CONNECTICUT SENTENCING COMMISSION

Legislative Committee Meeting
Tuesday, October 25, 2011
9:30 a.m.
Legislative Office Building, Room 1A
Hartford, CT

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

***Also Participating:** Brian Austin, Andrew Clark, John Defeo, Jason DePatie, Cathy Foleb Geib, Chris Reinhart, Sarah Russell, Dan Scholfield, Rick Taff*

***Public Attendees:** Jamie Robinson, Alex Tsarkov*

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MINUTES

I. MEETING CONVENED

Justice Borden called the meeting to order at approximately 9:45 a.m.

II. APPROVAL OF THE MINUTES FROM THE MEETING OF OCTOBER 4, 2011

Two amendments to the minutes were made modifying the format of the "members in attendance" and "also participating" headers. Upon a duly made and seconded motion, the amended minutes were **approved by a unanimous voice vote.**

III. PROPOSALS FOR THE CT GENERAL ASSEMBLY'S 2012 LEGISLATIVE SESSION

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

Sarah Russell reported that at the last meeting of the Legislative Committee, objections were raised regarding two provisions of the Certificates of Relief from Barriers legislative proposal: 1) expanding the scope of the certificate to include private employers; 2) providing employers with liability protection if they hire ex-offenders who have certificates. Both provisions have been removed from the new legislative drafts.

Option 1 changed the name of provisional pardons to "Certificates of Relief from Barriers," and allows the administering authority discretion to title the certificates: "Certificate of Employability" or "Certificate for Suitability for Housing." The purpose of these certificates is to remove the barriers ex-offenders experience during reentry in relation to employment and public housing. Two procedural changes are also included in the legislative proposal:

1) allowing judges to issue certificates at the time of sentencing; 2) requiring the Board of Pardons and Paroles to evaluate a person's eligibility to receive a certificate when making parole decisions. Option 1 also provides licensing boards and housing authorities guidance as to what a Certificate of Relief from Barriers means; although, it provides no specific guidance on the action that should be taken when presented with a certificate. Option 2 incorporated the same name change as Option 1 and omitted the procedural change to allow judges to issue certificates at the time of sentencing. The provision explaining the "direct relationship" requirement was maintained as well as the provision to require the Board of Pardons and Paroles to evaluate a person's eligibility to receive a certificate when making parole decisions.

Judge Shortall proposed that the committee move forward with Option 1 because it makes a meaningful procedural change and clarifies the purpose of provisional pardons. Justice Borden reminded the committee that the purpose of an ex-offender receiving a certificate is to help them gain employment and access to public housing. The certificate would show licensing agencies and potential employers that the person is suitable to employ.
Some concerns were raised as to whether or not judges should be involved in issuing certificates and after further discussion the committee agreed it was a good idea. Erika Tindill suggested that an alternative to judges granting certificates is to incorporate certificates in the plea bargaining process. For example, the prosecutor could include employment as a normal consideration in the plea bargaining process to ensure a conviction has no negative impact on a person's ability to find employment in regard to licensure from a state agency. Erika Tindill suggested that the standards are important to maintaining the integrity of the certificates. The committee discussed the standards in Option 1 and felt comfortable moving forward with the current language.

Robert Farr raised concern with three scenarios that could emerge if this proposal moves forward: 1) the certificates become meaningless because too many people are issued certificates and the original intent of the legislation is weakened; 2) the courts could be flooded with requests for certificates; 3) judges decide against issuing certificates due to not having enough information about the person at the time of sentencing. Other members pointed out that probation and defense counsel should be able to present this information at the time of sentencing. Judge Shortall noted there is a possibility that the Certificates of Relief from Barriers legislative proposal could initially burden the courts, but this is nothing that the courts have not experienced in the past. The process might be slow and difficult at first, but just like any new piece of legislation the court system would adapt.

Kevin Kane raised concern about the decision making process of the committee. He stressed the importance of taking time to thoroughly review the legislative proposal before recommending it to the General Assembly. He thought the committee should proactively edit the language of the legislative proposal to avoid unforeseen outcomes. Justice Borden reminded the committee that this proposal has gone through an extensive drafting process and he reviewed the changes the committee discussed up to that point in the meeting. Another change to which the committee agreed was that the line describing the period during which a certificate can be issued should be edited to read "at the time of sentencing and or during a probationary period." Michelle Cruz thought that victim safety should be

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mentioned, and that the legislative proposal should enable the victim to have input in the process of determining the issuance of a certificate. For example, a victim may have some useful information regarding a person's suitability for employment that is not directly available to the judges of the Board of Pardons and Paroles.

Justice Borden summarized the discussion and reminded the committee that this is new legislation and inherently imperfect. It is not possible to answer all questions or anticipate every problem. Instead, it is important for the committee to weigh the risks and benefits of the proposal. It is possible that down the road the Sentencing Commission will identify changes that should be made to the program which is why the Commission will have oversight over the evaluation of the program for a period of three years. Mike Lawlor explained that every year there are 30,000 felony convictions in Connecticut. This means that if even 10% of these people qualify to receive a certificate, then there are 3,000 people who would be eligible for jobs that they wouldn't have been otherwise. Andrew Clark reminded the committee that the education of employers, licensing boards, and housing authorities will be critical to successful implementation.

The committee divided the time at which a Certificate of Relief from Barriers could be issued into two categories: 1) those who are issued a certificate at sentencing; 2) those who may be issued a certificate during probation or the period thereafter. The option for judges to issue a certificate is especially important for reaching people who received a suspended sentence or a sentence less than two years since these people will not be eligible for automatic consideration during the parole process. Justice Borden proposed presenting this draft to the Full Commission at the November 11th meeting. Although the Commission has time before the legislative proposal has to be presented to the General Assembly, this would allow time for members to provide feedback, edits, critiques, and to reach compromises. A version of the legislative proposal will be circulated to the committee reflecting the chsnges from Sarah Russell, Andrew Clark and Jason DePatie's meeting with Erika Tindill and other provisional pardon stakeholders. The committee agreed to present the legislative draft with the agreed upon changes and highlight the concerns raised during this meeting to the Full Commission.

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

Sarah Russell reported that the concerns from the October 4th Legislative Committee meeting have been addressed in the new legislative draft. At the last meeting, discussion focused on evidentiary standards and providing guidance to judges as for what constitutes evidence of rehabilitation. The committee concensus was that the focus of a sentence modification hearing should be on how a person changes and not focus solely on the original offense.

As the legislative proposal currently reads, after 10 years, juvenile offenders would be eligible for a sentence modification hearing if "good cause" is shown. Deborah Sullivan explained that if good cause is not found a public defender would not request a hearing for sentence modification and the judge would likely dismiss the request after the hearing. The

idea behind sentencing modification is that after 10 years the individual has matured. Robert Farr questioned whether there is a need for multiple hearings. He reminded the committee that the individuals receiving life sentences are dangerous. Potentially, this legislative proposal could create a situation where a person is rejected every year only to re-file the petition for sentence modification. He argued that a person should only be allowed one hearing for sentence modification and not be entitled to multiple hearings.

Michelle Cruz agreed that these offenders should not be given multiple opportunities for sentence modification. She explained that multiple opportunities for sentence modification would be re-victimizing the victim. She agreed with Robert Farr that changes in a person's maturity and evidence of change needed for a sentence modification hearing should be obvious after 10 years and there is no need for additional opportunities. Justice Borden agreed that people should not be able to come back every year to ask for a sentence modification hearing, but questioned how many opportunities would be appropriate.

Limiting the opportunities for a person to seek sentence modification was further discussed. Two options that emerged from the committee were to allow a person to seek sentence modification once after ten years or once every ten years. Some members thought it would be best to allow multiple opportunities while others thought only one opportunity for sentence modification should be provided. Michelle Cruz argued that if a person only had one opportunity for sentence modification then the person's defense counsel would know that it is critical to use all the available resources to present a person's case demonstrating how they have changed since their original offense. Justice Borden agreed that there is merit to the idea of having one opportunity. If the defense counsel was unsure that a person's case was persuasive enough they could choose to wait before filing a petition. This should address concerns about the victim and emphasize the importance of having a strong case when filing a petition for sentence modification. The committee agreed to present the option for allowing one petition to the Full Commission.

The committee discussed two options for evidentiary standards presented in a separate memo accompanying the legislative draft. The first option is that at a sentence modification hearing, the defense counsel may present documentary evidence relevant to whether or not the defendant's sentence should be modified. This option provides the judge broad discretion in determining what evidence is permissible. The second option limited the types of evidence which could be presented. The general consensus was that components of the first and second option should be combined to provide clear evidentiary standards while preserving the judge's discretion in determining what kinds of evidence are permissible.

Some members raised concern that this legislative proposal establishes retro-activity. Justice Borden clarified that Graham v. Florida establishes retro-activity, meaning that past sentences can be modified based on a combination of previous and new information. Kevin Kane mentioned that, with this understanding, the courts should consider the maturity and rehabilitation of the offender in addition to the circumstances of the original crime that were considered by the sentencing court. Sarah Russell Elaborated that it is important to recognize that this Supreme Court decision does not mean that the original sentence was

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unfair, but that these cases deserve a second look to determine if the person has changed and expresses remorse.

Michelle Cruz and Kevin Kane thought it would be valuable for the committee to review the original crimes of people who would be eligible for sentence modification. Judge Shortall mentioned that the committee was provided this data in June. A detailed breakdown of the nature of offenders' crimes and age at the time the crime occurred were prepared by Quinnipiac Law School. Michelle Cruz and Kevin Kane thought the committee should not refer this legislative proposal to the Full Commission until this information is reconsidered. Other members felt information on a potential petitioners' criminal thinking at the time of the original crime would provide no insight into how the person has changed or the appropriate format for a hearing on sentence modification. Justice Border asked for a motion to present the legislative proposal to the Full Commission and for the concerns that emerged in the committee discussion to be highlighted for the Commission.

Justice Borden reviewed the points that emerged through committee discussion. Agreement was reached concerning the one-time opportunity for sentence modification and the idea that full evidentiary rules should be applied to the hearing with the addition of new language directing the judge to look at the original sentence of the petitioner. The committee also agreed to combine option one and option two of the memo accompanying the legislative draft. It will be noted at the Full Commission meeting that although a general consensus was reached it was not unanimous. The committee decided to leave other concerns such as the timing of hearings for sentence modification up to the courts.

C. UPDATE- Misdemeanor Classification Working Group

See the final report of the Classification Working Group on the Sentencing Commission website at: http://www.ct.gov/opm/cwp/view.asp?a=2967&Q=476520. Justice Borden, Kevin Kane, Andrew Clark, and Mark Palmer commended the working group on the final report. With a **unanimous voice vote** the committee voted to send the final report with any future changes the working group makes after receiving feedback from the state agencies and the committee members to the Full Commission for consideration.

IV. OTHER BUSINESS

No other business was introduced.

V. MEETING AADJOURNED

Meeting adjourned at approximately 12:55 p.m.

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