RHODE ISLAND SUPREME COURT
Office of General Counsel
Licht Judicial Complex
250 Benefit Street
Providence, RI 02903
401-222-8714/401-222-8634 (Fax)

April 4, 2023

Via Electronic Mail (HouseJudiciary@rilegislature.gov)
Chairman Robert E. Craven, Sr.
House Committee on the Judiciary
Rhode Island State House
House Lounge
Providence, RI 02903

Re: House Bill #5686: An Act Relating to Criminal Procedure: Sentencing and Execution

Dear Chairman Craven:

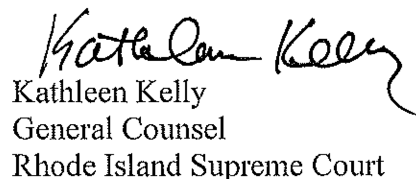
I write on behalf of the Rhode Island Judiciary to respectfully express our concerns regarding House Bill #5686, scheduled to be heard and considered this evening before the House Judiciary Committee. If enacted, this bill would require a sentencing judge to make numerous findings regarding whether a defendant is a parent of child or caregiver to an elderly or disabled family member. The list of findings includes whether the person is breastfeeding, involved in day to day caregiving activities, and an assessment of the relationship between the defendant and the dependent. It also requires the court to permit presentation of a family impact statement, which would include mitigating information presented by the family.

This legislation sems unnecessary. Judges and Magistrates are provided with sentencing memos from defense counsel, letters from family and friends of the defendant, and a pre-sentence report outlining the defendant's family history, upbringings, current obligations, etc. The pre-sentence report also provides the judge with an impact statement from the victim, if applicable. Given the current procedures in place the provisions of this legislation seem redundant.

The Judiciary also has concerns regarding section (6)(d) which would require a judicial officer to impose of sentence of probation, suspended sentence ,or home confinement to allow the defendant to continue to care for the dependent. Judges and Magistrates take these considerations into account whenever there is a sentence to be imposed. They also consider the impact of the criminal act upon the victim. However, to require a non-incarceration sentence is inconsistent with section (a) of this statute as well as the constitutional authority of the courts to impose a sentence.

Thank you for the opportunity to express the judiciary's concerns regarding this bill.

Sincerely,



Kathleen Kelly
General Counsel
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Via Electronic Mail (HouseJudiciary@rilegislature.gov)
Chairman Robert E. Craven, Sr.
House Committee on the Judiciary
Rhode Island State House
House Lounge
Providence, RI 02903

Re: House Bill #5563: An Act Relating to Criminal Offenses - Bail and Recognizance

Dear Chairman Craven:

I write on behalf of the Judicary and the District Court to respectfully express its concerns regarding House Bill #5563, scheduled to be heard and considered this evening before the House Judiciary Committee. If enacted in its present form, this legislation violates the Separation of Powers Doctrine by severely restricting the constitutional authority of judicial officers to make bail determinations.

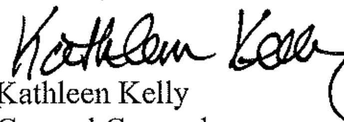
An accused's right to bail is guaranteed by the Rhode Island Constitution, Article 1, § 9. However, this right may be restricted or subject to conditions based on the facts of the criminal case, including under certain circumstances, an order to hold a person without bail. Mello v. Superior Court, **370 A.2d 1262 (1977).** Bail and the revocation of bail are squarely within the judicial sphere of government, Witt v. Moran, **572 A.2d 261 (1990)**, and the Courts retain discretionary power to grant the accused bail, set conditions of bail, or revoke bail. Mello v. Superior Court, **370 A.2d 1262 (1977).** Not only does this bill impermissibly limit judicial discretion in bail determinations, it also undermines public safety by requiring personal recognizance bail regardless of the type of misdemeanor criminal offense, or the number of misdemeanor offenses pending against the defendant.

Everyday judges and magistrates make bail determinations based upon the facts of a criminal case(s) before them, defendant's prior criminal history, and other relevant factors. They set personal recognizance bail in most instances where the accused appears before the Courts.

Only where the facts and circumstances of the case(s) have been evaluated and the Court determines the accused poses a risk to public safety or may fail to appear in the future, are monetary bail conditions imposed.

I ask the House Judiciary Committee to carefully consider the impact of this bill on the constitutionally protected separation of powers between the three branches of government and from a public safety perspective. Thank you for the opportunity to express the Judiciary's concerns regarding this bill.

Sincerely,



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Chairman Robert E. Craven, Sr.
House Committee on the Judiciary
Rhode Island State House
House Lounge
Providence, RI 02903

Re: House Bill #5685: An Act Relating to Criminal Offenses - Bail and Recognizance

Dear Chairman Craven:

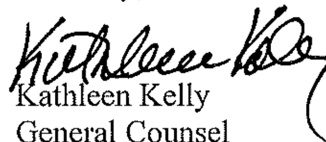
I write on behalf of the Judiciary and the Administrative Office of State Courts to respectfully express our concerns regarding House Bill #5685, scheduled for hearing and consideration this evening before the House Judiciary Committee. In its current form, this bill would require all bail money deposited in the Court Registry be returned by the Clerk of the Court to a defendant upon entry of judgment in a criminal matter, regardless of whether the defendant owes fines or restitution to a victim(s). This legislation would substantially conflict with the numerous statutory obligations placed upon the Courts requiring it order a defendant pay restitution where appropriate and then monitor the defendant during the term of the sentence to collect restitution.

RIGL § 12-19-34, "Priority of restitution payments to victims of crimes" requires that when a defendant is ordered to pay restitution to the victim of a crime, the Judicary and Administrative Office of States Courts (AOSC) shall administer a payment process and facilitate payment to the victim, unless the defendant makes full restitution at the time of sentencing. This statute obligates the Judicary and the AOSC to collect restitution on behalf of victims until such time as restitution is paid in full, or the defendant's sentence ends. This statute also authorizes the Courts to collect payment of costs, fees and assessments. However, since last year's passage of RIGLs § § 12-18.1-3, 12-20-10 and 12-21-20, costs, fees, and assessments are now waivered in most criminal cases. Consequently, bail funds are applied to restitution and fines only.

Also, RIGL § 12-28-5.1, requires that at the time a sentence is imposed against a defendant owing restitution, a civil judgment is automatically entered by the Court against the defendant on behalf of the victim. This civil judgment is legally binding upon the defendant. As such, requiring the Court to return money to a defendant legally obligated by court order to pay that debt is legally tenuous at best. It also punishes the victim who is entitled to the compensation.

It is my understanding that a Substitute A may be presented that would require bail funds be applied to restitution payments. The Judicary is amendable to this substitution. However, in its current form the Judiciary has concerns surrounding this bill. Thank you for the opportunity to express the judiciary's concerns regarding this bill.

Sincerely,



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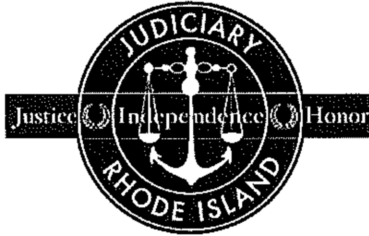

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Re: House Bill #5697: An Act Relating to Criminal Procedure: Identification and Apprehension of Criminals

Dear Chairman Craven:

I write on behalf of the Judiciary and the District Court to respectfully express our concerns regarding House Bill #5697, scheduled to be heard and considered this evening before the House Judiciary Committee. If enacted, this legislation would require the District Court clerks to automatically seal all individual counts of criminal complaints that were dismissed pursuant to Rule 48(a) of the Rules of District Court Criminal Procedure. The District Court does not have the manpower or administrative ability to provide for this process.

In the last legislative session, the Judiciary worked with other stakeholders and came to a consensus which resulted in passage of RIGL § 12-1-12.1. This statute provides for the automatic sealing of a criminal case that is dismissed pursuant to Rule 48(a). During last session's collaborative process, the Judiciary objected to expunging counts due to the heavy administrative burden this would place upon the District Court. This legislative session, based upon feedback from the defense bar, the Judiciary is seeking an amendment to that statute to significantly shorten the timeframe by which sealing of a criminal case will be processed. However, the process for automatically sealing a criminal count(s) within a criminal case is significantly more complicated than expunging a criminal case. Each case must be reopened, the count(s) electronically removed, and the remainder of the complaint regenerated. Also, each paper file must be reviewed, and the count(s) redacted. The District Court does not have the staffing or resources to meet the demands of this legislation.

The Judiciary is meeting with the sponsors of a similar bill in the Senate and we are happy to meet and discuss our concerns with the House sponsors as well.

Thank you for the opportunity to express the judiciary's concerns regarding this bill.

Sincerely,

Kathleen Kelly
General Counsel
Rhode Island Supreme Court

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Chairman Robert E. Craven, Sr.
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Providence, RI 02903

Re: House Bill #6199: An Act Relating to Criminal Procedure: Arrest

Dear Chairman Craven:

I write on behalf of the Rhode Island Judiciary to respectfully express our concerns regarding House Bill #6199, scheduled to be heard and considered this evening before the House Judiciary Committee. It appears the intent of this legislation is to prohibit an individual from being taken in custody while attending proceedings located in the courthouses. The current provisions of this bill and the definition of "civil arrest" are concerning to the Judiciary.

As the legislation currently reads, only when an arrest warrant has been issued by a court of competent jurisdiction may a law enforcement officer arrest the individual subject to the arrest warrant in any courthouse in Rhode Island. However, this bill is silent regarding the many other types of warrants and body attachments that may be issued. For example, judicial officers issue bench warrants, body attachment warrants for failure to pay child support, and capias. Additionally, once issued RIGL § 12-6-7.1 requires law enforcement officers to apprehend an individual and bring him or her before the Court. Law enforcement officers have no discretion in this regard.

If agreeable, the Judiciary is open to meeting with the sponsors of this legislation to craft alterative language. Thank you for the opportunity to express the judiciary's concerns regarding this bill.

Sincerely,

Kathleen Kelly
General Counsel
Rhode Island Supreme Court