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Testimony of  
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*Raised Bill No. 5366*  
*An Act Concerning Court Operations*

Judiciary Public Hearing - February 29, 2016

While not opposed to *Raised Bill No. 5366, An Act Concerning Court Operations* in its entirety, the Office of Chief Public Defender is opposed to Section 5 of the bill which would virtually eliminate sentence review in all criminal cases except those sentences imposed after trial to verdict. *Raised Bill 5366* amends C.G.S. §51-195 which permits a person to file for sentence review in cases in which he/she was sentenced to confinement for 3 years or more. There are exceptions, however. The statute prohibits sentence review (1) in cases in which a different sentence could not be imposed or (2) where the court accepted a plea agreement for a specific sentence or sentenced a person to a lesser sentence than the plea agreement proscribed. Basically a person has agreed to a specific sentence and there is no room for the court to exercise its discretion.

This amendment to Section 5 would now eliminate sentence review for persons who entered into a plea agreement in which the person had a right to argue for a lesser sentence and the court had exercised its broad discretion to impose a sentence. In State v. Anderson, 220 Conn. 400 (1991), the Connecticut Supreme Court certified the question of whether the agreement the defendant entered into constituted a plea agreement within the meaning of C.G.S. § 51-195. The Anderson court stated:

*"We have defined the meaning of "plea agreement," as used in the exceptions in § 51-195, as "an agreement encompassing a sentence of a specific term of years." Staples v. Palten, supra, 214 Conn. at 200, 571 A.2d 97. In Staples, the defendant agreed to plead guilty to a substitute three count information. The state and the defendant agreed that no specific sentence would be recommended to the trial court. At sentencing, the state argued for incarceration and the defendant argued for a lesser sentence than he actually received. The defendant was sentenced to a total effective sentence of six years. On appeal, the defendant successfully argued that the sentence review division incorrectly dismissed*

his application for sentence review. In *Staples*, we held that because the defendant had not agreed to a "specific term of years" he was not excluded from sentence review under the "plea agreement" exception."

State v. Anderson, at 405. The Anderson court concluded that:

*"a "plea agreement," for the purpose of excluding sentence review under § 51-195, requires that the defendant and the state's attorney agree to a recommendation of a specific term of years of incarceration, without a reservation by the defendant of the right to argue for a lesser sentence. Any reservation of the right to argue for a lesser sentence affords the court the very discretion that the statute intended to monitor."*

State v. Anderson, at 407.

While the Office of Chief Public Defender acknowledges that the court was analyzing the statute as written and that the legislature has the authority to amend the statute it is important to note that Sentence Review was created to review whether the court properly exercised its discretion and in particular whether there was an abuse of discretion. In Staples v. Palten, 214 Conn. 195, 200 (1990) in regard to the sentence review statute the Supreme Court stated that:

*"§51-195 is a remedial statute because its purpose is to curb the ill effects stemming from wide judicial discretion in sentencing prisoners for similar offenses."*

At sentencing, the court has the discretion to craft a sentence it views as appropriate within that range based upon the information presented, including any mitigating evidence relevant to the defendant, the facts of the case, the concerns of the victim and public safety. So in such a case where a person entered into a plea agreement which recommends a *term of years* and specifically provides the person a right to argue for less, there should be a mechanism wherein the court's exercise of discretion can be reviewed.

In an effort to highlight the need to retain this statute as it currently exists, consider, for example, a case in which there is a right to argue for less in a high profile case and where the court is under incredible media pressure and unfairly imposes a sentence that is completely disproportionate to sentences normally imposed under such convictions. Such a case is precisely the type of case where an independent body, such as Sentence Review, may make a difference as it is capable of reviewing similar situations while being somewhat removed from the media spotlight.

In conclusion, the Office of Chief Public Defender requests the Committee not to support Section 5 of this bill.