

April 18, 2017

Written Testimony Regarding S. 134

By the Attorney General's Office and State's Attorney David Cahill

We write to urge the Committee to adopt the proposal put forth by State's Attorney David Cahill: to legislate that expungement-eligible crimes will carry a presumption for a referral to Court Diversion.

After discussion with the Attorney General and with State's Attorney Cahill we agree that in practice this option would likely lead to more opportunities for people to participate in Diversion than the option of providing authority to the court to refer to Diversion.

In order for this presumption to be effective, however, we think it is important to aim it toward one group of crimes, namely those eligible for expungement. Were the presumption to apply to all except listed crimes, prosecutors will feel the law is an imposition that is a waste of time because it would apply to so many cases that will never be diverted—for example, to DUIs. If the presumption isn't narrowed to plausible Diversion-eligible cases the recitation about “the interests of justice” may devolve into a thoughtless ritual.

We believe providing a Diversion presumption for expungement-eligible cases will achieve the twin goals of moving more cases to diversion and incentivizing prosecutors to take seriously the option of diversion.

Respectfully,

Willa Farrell, Director of Diversion and Pretrial Services

David Cahill, Windsor County State's Attorney

David Scherr, Assistant Attorney General