



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

S.B. NO. 429: AN ACT CONCERNING PUBLIC SAFETY

JOINT COMMITTEE ON PUBLIC SAFETY AND SECURITY
March 11, 2014

The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE SUBSTITUTE REPORT for S.B. No. 429, An Act Concerning Public Safety.

The Division commends the Committee for raising this legislation to examine questions surrounding what have been dubbed "knockout" crimes. The public concern that has arisen following media coverage of these incidents is understandable, as is the Committee's desire to examine these matters.

The Division, however, must respectfully oppose S.B. No. 429 as it is now written because it is duplicative, creates anomalies and would serve only to encourage would be "knockout" criminals to punch, kick or strike their intended victims more than the statutorily prescribed one time to avoid the mandatory minimum sentence created by the proposal.

Unconsciousness already constitutes a *serious physical injury* for purposes of assault. *State v. Sewell*, 38 Conn. App. 20, 24 (and cases cited therein), *cert. denied*, 234 Conn. 918 (1995). Consequently, any person who acts with the intention of causing another person to lose consciousness by necessity also acts with the intention of causing a serious physical injury and, therefore, is amenable to prosecution under existing section 53a-60 (a)(1) regardless of the manner in which he causes the unconsciousness of another person. If S.B. 429 is enacted as proposed, the person who acts with the intention of causing another person to lose consciousness, and manages to cause this result with a single blow, will be amenable to prosecution under both existing subdivision (1) *and* new subdivision (6). While double jeopardy protection would most likely prevent such a person from being punished under both subdivisions, the duplication created by S.B. 429 may lead to differences among prosecutors in charging decisions and trial courts in plea offers.

S.B. No. 429 also creates the anomaly that a person who acts with the intention of causing another person to lose consciousness can avoid prosecution under new subdivision (6), and the mandatory minimum prison sentence it carries, merely by causing unconsciousness with more than a single punch, kick or strike. While the presumable appeal of the "knockout" game is to try to cause a loss of consciousness with a single blow, when word gets out that doing so carries a two-year mandatory minimum sentence, would-be "knockout" criminals may switch to a one-two punch combination to avoid the harsher sentence.

S.B. 429 creates the additional anomaly that the "knockout" criminal, who intentionally causes a loss of consciousness quickly and efficiently with one blow, is subjected to a two-year mandatory minimum sentence, but a person who intentionally causes exactly same end result, but does so less efficiently over a longer period of time, with more blows, and presumably more pain and suffering for the victim, is subject to no mandatory minimum sentence.

To underscore the seriousness of intentionally causing another person to suffer a serious physical injury, the Committee may wish to amend section 53a-60 (b) to provide that violations of subdivision (1) of subsection (a) are class C felonies. Or, to underscore the seriousness of "knockout" crimes specifically, the Committee may wish to consider amending section 53a-60 (b) to provide that: "Assault in the second degree is a class D felony[.] and any person found guilty under subdivision (1) of subsection (a) of this section who caused another person to lose consciousness shall be sentenced to a term of imprisonment of which two years of the sentence imposed may not be suspended or reduced by the court."