



# STATE OF CONNECTICUT

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Testimony of Michelle Cruz, Esq., State Victim Advocate  
Submitted to the Judiciary Committee  
Monday, April 4, 2011

Good morning Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

**Raised House Bill No. 6639, An Act Concerning Pretrial Diversionary Programs**  
**(Proposed amendment to Section 1; Strike Section 2; Proposed amendment to Section 4)**

The Office of the Victim Advocate (OVA) supports the effort to rehabilitate first time offenders through certain diversionary opportunities when limited to non-violent offenses. The alcohol education program, the family violence education program, the pretrial drug education program, pretrial supervised diversionary program for persons with psychiatric disabilities, the pretrial community service labor program, the animal cruelty prevention and education program, the hate crimes diversion program, the list seems almost endless. Section 1 of Raised House Bill No. 6639 seeks to expand the availability of the pretrial accelerated rehabilitation program (A/R) for offenders charged with certain drug offenses even though the offender had previously participated in the pretrial drug education program and had the benefit of a dismissal. Diversionary programs are created for the first time offender, amendable to treatment.

The concept behind diversion is that because of the offender's lack of criminal history, the offender, having no record, should not be saddled with a criminal record, but for the commission of a minor non-violence offense. In screening offenders, it is important to take into account the offender's entire history with the criminal justice system. Diversion should not be utilized to enable offenders to continue along the criminal path with little or no consequences. By allowing multiple opportunities to participate in diversionary programs, the Connecticut Criminal Justice System encourages the "revolving door" pattern, and the individual offenders gain little or no insight as to how to rehabilitate themselves, but rather, learn how to manipulate the system.

Diversion opportunities are designed to allow first time offenders an opportunity to learn from their mistake and benefit from a dismissal of the criminal case as long as the program is completed successfully. Diversionary programs should not be utilized as a tool to "move" and "dismiss" cases to control caseloads. To avoid misuse of diversion programs and deter future criminal conduct, offenders must understand that continued criminal behavior will result in stiffer penalties, not another diversion.

Plea bargains resolve more than ninety-five percent of criminal cases. Or in other words, the state of Connecticut only litigates approximately 1 - 2% of its criminal cases. In practice, this means that the remaining cases are often diverted, reduced for lesser charges or outright

nolled. In the aftermath of Cheshire, many around the state wondered how two individuals with lengthy records and numerous criminal cases spanning over a number of years, were free. I would suggest it is a combination of diversion, plea bargains, and diluted charges to encourage pleas. The continued enabling of offenders in the name of "rehabilitation" does no one any good. The Courts of Connecticut cannot simply operate from a "lets move files" mentality, but rather, must look at public safety, justice for crime victims and offender accountability. If the criminal justice system doesn't take the prosecution of crimes seriously, how can we then ask the offenders to do so? **The OVA urges the Committee to, on line 47, remove the open bracket (I) and on line 50, remove the close bracket (J) and to strike Section 2 in its entirety.**

Additionally, Section 1 of Raised House Bill No. 6639 expands the eligibility for A/R to those charged with sexual assault second degree, when good cause is shown. This proposal seems to come from the common misconception that sexual assault second degree only involves statutory rape between teenagers. Public Act No. 07-143 changed the sexual assault second degree statute regarding the age difference between the actor and victim to three years to allow for the so-called "teenage relationships" situations. For that reason, this proposal is troubling at best. It is common knowledge that crimes involving sexual assault are often not reported to law enforcement. Of the victims of sexual assault crimes who do gather the courage to report the crime to the police, many of these cases never result in an arrest and prosecution. Moreover, as stated above, the majority of criminal cases are resolved through the plea bargain process. Sexual assault cases are often plea bargained for a myriad of reasons, including, to avoid trials, to benefit offenders from registry requirements, etc... Therefore, it can be reasonably concluded that, when a sexual assault case has survived through the report to the police and results in a prosecution, there is no room for diversion.

Allow me to summarize two recent cases of sexual assault second degree and you decide whether A/R is an appropriate resolution, including a dismissal of the charges.

On August 12, 2010, Joseph Marino, 42, was arrested and charged with two counts of sexual assault second degree. Defendant Marino was a teacher at Conard High School and had a "relationship" with a student that lasted several months, dating back to February 27, 2010. On August 27, 2010, Defendant Marino was again arrested for reckless endangerment first degree and coercion. As a result of a plea bargain, on February 14, 2011, Defendant Marino was given a suspended sentence and placed on probation for three years. Defendant Marino is also listed on CT's Sex Offender Registry.

**Eligible for A/R upon a showing of good cause?**

On March 2, 2011, Jeffrey Sepa was arrested and charged with two counts of sexual assault second degree, dating back to August 1, 2010. According to police, Defendant Sepa is the co-owner and instructor of a dance studio and the charges involve one of his students. Defendant Sepa was released on a \$50,000 bond and is due to appear in court on April 18, 2011.

**Eligible for A/R upon a showing of good cause?**

Good cause is defined as representing adequate or substantial grounds or reason to take a certain action or to fail to take an action prescribed by law. Good cause has not been consistently established throughout the courts in our state and is rarely reflected on the record. Additionally, as demonstrated in the first example, sexual assault cases are rarely prosecuted, as the plea bargain process is utilized to resolve most criminal cases. However, in cases of sexual assault, diversion should never be an option. The offering of diversion in a sexual assault case sends the wrong message. Essentially, diversion of sexual assaults cases allows for an offender to interpret the crime was a minor one and that no one was harmed. Additionally, the opportunity to penalize the offender for sexually assaulting the victim is removed through diversion. **I strongly urge the Committee to reject Section 1 & 2 of the proposal and send the message that diversion is a one-time opportunity and not to be abused.**

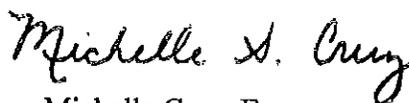
Section 4 of Raised House Bill No. 6639 expands programs of mediation to all geographical area courts. The OVA respectfully requests that the proposal be further amended to exclude availability of the mediation program in criminal cases involving the use, attempted use or threatened use of physical violence. "Mediation means the process where two or more persons to a dispute agree to meet with an impartial third party to work toward a resolution of the dispute...", lines 189-193. This process is not at all appropriate for criminal offenses involving the use, attempted use or threatened use of physical violence and will only be abused, just as the diversion program process has become.

The OVA assisted a victim of harassment that received notification from the Hartford Community Court that the pending criminal case was being referred for mediation. The victim, who was afraid of the offender, objected and the case proceeded without the mediation program. To ask a victim of a crime, involving the use, attempted use or threatened use of physical violence, to engage in a "mediation program" suggests that somehow the victim is responsible for some aspect of the criminal conduct.

Furthermore, mediating cases involving the use, attempted use or threatened use of physical violence allows the offender access to the victim, using the Courts as a conduit, to continue the harassment and/or abuse and places the victim and court staff in unnecessary danger. Victims have a constitutional right to be treated with fairness and respect and to be reasonably protected from the accused. Subjecting a victim, of certain crimes, to the mediation process is offensive and a violation of their constitutional rights. There are simply just some cases that should not be mediated. **I strongly urge the Committee to amend the proposal to include language excluding any crime involving the use, attempted use or threatened use of physical violence.**

Thank you for consideration of my testimony.

Respectfully submitted,



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