



**DIVISION OF PUBLIC DEFENDER SERVICES**  
**State of Connecticut**

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**Testimony of the Office of Chief Public Defender**  
**Jennifer Bourn, Chief of Legal Services**

**Judiciary Committee – March 6, 2023**

**Raised H.B. 6834 – An Act Concerning Serious Firearm Offenses by Repeat Offenders**

The Office of Chief Public Defender (OCPD) **opposes Raised H.B. 6834, An Act Concerning Serious Firearm Offenses by Repeat Offenders (LCO No. 5168)**. OCPD opposes this bill for numerous reasons. This bill arbitrarily designates certain offenses as “serious firearm offenses,” it unconstitutionally requires detention without bail in certain circumstances, and it unnecessarily burdens the system with unrealistically quick hearings and specialized dockets. But of primary concern to this office is that this bill will disproportionately impact communities of color and exacerbate existing inequities in gun laws and the criminal legal system. This office cannot support a tool to inequitably incarcerate Black and Brown people.

The stated purpose of the bill is “[t]o increase accountability for serious repeat offenders and those who commit serious firearm offenses.” The bill ventures to meet this goal in several problematic ways that include:

- (1) creating a category of “serious firearm offenses” that are purportedly more serious than other firearm offenses;
- (2) requiring automatic detention – which is unconstitutional – and unrealistically quick hearings on violations of probation (VOP) where there is an allegation of a serious firearm offense, and the person is on probation for a certain qualifying offense;
- (3) if charged with a serious firearm offense and the defendant also has a qualifying

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***Mission Statement of the Division of Public Defender Services***

*Striving to ensure justice and a fair and unbiased system, the Connecticut Division of Public Defender Services zealously promotes and protects the rights, liberty and dignity of all clients entrusted to us.*

*We are committed to holistic representation that recognizes clients as individuals, fosters trust and prevents unnecessary and wrongful convictions.*

previous conviction,<sup>1</sup> requiring money bail instead of allowing the court the discretion to order less onerous and restrictive modes of pretrial release that are considered and available, if appropriate, for every other offense except capital cases; (4) creating gun dockets in only four cities, where such dockets will apply predominantly to Black and Brown communities; and (5) requiring all law enforcement officers and prosecutors to petition for violation of probation or parole if they believe the person poses a threat to public safety, without defining or giving guidance as to what that means.

**The bill would exacerbate racial disparity and inequity.**

OCPD urges legislators to obtain data about and consider the demographics of the population who are most often charged with the particular gun offenses that are deemed “serious firearm offenses”<sup>2</sup> by this bill. It is troubling that these are the offenses characterized as “serious” and as carrying the serious consequences created in the bill without any apparent racially neutral rationale for treating the myriad other gun offenses so differently.

**The distinctions drawn between firearm offenses are arbitrary.**

Why is carrying a gun after a prior felony conviction for something like larceny or failure to appear in court a “serious firearm offense,” but carrying a gun without a permit is not? Why is borrowing a gun without serial numbers from a friend for your own protection a “serious firearm offense,” but lending your gun to a friend for their protection is not?

It does not appear that these distinctions are based on any objective criteria or measurable harm to society. Instead, the distinctions are drawn, whether intentionally or not, along the lines of offenses that most frequently affect communities of color.

**Data must be analyzed and proposed distinctions between offenses scrutinized before enacting public policy.**

This Office urges caution when making assumptions about individuals and their degree of dangerousness and threat to public safety based on prior convictions. Similarly, just as we now know that rates of drug use are higher in the white population even though rates of *arrest* for drug use/possession are higher in the Black population, we should use caution when making assumptions about rates of illegal gun possession or other irresponsible or

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<sup>1</sup> The qualifying offenses listed for this provision and VOP provision are numerous and frequently occurring. The list cannot be said to include only the worst or most violent offenses. Conduct from this list includes drug sharing with a friend, purse snatching, and non-violent taking of property valued at more than \$2000.

<sup>2</sup> Under the proposed definition, one is guilty of committing a “serious firearm offense” by (1) possessing or manufacturing a firearm that is altered in some way (serial numbers removed or other alteration that makes possession of the firearm unlawful), (2) possessing large capacity magazines illegally, or (3) criminal possession of a firearm after (a) having been convicted of a felony, or (b) the act of brandishing or shooting a firearm while threatening another person.

It is not clear what “criminal possession of a firearm” is referring to and whether it is broader than the offense criminal possession of a firearm. The bill does not specify the statute number(s) for criminal possession of a firearm, §§ 53a-217, 53a-217c. But the bill *does* specify statute numbers for other offenses (altered firearm, large capacity magazines), creating some confusion.

dangerous gun usages in different populations based on arrest or conviction rates.

To plainly summarize systemic problems too numerous and too vast to discuss here fully, Black and Brown communities are overpoliced, Black and Brown people are stopped and searched more frequently, Black and Brown people are more likely to be held on bond, which brings about higher conviction rates, and Black and Brown people are overrepresented in the prison population.<sup>3</sup> A felony conviction on a Black or Brown person's record is as much – if not more so – a symptom, or manifestation, of systemic racism, as it is a reflection of criminal conduct. A racial and ethnic impact statement, under Public Act 18-78, could be used to assess and address the anticipated impact of this bill.

### **Historical context.**

To understand the problematic racial impact of this bill, it's important to contextualize it against the backdrop of the systemic and insidious racism in the criminal legal system and the racist history of gun laws in this country. Our country's history of criminalizing and excluding Black people from owning firearms underscores the need for closely scrutinizing and carefully crafting legislation to ensure that the legislation is applied evenly across the population and does not target or disparately impact people of color.

*The founding generation that wrote the Second Amendment had racist gun laws, including prohibitions on the possession or carrying of firearms by Black people, whether free or enslaved. A Florida law in 1825 authorized white people to "enter into all Negro houses" and "lawfully seize and take away all such arms, weapons, and ammunition." In Dred Scott v. Sandford, Chief Justice Roger Taney argued that one reason Black people could not be citizens under the Constitution was that it "would give to persons of the negro race" the right "to keep and carry arms wherever they went." After the Civil War, the Black Codes enacted in the South made it a crime for a Black person to have a gun. Even facially neutral laws were used in a racially discriminatory fashion; Martin Luther King Jr. was denied a concealed carry permit even after his house was firebombed. For much of American history, gun rights did not extend to Black people and gun control was often enacted to limit access to guns by people of color.*

[Racist Gun Laws and the Second Amendment - Harvard Law Review](#), Adam Winkler (2022).

In conclusion, this office urges the Committee to **reject** this legislation. Thank you.

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<sup>3</sup> See e.g., the work of the Connecticut Racial Profiling Prohibition Project (CTRP3), (<https://www.ctrp3.org/>), The Sentencing Project (<https://www.sentencingproject.org/>), and the Prison Policy Initiative (<https://www.prisonpolicy.org/>).