CONNECTICUT SENTENCING COMMISSION

Legislative Committee Meeting
Tuesday, October 4, 2011
9:30 a.m.
Legislative Office Building, Hearing Room 1D
Hartford, CT

Members Present: *Hon. David Borden (Committee Chair), Hon. Joseph Shortall (Commission Chair), Michael Lawlor (Commission Vice Chair), Michelle Cruz, Robert Farr, Cathy Foley Geib (Representing William Carbone), Kevin Kane, Mark Palmer, Deborah Sullivan (Representing Susan Storey), Erika Tindill*

Also Participating: *Andrew Clark (Acting Executive Director), Jason DePatie, Rosie Morgan, David Norman, Chris Reinhart, Sarah Russell, Rick Taff*

Public Attendees: *John Defeo, Andrew Moseley, Alex Tsarkov*

MINUTES

I. MEETING CONVENED

Justice Borden called the meeting to order at approximately 9:45 a.m. The following new members were welcomed to the committee: Michelle Cruz, Kevin Kane, Mark Palmer and Deborah Sullivan (Representing Susan Storey). Afterward, Justice Borden explained the purpose and history of the Legislative Committee and its goals looking forward to the 2012 Legislative Session.

II. APPROVAL OF THE MINUTES FROM THE MEETING OF AUGUST 11, 2011

Upon a duly made and seconded motion, the minutes were **approved by a unanimous voice vote.**

III. PROPOSALS FOR THE 2012 LEGISLATIVE SESSION

A. UPDATE- Provisional Pardons/Certificates of Relief from Barriers

Andrew Clark retraced the history of how the Legislative Committee came to look at Provisional Pardons. Originally, the idea was to explore standards for pardons. The committee then learned that Connecticut's pardons system is positioned favorably in the national context and shifted its attention to the provisional pardon. The current version of the draft legislation changes the name of the *Provisional Pardon* to *Certificates of Relief from Barriers* and is largely based on New York's *Certificates of Relief from Disabilities*. Another change is a provision delegating oversight over the implementation and evaluation of the Certificate of Relief of Barriers program to the Sentencing Commission.

Procedurally, Justice Borden asked what would happen if a judge does not feel they have enough information at the time of sentencing. i.e., Does a judge have the option to refer the person to the Board of Pardons and Paroles for review? Sarah Russell responded the procedure for a judge would likely be to deny the certificate, ask for an investigation, and allow the person to re-apply. The committee then discussed the provision of the legislation to require parole to consider a person's eligibility for a certificate at the time parole is granted. Erika Tindill raised the concern that this proposal could circumvent the Board of Pardons and Paroles' statutory mandate in that the parole and pardon functions of the Board are separate. Erika Tindill also commented that she felt the name should be changed to "Certificate of Employability" which is what the Board has recently decided to rename the provisional pardon. It was explained the name was broadened to "Barriers" because the new version includes a section on public housing.

Erika Tindill explained that from her vantage point the most challenging part of the certificate going forward is the education of the business community, licensing boards, and those who are eligible for certificates. Mike Lawlor inquired as to the relationship of the public housing component of the legislation and whether it is in line with federal requirements. Sarah Russell explained that the proposed legislation does not conflict with any component of federal law. Kevin Kane suggested the committee consider the potential impact of a judge's denial on the ability of a person to seek a certificate in the future. Mike Lawlor pointed out that current law only applies to licensing boards and the state of Connecticut as an employer. The new legislation would expand the Certificate of Relief from Barriers to private employers.

Judge Shortall highlighted a few technical issues with the current draft of the legislation and explained that the Commission does not have the resources or staff to oversee the implementation of the certificate. He did endorse the idea that the Sentencing Commission oversee the evaluation of the program. Andrew Clark commented that the implementation of the certificate is going to be challenging because it has to be coordinated among three granting sources. Michelle Cruz suggested that there may be a way to implement these proposed changes administratively. Bob Farr raised concern that the liability protection component of the legislation may be too controversial going forward. Together the committee decided it was not ready to move forward on this proposal. It was determined that Justice Borden will meet with Sarah Russell, Andrew Clark and Jason DePatie to further discuss the specifics of a scaled back version of Certificate of Relief from Barriers legislation.

B. UPDATE- Legislation for juveniles convicted in adult court to seek sentence modification (Sarah Russell & Linda Meyer)

Sarah Russell outlined the new components of the proposed legislation addressing sentence modification for juveniles convicted in adult court. Bob Farr commented that the legislation seems to go beyond the minimal compliance required in the U.S. Supreme Court decision in Graham v. Florida (2010). The committee then discussed the procedure for how a person would request a hearing for sentence modification and how the hearing would be

structured. Rules of evidence were discussed in detail. Discussion then focused on whether or not Connecticut is in compliance with the Supreme Court decision. Justice Borden explained that in his reading of Graham v. Florida, Connecticut is currently not in compliance. The use of parole for sentence modification was briefly discussed by the committee. Michelle Cruz raised concern about the notification process and role of the victim in a sentence modification hearing. Justice Borden responded that the current version of the legislation maintains the rights of the victim.

Bob Farr commented that Graham v. Florida seems to only apply to cases of homicide and is very limited in its application. Deborah Sullivan suggested that the public defender be given the opportunity to represent those eligible to seek sentence modification. Kevin Kane discussed the types of evidence that may be permissible during a hearing for sentence modification. He raised concern that during a hearing for sentence modification, eligible parties may now be allowed to introduce a broader range of evidence than what would be allowed during the original proceedings. Other members of the committee felt judicial discretion in determining the types of evidence that can be introduced at a sentence modification hearing is important. Justice Borden asked for consensus on the time period after which a person would be eligible to seek sentence modification, whether special parole should be considered, and what kind of guidance to provide judges in regard to the hearing format for sentence modification. Michelle Cruz discussed the process of offenders contacting victims in order to reconcile and outlined the various restrictions in this process. Justice Borden asked that a new version of the bill be drafted incorporating committee's feedback.

C. UPDATE- Addressing anomalies in the penal code involving the minimum sentence of the kidnapping statute and sexual assault in the fourth degree (Justice Borden)

Justice Borden outlined the legislative drafts prepared by Rick Taff. Both drafts were **approved by a unanimous voice vote** and will be presented at the next Full Sentencing Commission meeting.

D. UPDATE- Classification Working Group (Bob Farr)

Bob Farr reported the Classification Working Group has continued to meet with state agencies and anticipates presenting a final packet of recommendations to the Legislative Committee at its next meeting.

IV. STRATEGY: MOVING LEGISLATIVE PROPOSALS FORWARD

Justice Borden skipped this item in the interest of time.

V. NEXT STEPS

The next meeting of the Legislative Committee will be October 25, 2011 at 9:30 a.m. in the Legislative Office Building. The room number will be forwarded to the committee in advance of the meeting.

VI. OTHER BUSINESS

VII. MEETING ADJOURNED

Meeting adjourned at 11:15 a.m.