



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN SUPPORT OF:

H.B. No. 6939 (RAISED) AN ACT CONCERNING SEXUAL ASSAULT IN THE FIRST DEGREE

JOINT COMMITTEE ON JUDICIARY

March 4, 2015

The Division of Criminal Justice respectfully recommends the Committee's **Joint Favorable Report** for H.B. No. 6939, An Act Concerning Sexual Assault in the First Degree. This legislation is one of the Division's legislative recommendations for this session, and we thank the Committee for your consideration of it.

The purpose of H.B. No. 6939 is to give Superior Court judges greater flexibility and more appropriate sentencing options when it comes to the most serious sexual offenders - those convicted of Sexual Assault in the First Degree in violation of Section 53a-70 of the General Statutes or Aggravated Sexual assault in the First Degree in violation of Section 53a-70a.

Presently, persons convicted of Sexual Assault in the First Degree and Aggravated Sexual Assault in the First Degree cannot be sentenced to a traditional "split sentence" whereby the judge imposes a term of imprisonment, a portion of which is suspended, and a subsequent period of probation. Two obstacles exist in this regard, which H.B. No. 6939 seeks to correct.

The first obstacle is Section 53a-29, which does not authorize a judge to impose a sentence of probation for any class A felony. The bill would amend Section 53a-29 to carve out an exception and thereby permit the imposition of probation for class A felony violations of 53a-70 and 53a-70a. This change would not allow a judge to impose a fully suspended term of imprisonment, followed by a period of probation, because every violation of 53a-70 and 53a-70a already carries a mandatory minimum term of imprisonment.

The second obstacle is the language in 53a-70 and 53a-70a mandating the imposition of either a combined period of prison and special parole, as per 53a-70 (a)(3), or a minimum period of special parole, as per 53a-70a (b). These mandates effect all violations of the first degree sexual assault statutes, not just class A violations, because they effectively prevent the imposition of a traditional "split sentence" of prison and probation for class B violations of 53a-70 and 53a-70b. The bill would amend these two statutes to eliminate the special parole

mandates that presently exist, and to permit a judge to impose a combined minimum sentence of either prison and probation, or prison and special parole. The bill does not change the existing ten-year mandatory minimum combined period.

Providing judges with the option of imposing a traditional "split sentence" of prison and parole upon persons convicted of violating 53a-70 and 53a-70a, who are the worst sexual offenders is sensible because pursuant to 53a-29 these violators would be subject to very lengthy ten- to thirty-five year periods of probation were it not for the special parole mandates.

Special parole cannot match these lengthy periods of probation supervision because, pursuant to 54-128 (c), the "total length of the term of incarceration and term of special parole combined shall not exceed the maximum sentence of incarceration authorized for the offense for which the person was convicted."

The special parole mandates effectively negate 53a-29 (f), which subjects persons who violate 53a-70 and 53a-70a to a period of probation of between ten and thirty-five years because probation and special parole cannot logically or practically coexist for the same conviction. And, even if they could, it is not a sensible use of resources to have a person on parole and probation at the same time for the same offense.

The difference between special parole and probation may be considerable in terms of combined periods of prison and supervision. Take the example of a person convicted of forcibly raping an adult victim in violation of 53a-70 (a)(1). This is a generic class B felony, for which a term of imprisonment of between one and twenty years may be imposed, two years of which cannot be suspended or reduced by the court. Because the court must impose a combined period of prison and special parole that equals at least ten years, it cannot impose the maximum twenty-year term of imprisonment. Assuming that the court imposes the maximum allowable twenty-year combination of prison and special parole, the offender is free and clear after twenty years, even if he violates special parole because the combined prison and parole period cannot exceed twenty years.

If the above class B violator was exposed to a traditional "split sentence" of prison and probation the combined period of prison and probation could be far longer. For example, if the court imposed a twenty-year prison sentence, execution suspended after ten years, and thirty-five years' probation, the combined period of prison and probation would be forty-five years. Probation has the added benefit of subjecting violators to the entire suspended portion of the prison term, unlike special parole, which subjects violators to the remaining pro-rated term.

Lastly, the bill seeks to set a sensible hierarchy of mandatory minimum sentences that cannot be suspended or reduced by the court.

This legislation is obviously quite complicated given the various combinations of incarceration, parole and probation that can be considered in determining the appropriate sentence. The Division has devoted considerable time to examining the current language and developing what we believe to be the better approach embodied in H.B. No. 6939. In conclusion,

we would be happy to provide any additional information the Committee might have or answer any questions you might have.