



STATE OF CONNECTICUT
SENTENCING COMMISSION

Testimony of Alex Tsarkov and Honorable Judge Robert Devlin before the Judiciary Committee on, *SB 389 An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Sentence Review*

Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee. For the record, my name is Alex Tsarkov and I am the Executive Director of the Connecticut Sentencing Commission. With me is Judge Robert Devlin Jr., an Appellate Court Judge and chair of the Sentencing Commission. We are here to testify in favor on SB 389, *An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Sentence Review*.

We would first like to give you some brief background about the Sentencing Commission. We are a permanent statutory commission created eight years ago, consisting of all the stakeholders in Connecticut's criminal justice system. Our membership includes four judges; the Chief State's Attorney; the Chief Public Defender; the State Victim Advocate; the commissioners of Correction and Emergency Services and Public Protection; community activists interested in the criminal justice system; the chair of the Board of Pardons and Paroles; municipal police chiefs; the undersecretary of the Office of Policy and Management's Criminal Justice Policy and Planning Division; as well as others vitally engaged in the criminal justice system. We operate by consensus among all Commission members. Our work is informed by all the major stakeholders of the criminal justice system and aims to adhere to the best legal and evidence-based research and practices.

SB 389 would make important changes to the state's sentence review and sentence modification statutes. The consensus proposal is a result of work by the subcommittee that was chaired by Judge White and included members of the Chief State's Attorney's office, the Chief Public Defender's office, and representatives of the private bar among others.

Sentence Review

Current law permits inmates who are sentenced to a term of three or more years of incarceration, with certain exceptions, to request the Sentence Review Division of the Superior Court to review and potentially reduce their sentence. Since 1978, state law has prohibited

most defendants from applying to have their sentence reviewed where the sentence has been the result of a plea agreement. However, a subset of these defendants – those who pled to a "cap agreement," a plea agreement between the parties that sets a maximum sentence, but gives the defendant the right to argue to the trial court for a less than the agreed upon maximum – retains eligibility for sentence review under current law. This bill would change this, prohibiting sentence review for *all* defendants whose sentences are the result of a plea agreement.

It should be noted that sentence review has very rarely been a successful post-conviction remedy. According to the Office of Legislative Research Report from June 27, 2008, out of 997 applications for sentence review over the course of 6 years, only 13 sentences received a reduction or modification as a result of sentence review.

Sentence Modification

The statutory change with respect to sentence modification would allow a defendant, without agreement from the prosecutor, to petition the court to modify any sentence which includes three years or less of *actual incarceration* after a hearing and a showing of good cause. Sentences of more than three years of actual incarceration will still require consent from the prosecutor in order to have a modification hearing.

The current law on Sentence Modification prohibits the court from holding a hearing without the agreement of the prosecutor if the entire sentence, *including suspended periods of incarceration*, exceeds three years. This legislation would allow the court to hold a modification hearing for any sentence without the state's consent as long as the defendant is serving a sentence of three years or less of *actual incarceration*.

This expansion of eligibility for Sentence Modification would provide more opportunities for release to many deserving individuals.

We thank the Committee for raising this important legislation and urge the Committee's JOINT FAVORABLE Report.