



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Ann Parrent, Assistant Public Defender

Judiciary Committee – March 29, 2019

S.B. 344, An Act Supporting Diversity in the Selection of a Jury Panel

The Office of Chief Public Defender supports the intent of *S.B. 344, An Act Supporting Diversity in the Selection of a Jury Panel*. 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. The intent of the bill is to promote diversity and improve the current jury selection process in criminal trials and address fairness. The bill requires the Jury Administrator to do what is necessary to ensure that a fair cross section of the community is represented and that groups of persons are not excluded as a whole from the process. (Section 1). The bill also requires the court, prior to commencement of trial and after a statement from defense counsel, to determine whether the impaneled jury represents a fair cross section of the community. If it does not, the court is required to return the case to the Jury Administrator for further proceedings as necessary to accomplish this. (Section 3).

The Office of Chief Public Defender fully supports efforts to increase the diversity and inclusiveness of the juries that are impaneled to carry out the important responsibility of adjudicating the guilt or innocence of those charged with criminal offenses in Connecticut. If the Committee is not inclined to adopt this bill as drafted, it could address the underlying issues by requiring a full review of the current jury selection practice by a Jury Task Force. This office has proposed a bill that would create a task force to examine whether current practices in jury selection result in a fair cross section of the community being summoned and whether a fair cross section of the community actually appear for service. See *H.B. 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. Section 1 of H.B. 1055 creates such a task force and is similar to H.B. 5414, *An Act Concerning the Jury Administrator’s Retention of Demographic Data Relating to Jurors*, which passed the House in 2018.

This office has raised the issue that in Connecticut, a defendant lacks any means of enforcing his/her constitutional right to a jury pool which is inclusive and representative of the community as a whole. A reason put forth is that while the Juror Questionnaires ask potential jurors their race and ethnicity, providing the information is not required. In addition, Juror Questionnaires are not retained by the Judicial Department for an appropriate amount of time for appeal purposes. This creates an obstacle to ensuring that jury pools are inclusive and representative of the community as a whole. And, unlike the requirement in the federal court system, potential jurors are not required to provide this information.

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.

A task force could also study how other factors may be affecting the ultimate composition of impaneled juries. For example, some individuals who are summoned for jury duty and are willing to serve may be unable to do so due to financial hardship. Those whose employers do not continue paying them for days absent for jury duty beyond the five days required by law receive only \$50 per day for jury service after five days. They are not otherwise compensated for taking unpaid days off from work, which invariably will cause financial hardship. Those with childcare or other caretaking responsibilities can serve as jurors only if they are able to make alternative arrangements, which may require financial outlay. Such individuals who would suffer financial loss are eligible to be excused for hardship to avoid

financial loss. However, they are thereby deprived of the opportunity to serve on a jury and such hardship excusals reduce the pool of available prospective jurors based on financial factors. This can have a substantial impact on the demographic characteristics of the pool of jurors available to serve on juries. Without documenting the race of prospective jurors, it is impossible to evaluate the impact of these financial factors on the ultimate racial composition of impaneled juries. A task force would have the ability to collect more complete data concerning these issues, which could be used to develop policy proposals to reduce the number of prospective jurors who are simply unable to serve on juries, such as by increasing the daily compensation for jurors or providing childcare where needed..

This Office supports this bill. However, if the Committee is not inclined to adopt it as drafted, this Office requests that the issues raised be added to the mission of the task force contemplated by H.B. 1055 and that H.B. 1055 receive a joint favorable vote. Creation of a task force will assist in moving the discussion forward in a productive way to consider all of the factors that may be operating to reduce the diversity and inclusiveness of our juror pools This Office remains committed to working on these issues.