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6706

**CCDLA**  
"Ready in the Defense of Liberty"  
Founded 1988

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**Judiciary Committee Public Hearing**  
**RAISED BILL NO. 6706**  
**AN ACT CONCERNING RECISSION OF PROBATION**  
**March 24, 2009**

**TESTIMONY OF EDWARD J. GAVIN, PRESIDENT OF THE**  
**CONNECTICUT CRIMINAL DEFENSE LAWYERS ASSOCIATION,**  
**IN OPPOSITION OF RAISED BILL 6706**

Chairman McDonald, Chairman Lawlor, and Distinguished Members of the  
Judiciary Committee:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 350 licensed lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice.

**We oppose passage of Raised Bill 6706.**

**CCDLA OPPOSES POST SENTENCE MODIFICATIONS  
PERMITTING THE RECISSION OF PROBATION AND THE  
IMPOSITION OF LONGER PERIODS OF INCARCERATION:**

CCDLA is firmly committed to the fair administration of justice. We believe that permitting the re-sentencing of individuals after plea agreements have been imposed by the court is statutorily unconstitutional, is unnecessary as post plea conduct can always lead to the filing of new criminal charges, is not a deterrent to crime, and impermissibly vests decisions involving sentencing authority in the office of the States Attorney.

**I. INDEFINITE AND DEFINITE SENTENCES:**

Virtually all states and the federal government used indeterminate or indefinite sentencing before 1975. Two results bad results occurred with indefinite sentences. First, disparity of treatment became an issue with offenders committing the same offense and receiving drastically different prison sentences. Second, many citizens perceived that the “system” was soft on crime because many offenders were not punished as severely as a significant part of the public wanted or there was a significant disparity in the sentence imposed versus the actual sentence served by offenders.

Connecticut has effectively eliminated indefinite sentences. Individuals serving sentences with minimum and maximum terms (crimes committed prior to July 1, 1981) are serving indefinite sentences within a sentencing range. Under the indefinite sentencing scheme, defendants were sentenced to both a minimum and maximum term of imprisonment ( 1 year to 20 years Imprisonment ). The sentencing term is defined as the indefinite sentence. The statistical reality of new prosecutions for offenses claimed to have been committed almost 28 years ago is that it rarely ever happens.

Indefinite sentences were eliminated so that there was uniformity in the imposition of sentences and defendants were made aware of the **maximum** sentence a court could impose under a plea agreement. It assisted the defendant and defenses counsel in determining whether or not to accept a plea agreement and forgo trial. The uncertainty of indefinite sentences caused more cases to go to trial that may have been resolved through a plea.

Definite Sentences are now imposed for individuals serving sentences for crimes committed on or after July 1, 1981. Public Act 80-442 codified Section 53a-35a of the General Statute. The sentencing ranges have been eliminated and fixed terms of incarceration are now imposed. The definite sentencing scheme has worked well for over 25 years and does not need to be changed to provide for reopening definite sentences. If Raised Bill 6706 is enacted, there may be inconsistencies in the current statutory sentencing that may lead to increased unnecessary litigation.

II. **“RESENTENCING” UNCONSTITUTIONALLY DILUTES THE BURDEN OF PROOF:**

The Constitutional Burden of Proof in criminal cases is “proof beyond a reasonable doubt”. Raised Bill 6706 provides in relevant part that :

“At any time prior to the commencement of a period of probation imposed under this section, the state may file a motion with the court seeking the reopening of the sentence on the ground that the defendant has engaged in conduct after imposition of the sentence that renders the defendant unsuitable for a sentence that includes a period of probation. Such motion shall set out the date, time, place and description of such conduct. The defendant may file a response to such motion.

*The court shall conduct a hearing on such motion at which the state shall have the burden of proving by a preponderance of the evidence the conduct of the defendant alleged by the state. If the court finds that such conduct has been proved, the court shall further determine whether such conduct renders the defendant unsuitable for a sentence that includes a period of probation. The defendant shall have the opportunity to present evidence and argument at such hearing. If the court concludes that the sentence should be modified by the rescission of the period of probation, it shall modify such sentence within the limits fixed by law for the offense for which the defendant was convicted, provided the court shall not sentence the defendant to a term of imprisonment that exceeds the maximum possible term of imprisonment that could have been imposed in accordance with any plea agreement that was approved and accepted by the court. The defendant shall not be released on probation during the pendency of such motion.*

By effectively changing the applicable burden of proof from “Proof beyond a reasonable doubt” to the lesser civil standard of “Proof by a preponderance of the evidence” Raised Bill 6706 impermissibly modifies the Constitutionally protected standard and permits citizens to suffer sentencing consequences based on a lesser standard. This violates both State and Federal Constitutional protections.

### **III. RAISED BILL 6706 VIOLATES BLAKELY v. WASHINGTON**

In *Blakely v. Washington*, 542 U.S. 296 (2004), the United States Supreme Court held that, in the context of mandatory state sentencing guidelines, the Sixth Amendment right to a jury trial prohibited judges from enhancing criminal sentences based on facts other than those decided by the jury or admitted by the defendant.

In a prosecution of the defendant *Blakely* for kidnapping his estranged wife, the Supreme Court held defendant's federal constitutional right to have a jury determine beyond a reasonable doubt all facts legally essential to his sentence was violated where the court enhanced his sentence based on facts not before the jury.

Blakely provided another bright - line formulation. "When a judge inflicts punishment that the jury's verdict alone does not allow, the jury has not found all the facts ... and the judge exceeds his proper authority." The trial court erred when it added some three years of confinement on facts not anchored to a waiver or jury verdict. From a constitutional perspective, that outcome encroached on a power reserved to the jury. "Just as suffrage ensures the people's ultimate control in the legislative and executive branches, jury trial is meant to ensure their control in the judiciary."

Raised Bill 6076 would theoretically allow a sentencing Judge to enhance an a previously agreed upon sentencing range and impose additional jail time based upon post sentencing conduct. This violates a defendants 6th amendment rights.

**IV. RAISED BILL 6076 IS UNNECESSARY AS PROSECUTORS CAN ALWAYS FILE NEW CHARGES FOR POST SENTENCING CRIMINAL CONDUCT**

In the event a sentenced prisoner commits post-sentencing conduct that lead prosecutors to believe that a period of post release probation is not warranted, they can simply file new charges based on the conduct alleged.

**CONCLUSION:**

The Connecticut Criminal Defense Lawyers Association strongly opposes the passing of Raised Bill 6706. The implication of its passage will disrupt a sentencing scheme that has worked for over 25 years, unconstitutionally dilutes the burden of proof, will cause more trials rather than negotiated plea agreements, and violates equal protection rights in providing unconstitutional unilateral authority in the State's Attorney's office in attempting to modify agreed upon sentencing terms. Raised Bill 6706 violates State and Federal 6<sup>th</sup> amendment rights and is unenforceable as proposed.

Respectfully submitted,

A handwritten signature in cursive script that reads "Edward J. Gavin".

EDWARD J. GAVIN  
PRESIDENT -CCDLA  
On behalf of the Connecticut  
Criminal Defense Lawyers  
Association