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TESTIMONY OF
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COMMITTEE ON THE JUDICIARY

March 12, 2012

S.B. 279, AN ACT CONCERNING SENTENCE MODIFICATION

Dear Chairman Coleman, Chairman Fox, and members of the Judiciary Committee:

We write in support of Senate Bill 279, An Act Concerning Sentence Modification. We are both law professors at Quinnipiac University School of Law, where our research and scholarship focus on issues of sentencing law and policy.

Senate Bill 279 would allow courts to reassess sentences after a period of time to ensure that those sentences continue to further their underlying goals. This idea of taking a "second look" at sentences is supported by the American Law Institute's recommendations contained in its most recent draft of the Model Penal Code on Sentencing. Senate Bill 279 would also help bring Connecticut's juvenile sentencing laws in line with the growing consensus that those who commit crimes under the age of 18 and receive lengthy adult prison sentences should have the opportunity for review after a portion of the sentence is served. Indeed, Connecticut's own Sentencing Commission has recommended that the Legislature create a mechanism for review of long sentences imposed on juvenile offenders. This specific issue regarding juvenile sentencing, and the Commission's recommendation, will be considered by the Judiciary Committee at a hearing on a later date.

I. Taking a "second look" at a long sentence after a portion of the sentence is served to ensure that the sentence continues to serve its purpose is consistent with the most recent draft of the Model Penal Code and reflects a fair and cost-effective policy.

Since 1999, the American Law Institute ("ALI") has been working to develop a Model Penal Code ("MPC") for sentencing. The original Model Penal Code, written by the ALI more than 40 years ago, was enormously influential around the country. Many states, including Connecticut, reformed their criminal codes using the MPC as a model. The American Law Institute also writes other influential documents including the Uniform Commercial Code, and the Restatements of Law.

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The most recent draft of the Model Penal Code on Sentencing was approved by the ALI membership at its 2011 Annual Meeting.[1] A significant recommendation is the so-called "second look" provision. In particular, Section 305.6 of the MPC recommends that states create a sentence modification procedure to allow courts to modify lengthy sentences after a significant portion of the sentence is served.[2]

The rationale for taking a second look at lengthy sentences is that after a period of time has passed, the sentence may no longer be furthering its intended goals. The purposes of criminal sentencing are generally accepted to be retribution, deterrence (both specific and general), incapacitation, and rehabilitation. With respect to some of these purposes, the court at the time of sentencing tries to predict the future – as the judge does not know what impact the sentence will actually have on an individual. Will the person rehabilitate while in prison? How quickly will this transformation occur? The judge cannot know with any level of precision how long a person needs to be incapacitated in order to protect the community, and what length of prison time will deter the person from committing more crimes. So the judge makes an educated guess. Sometimes the prediction is right. But sometimes it is wrong, and a person thus spends much more time behind bars than is necessary for public safety. Allowing a person who has rehabilitated in prison the chance to return to the judge later in time makes good sense. This procedure permits the judge to be sure that the original sentence – which was an educated guess – is actually serving its intended purposes. If further detention is not necessary, then no purpose is served by the state's continuing to pay the high cost of incarceration.

Under current Connecticut law, Conn. Gen. Stat. § 53a-39, individuals serving sentences of three years or less can return directly to the sentencing judge and ask for a modification of the sentence. However, those serving more than three years cannot return to the judge unless they obtain the consent of the state's attorney. This really gets it backwards. There is a stronger justification for allowing petitions for modification in those cases in which an individual is serving a lengthy sentence because much more may have changed since the time the sentence was first imposed. A person may have undergone an extraordinary transformation in prison and yet have no chance to obtain review of the appropriateness of continued incarceration. Indeed, the Model Penal Code's focus is on lengthy sentences for this reason.

In Connecticut, review of long sentences cannot occur unless the state's attorney consents. But having the state's attorney serve as a gatekeeper for sentence modification requests is simply not the best way to ensure review of appropriate cases. Modifying a sentence may be warranted in cases where an individual has demonstrated an unusual degree of change and rehabilitation since the time of sentencing. The state's attorney's office is not well-situated to determine the degree of a prisoner's rehabilitation. Accurate assessment requires information about the individual's background, details about programs completed in prison, a review of disciplinary history, and reports from counselors or others who know the individual well. To actually collect and evaluate this information every time someone requests modification would place prosecutors in a very different role, and would require the state's attorney's office to devote resources to the effort.

Rather than putting pressure on the state's attorney's office to conduct more thorough reviews, the better solution is to simply allow the sentencing court, as a neutral party, to evaluate

information regarding rehabilitation and determine whether to modify the sentence. The Model Penal Code draft specifically rejects the view that an agency (such as the prosecutor or department of corrections) should serve as a "gatekeeper" and decide which claims reach the court. Rather, the MPC recommends allowing individuals to petition the court directly.

Senate Bill No. 279 makes good sense from a policy perspective. Allowing review of sentences provides incentives to prisoners to rehabilitate and promotes notions of fairness in the criminal justice system. Moreover, allowing courts to consider sentence modification requests could ultimately lead to cost savings for the state because sentences can be reduced when further incarceration is not necessary.

II. Senate Bill No. 279 would bring Connecticut sentencing law in line with the growing consensus that juvenile offenders serving long sentences should have a meaningful opportunity for release after a portion of the sentence is served.

Senate Bill No. 279 is consistent with a growing consensus that there should be a "second look" at long sentences imposed on juvenile offenders after a portion of the sentence is served.

In its 2011 Annual Report, the Connecticut Sentencing Commission recommended "that legislation be enacted to create a procedure whereby a person sentenced to a lengthy term of imprisonment for a crime committed when he/she was under the age of 18 will have a meaningful opportunity, after service of a portion of the sentence, to obtain release before the end of that term by demonstrating increased maturity and rehabilitation."[3] As noted in the Annual Report, the Commission is working to try to reach a consensus around proposed statutory language for the Legislature's consideration. A hearing will be held before this Committee on this issue later this month.

Senate Bill No. 279 would achieve the goal of providing review of long adult prison sentences imposed on children. In Connecticut, children as young as 14 who are charged with certain crimes are automatically transferred to adult court and subject to adult penalties, including mandatory minimums. There are children serving sentences of 50 years or more for crimes they committed when they were 14 years old. Many of these juvenile offenders serving long sentences are entirely ineligible for parole. Even when they have matured and changed in prison, these individuals cannot petition the court directly for a sentence modification. Their only hope of review is if the prosecutor consents.

In two recent cases, the United States Supreme Court has considered the constitutional limits on the punishment of children under the Eighth Amendment. In both cases, *Roper v. Simmons* and *Graham v. Florida*, the Court has emphasized that children are both less culpable than adults, and more capable of change than adults.[4] In these cases, the Court relied heavily on a well-established and growing body of research in developmental psychology and neuroscience that shows critical differences between adults and children. The science confirms what every parent knows: teenagers do not have the same judgment and control over impulses as adults. Teenage brains are not fully formed. Brain scans show fundamental and visible differences between the brains of adolescents and adults, particularly in the parts of the brain involved in behavior control. In fact, brain control over impulsivity and judgment does not fully develop

until the mid-20s. Adolescents are less capable of considering long-term consequences of their actions and more susceptible to peer pressure.

For these reasons, crimes committed by children often reflect reduced culpability. The Model Penal Code drafters point out: "Most serious juvenile offenses are committed in groups, much more so than with adult offenders, and the inability to resist peer pressure is one of the best-documented features of adolescence. Nonetheless, the substantive criminal law makes all accomplices equally liable for the primary offense, as though all were primary actors."[5] Children who are dependent on parents and siblings involved in criminal conduct can more easily become accomplices to serious crimes. Children who are sexually or violently abused sometimes fight back. Children who grow up in gang environments are more easily drawn into cycles of drug-addiction, violence, and drug-related crime.

Moreover, because of the differences between the brains of children and adults, children have a greater capacity for change than adults. Even if a child commits a very bad act, it does not mean that he or she has a permanently bad character and is incapable of rehabilitation. Indeed, the Supreme Court has recognized that "[i]t is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption."[6]

Because of the differences between adult and juvenile offenders, the Model Penal Code draft recommends a different sentencing structure for juvenile offenders, even for the most serious crimes. In particular, the current draft recommends absolute caps on juvenile sentences that are below adult maximums, and provides that juvenile offenders should become eligible for sentence modification "substantially earlier" than adults because "adolescents can generally be expected to change more rapidly in the immediate post-offense years, and to a greater absolute degree, than older offenders."[7]

In sum, Senate Bill No. 279 would provide much-needed review of long sentences imposed on children in Connecticut.

Sincerely,

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(We sign as individuals and do not purport to represent the views, if any, of Quinnipiac University)

NOTES

[1] American Law Institute, *Model Penal Code: Sentencing, Tentative Draft No. 2* (Draft of March 25, 2011) (approved at May 17, 2011 Annual Meeting, subject to the discussion at the meeting and to editorial prerogative), available at: http://www.ali.org/00021333/Model%20Penal%20Code%20TD%20No%202%20-%20online%20version.pdf.

[2] *Id.* § 305.6. The MPC recommends that states create a procedure allowing at least those who have served 15 years in prison the opportunity to request sentence modification. The MPC states that 15 years should be the outer-limit of the time frame for an initial review, and an individual should have the right to re-petition for sentence review at intervals not exceeding 10 years. *Id.* § 305.6(1), (2). The goal of such review hearings is to determine "whether the purposes of sentencing . . . would better be served by a modified sentence than the prisoner's completion of the original sentence." *Id.* § 305.6(4). Sentences could be modified below mandatory minimum requirements. *Id.* at § 305.6(5).

[3] Connecticut Sentencing Commission, *2011 Annual Report*, available at http://www.ct.gov/opm/lib/opm/cjppd/cjabout/sentencingcommission/2011_sentencing_commission_annual_report.pdf.

[4] *See Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 130 S. Ct. 2011 (2010).

[5] *Model Penal Code: Sentencing*, 6.11A, cmt.

[6] *Roper*, 543 U.S. at 570.

[7] *Model Penal Code: Sentencing*, 6.11, cmt. The current draft recommends the opportunity for modification of sentences imposed on juvenile offenders after no longer than 10 years. *Id.* 6.11A(h).