to a summons for jury duty. This section would eliminate the current unenforceable criminal provisions in favor of a civil procedure where a civil fine would be assessed for failure to respond to a summons. Enforcement would rest with the Office of the Attorney General, which already has authority over non-criminal legal matters. Similar procedures are already in use in other states. The Division would note that the State of Connecticut can take pride in the fact that the vast majority of the thousands of people called for jury duty each year do in fact carry out their civic duty.

However, as we noted last year, the State of Connecticut for some time has lacked an effective mechanism for dealing with the very small percentage of those summoned to who ignore their duty to serve. Criminal prosecution is not possible because there is no feasible way to prove beyond a reasonable doubt that an individual actually received the summons. A substantial increase in personnel and other investigative resources would be required to even attempt to successfully prosecute these cases. Further, the Division of Criminal Justice believes a civil enforcement procedure is preferable since the process for summoning prospective jurors is in no way a prosecutorial function. It is exclusively a judicial function and as such all aspects should be carried out within the Judicial Branch. Implementation of this change could actually have a positive fiscal impact by establishing a means for collecting some sort of financial penalty for failure to answer a jury duty summons.

Section 5 revises section 53a-137, which is the definitions section for Forgery and Related Offenses. The Division calls the Committee's attention to *State v. Raffa*, and *State v. Robert Kuchta* where prosecution was barred under the current definition. The bill would make it clear that an individual commits a crime when he or she signs a written instrument fraudulently representing that they had authority to sign in the capacity in which they did. The cases in question involved public officials who were charged with "signing off" on official building inspection reports when they did not have authority to do so.

Finally, section 6 of the bill would make Youthful Offender records available to law enforcement and prosecutorial officials conducting criminal

investigations. This language is similar to Section 46b-124(d) dealing with the confidentiality of juvenile records and would apply to youthful offender records. It would allow the prosecutors and law enforcement officers to have access to otherwise confidential youthful offender records when conducting an investigation. The section brings greater conformity to the statutes in the wake of the revisions to the Youthful Offender laws.

Again and in conclusion, the Division would respectfully recommend and request the Committee's Joint Favorable Report for H.B. No. 5253, which would contribute to the more efficient and more effective operations of the criminal justice system. We would be happy to provide any additional information or to answer any questions the Committee might have.

Respectfully submitted,

Kevin T. Kane
Chief State's Attorney