



**State of Connecticut**  
**COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES**

Central Office ~ 25 Sigourney Street, Hartford, CT 06106

*Promoting Equality and Justice for all People*

**JUDICIARY COMMITTEE**  
**Wednesday, March 23, 2016**

**Testimony regarding RB No.468**

***AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITES***

**and RB No.18**

***AN ACT CONCERNING THE SECOND CHANCE SOCIETY***

Good morning Senator Coleman, Representative Tong, Senator Kissel, Representative Rebimbas, Vice Chairs and Members of the Judiciary Committee. My name is Tanya A. Hughes, and I am the Executive Director of the Commission on Human Rights and Opportunities (CHRO). With me is Cheryl Sharp, the CHRO's Deputy Director. We are here to speak regarding Raised Bill 468, An Act Concerning the Commission on Human Rights and Opportunities and Raised Bill 18, An Act Concerning the Second Chance Society.

With the full support of the General Assembly, procedural reforms proposed by the CHRO were adopted into law by P.A. 11-237. P.A. 11-237 transformed CHRO case processing by emphasizing the importance of early mediation and adding a new procedure, early legal intervention, which allows the CHRO greater flexibility in how it manages its case flow. The measures enacted in P.A. 11-237 have resulted in a remarkable turnaround and given the agency new life. In 2014-15, the CHRO closed a total of 2,334 cases, nearly double the number closed four years earlier. In 2013, the Commission had 331 cases that exceeded the statutory timeframes for investigation. These cases represented 13% of the total number of complaints pending. In 2015, that number was reduced to 69, comprising only 4% of our active regional caseload. This is a 79% reduction of aged inventory in only two years. Two of our regional offices have completely eliminated their aged inventory. The other two regional offices are on track to eliminate theirs by the end of this fiscal year.

Just this past session the General Assembly further refined the CHRO's case processing in P.A. 15-249. We added pre-answer conciliation, signaling to parties that it is never too early to discuss resolving the case. We have reaped rich dividends from these changes. We should allow these changes to work before making further changes to the CHRO's investigatory process.

The point of such a rapid increase in closures should not be lost. The CHRO earns federal dollars from the U.S. Equal Employment Opportunity Commission (EEOC) on a per case basis for each case we close that is also jurisdictional with the EEOC under federal law. The money the CHRO earns goes to the General Fund. In 2009-2010 federal funding for the agency was 17% of our budget. In 2014-2015 federal funding was 29% of our budget, nearly doubled. I have no hesitancy in saying that the proposed changes to the CHRO's case processing will result in a decrease in

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federal revenue, while the proposed changes to the CHRO's hearing process will increase efficiency and productivity.

The CHRO supports Sections 1 through 3 of RB 468, because these provisions will enhance the CHRO's ability to enforce our state's laws against discrimination and improve our vital public hearing process. The CHRO's case processing has two steps—an investigative step and a public hearing step. While the CHRO has made striking improvements in how it processes cases at investigation since 2011, the volume of cases at the CHRO's Office of Public Hearing has more than doubled. RB 468 sets an 18-month time limit for a human rights referee to issue a final decision, authorizes a referee to impose sensible sanctions against parties who abuse the discovery process, and holds the CHRO's Office of Public Hearings accountable to this Committee for failure to meet the time limits. While we are amenable to a slightly longer time frame of perhaps 20 months, we believe that some deadline for resolving cases is essential. The backlog of cases at the Office of Public Hearings cannot continue to rise.

RB468 also allows the executive director, within available resources, to divert cases for trial from the CHRO's Office of Public Hearings to a Judge Trial Referee or a Judge of the Superior Court. Judge Trial Referees already hear Office of State Ethics cases, and Superior Court judges are familiar with CHRO's statutes. The executive director's authority would activate if the number of cases at public hearing exceeds 100, which we believe will be an effective check on the public hearing process. The executive director's role is limited to requesting the designation of a Judge Trial Referee from the Chief Court Administrator. It is the Chief Court Administrator who would select the Judge Trial Referee, so the executive director has no ability to influence the outcome.

The CHRO supports Section 4 in principle. We suggest, however, that the first new sentence at Lines 145-149 be modified to substitute the phrase "executive director or the executive director's designee" for the word "commission". The Commission is composed of 9 volunteers who only meet once a month. The executive director is a full-time employee. Making this change will remove any ambiguity in who will be charged with the responsibility to conduct a timely review of a contractor's affirmative action plan.

The CHRO opposes Section 5, because these changes to our current procedures either are unworkable or have a fiscal note. I am providing as an attachment to my testimony the CHRO's detailed analysis of these sections, which will undo much of the progress the CHRO continues to make to accelerate its case processing time while still maintaining the high quality of its decisions. Nevertheless I want to highlight sections that are particularly troubling.

Section 5, Line 185, unacceptably adds delay to the process by extending the time a Respondent has to answer the complaint. An answer is a very basic document. It need only "admit, deny or plead insufficient knowledge" of the allegations of the complaint (Section 46a-54-43a of the CHRO's regulations). To put things in perspective, a respondent in a housing discrimination case has only 10 days to answer and there is no provision for an extension (CONN. GEN. STAT. Sec. 46a-83).



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We also oppose the proposal in Section 5, Lines 227-366, which makes mandatory mediation a voluntary process. Mediation is one of the success stories of the new CHRO. Mediation has been mandatory for at least 20 years and has produced excellent results. Our closure rates due to settlement are among the highest in the country. About 30% of our cases settle at mediation, and in excess of 40% of our closures are due to settlement. Not only do the parties appreciate the value of a negotiated agreement, they also understand that they are in charge of the process. Parties are only required to attend. They are not required to make or accept an offer. I have personally mediated cases where the parties have stated at the outset that they have no interest in settlement, but they have a change of heart. Not every case of course, but through a bit of hard work these cases can and do settle. This proposal would incentivize respondents to decline to participate in mediation. This may be fine from a respondent's point of view, but it would lead to increased processing times and erode recent gains in reducing our inventory. Allowing respondents (or complainants) to force the CHRO to conduct full investigations will result in a fiscal note having to be attached to this proposal.

The CHRO strongly opposes the proposal at Section 5, Lines 202-209, which would replace current case assessment review standard 3 ("there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause") with a new one ("the commission is unable to determine whether the information provided by the complainant and the respondent sets forth that a discriminatory practice has occurred"). A discrimination case can't be proved on the papers, as our judiciary has made plain. The proposed standard would require just that, however. The only material that the CHRO would review would be documentary: "the complaint, the respondent's answer and the responses to the commission's requests for information, and the complainant's comments, if any, to the respondent's answer and information responses." Discrimination cases nearly always come down to credibility. To assess credibility, witnesses must be seen and heard.

The proposed standard looks little different from the CHRO's public hearing standard and would have the same practical effect - a preponderance of the evidence standard would be required for the complainant to prevail. The significant difference, however, is that the public hearing standard is used only after there has been discovery, examination and cross-examination of witnesses and the filing of motions and briefs. In other words, there has been due process. A case assessment review, on the other hand, is conducted by looking only at documents, all or most all of which are in the respondent's possession. Respondents hold the information (payroll and attendance records, personnel files, etc.) and I am concerned that this standard perhaps unintentionally creates an incentive to withhold it. "Reasonable cause...require[s] a lesser showing than the preponderance of the evidence standard". Adriani v. CHRO, 220 Conn. 307, 319 (1991).

The CHRO likewise objects to the proposal at Section 5, Lines 369-372, which limits a fact-finding to 8 hours. This proposal would change the whole dynamic of how cases are heard. Limiting testimony to 8 hours is arbitrary. It punishes a complainant because a case is complex and would force the CHRO to make impossible choices as to which witnesses will be heard, which left out. I don't know of any system that lets a litigant have veto power over what evidence a trier of fact may



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consider. I also worry that an artificial deadline unintentionally encourages parties (both the complainant and the respondent) to engage in conduct that might delay or obstruct the fact-finding, as the investigator would be precluded from scheduling follow-up days of fact-finding.

The CHRO supports the Governor's RB 18, An Act Concerning the Second Chance Society, a bill designed to raise the age of adult criminal responsibility to 21. The mission of the Commission on Human Rights and Opportunities is to eliminate discrimination through civil and human rights law enforcement and to establish equal opportunity and justice for all persons within the state through advocacy and education. Eliminating barriers to equal employment opportunity is one of the Commission's core concerns. Individuals with criminal records of any kind have an extremely difficult time finding employment after their periods of incarceration. Because of longstanding issues with our criminal justice system<sup>1</sup>, individuals of color are statistically more likely than other individuals to have criminal records. Young men of color comprise the vast majority of youth sentenced to adult confinement. This proposal would eliminate lifetime criminal records for these young people, making it easier for them to have a chance for successful careers, families and all the things we think of that make up the American Dream.

The CHRO **supports** RB 468 with the changes I have described. We also **support** RB 18. Thank you for the opportunity to testify today. I am happy to answer any questions the Committee may have.

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<sup>1</sup> <http://www.civilrights.org/publications/reports/cerd-report-falling-further-behind/discrimination-in-the.html>



STATE OF CONNECTICUT

## SENTENCING COMMISSION

*Testimony of Alex Tsarkov on behalf of the Connecticut Sentencing Commission  
Judiciary Committee Public Hearing  
March 23, 2016*

*Senate Bill 473, An Act Concerning A Petition for Release from the Requirement to Register as a Sexual Offender for Life*

Good morning Senator Coleman, Representative Tong, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee. Thank you for the opportunity to submit written testimony on behalf of the Connecticut Sentencing Commission regarding S.B. 473, **An Act Concerning a Petition for Release from the Requirement to Register as a Sexual Offender for Life**. For the record, my name is Alex Tsarkov and I am the Executive Director of the Sentencing Commission.

The Connecticut Sentencing Commission is not offering comment in favor of or in opposition to this bill, but rather would ask that the legislature remain mindful of the study mandated by Special Act 15-2 during the 2015 legislative session. That act requires the Commission to take a comprehensive look at the registration, management, residency restrictions, and sentencing of sexual offenders in Connecticut. The act further requires the Commission to submit reports on its study to the General Assembly on February 1, 2016 and December 15, 2017. The Commission submitted its interim report this past February, has convened key stakeholders of the criminal justice system and is in the process of conducting a comprehensive evidence based evaluation regarding these topics.

Thank you for your consideration of this testimony.

Room 212, 185 Main Street, New Britain, CT 06051