



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 24, 2009

In support of:

- **H.B. No. 6706 An Act Concerning the Rescission of Probation**

The Division of Criminal Justice would respectfully request the Committee's Joint Favorable Report for H.B. No. 6706, An Act Concerning the Rescission of Probation. This bill was proposed by the Division of Criminal Justice as part of our Legislative Recommendations to the 2009 Session of the General Assembly.

H.B. No. 6706 addresses the situation where the defendant has been given a split sentence (i.e., a sentence that includes both a period of incarceration and probation) and, while incarcerated, engages in conduct that demonstrates that the defendant is not an appropriate candidate for probation. This proposal allows the court to correct a sentence that had been based on the erroneous assumption that the defendant would likely benefit from leniency.

The proposal was made because the State recently had another situation where a violent offender had been given a split sentence. While incarcerated, the defendant made extensive plans to harm a number of individuals whom he felt had slighted him. Because the defendant did not enlist others to help him and because he did not communicate his plans to the putative victims there were no criminal charges that could be brought. Because the defendant had not yet started his probation, under current law, the State could not pursue a violation of probation. The State and potential victims were therefore faced with the scenario where a dangerous offender was due to be released to the community and probation would have to wait until the defendant violated post-release before a revocation of probation could be brought before the court.

Connecticut legal authority appears to preclude the violation of a defendant's probation for misconduct occurring after sentencing but before the defendant's actual release from DOC custody. AAC the Rescission of Probation would rectify this situation and give the Superior Court an express grant of the authority to revoke probation for misconduct committed by a Defendant while incarcerated on a split sentence.

In other words, in limited circumstances, the Court could reconsider its original sentencing decision based upon the misconduct of the defendant while incarcerated and revoke probation in whole or in part as the Court deems appropriate. Sound public policy dictates that a defendant who has been sentenced, and is thereby on notice of any probationary terms, should not be granted free reign to violate those terms at will merely because the actual period of probation has not begun. Such an anomaly is contrary to the express purposes and considerations of sentencing. If a probationer's conduct, committed prior to commencement of the probationary period, discloses that probation will not be in the best interests of the public or the defendant, a court should be able to revoke or change the order of probation.

A review of other jurisdictions, both federal and state, reveals that an overwhelming majority support the trial court's authority to revoke probation for acts committed by the defendant after the imposition of sentence but prior to the commencement of the probation term. Generally such authority is found either in the statutes governing probation or on the grounds that the defendant's acts are violations of an implied condition of probation, namely that the defendant refrain from conduct that is contrary to good behavior during the period of sentence, or as a matter of judicial policy. See, e.g., *U.S. v. Mele*, 117 F.3d 73 (2d Cir. 1997)(Conn.); *U.S. v. Veatch*, 792 F.2d 48, 52 (3d Cir. 1986), cert. denied, 479 U.S. 933 (1986); *U.S. v. Camarata*, 828 F.2d 974, 980 (3d Cir. 1987); *U.S. v. Ross*, 503 F.2d 940, 941 (5th Cir. 1974); *U.S. v. Yancey*, 827 F.2d 83 (7th Cir. 1987); *U.S. v. Daly*, 839 F.2d 598 (9th Cir. 1988); *U.S. v. Taylor*, 931 F.2d 842 (11th Cir. 1991). In addition to these federal decisions, state courts have overwhelmingly supported the authority of a trial court to revoke probation for violations committed prior to the commencement of the probationary period. See Annotation, *Power of Court to Revoke Probation for Acts Committed after Imposition of Sentence but Prior to Commencement of Probation Term*, 22 A.L.R. 4th 755 (1983); *Commonwealth v. Hoover*, 909 A.2d 321 (Pa. Super. 2006); *State v. Conner*, 919 S.W.2d 48, (Tenn. 1995); *State v. St. Francis*, 628 A.2d 556 (Vt. 1993); *Vogel v. State*, 543 So.2d 200 (Ala. App. 1989); *State v. Sullivan*, 642 P.2d 1008 (Mont. 1982); *State v. Holter*, 340 N.W. 2d 691 (S.D. 1983); *Layson v. Montgomery*, 306 S.E.2d 245 (Ga. 1983); *Williamson v. State*, 388 So.2d 1345 (Fl. 1980); *Brown v. Commonwealth*, 564 S.W. 2nd 21 (Ky. App. 1977).

To summarize, the conditional nature and revocability of a probation order in Connecticut is already clearly established in Section 53a-28(d). This bill addresses the specific question of whether a warrant for violation of probation may be issued prior to the period of probation but after sentencing. AAC the Rescission of Probation would amend our Connecticut probation statutes and specifically grant to the Superior Courts of this state the authority that already exists in our federal criminal justice system and in many other states. The Division of Criminal Justice respectfully requests the Committee's Joint Favorable Report.

In conclusion, the Division of Criminal Justice extends its appreciation to the Committee for this opportunity to bring this important issue before you for your consideration. We would be happy to provide any additional information or to answer any questions the Committee might have.