STATE OF CONNECTICUT
SENTENCING COMMISSION

FOR IMMEDIATE RELEASE

Monday, November 26, 2018

NOTICE OF PUBLIC HEARING

Thursday, December 6, 2018 10 a.m.
Legislative Office Building, Room 1C
300 Capitol Avenue
Hartford, CT 06106

On Thursday, December 6, 2018, the Connecticut Sentencing Commission will hold a public hearing on several potential legislative proposals:

1. Reform of the Sex Offender Registry and other recommendations from the Commission's report on sex offender sentencing, registration, and management system (see Appendix A)
2. Reform of the sentence modification and sentence review statutes (see Appendix B)
3. An Act Concerning Misdemeanor Sentences (see Appendix C)
4. An Act Concerning the Adoption and Safe Families Act (see Appendix D)
5. An Act Concerning Automatic Erasure of Certain Records (see Appendix E)
6. An Act Concerning Voting Rights (See Appendix F)
7. An Act Concerning Accelerated Pretrial Rehabilitation (See Appendix G)
8. Reform of the child pornography statutes (See Appendix H)

The hearing will take place in Room 1C of the Legislative Office Building, 300 Capitol Avenue, Hartford, at 10 a.m.

Sign-up for the public hearing will begin promptly at 8:30 a.m. and will conclude at 9:30 a.m. in the 1st floor Atrium of the Legislative Office Building. Speaker order will be determined by lottery. Anyone wishing to testify after the drawing is closed must sign up on the official list in Room 1C, at which point sign-up will be accepted on a first come, first served basis. Written testimony for the public hearing will be accepted for distribution to Commission members during the sign up period. If you would like each Commissioner to have a copy for the hearing, please submit 25 copies. If you would simply like to have your testimony submitted for the public record please submit one copy. Please note that any testimony submitted for the public record will be placed on the Commission's website and is subject to Connecticut's Freedom of Information statutes and regulations. At any point prior to the hearing, electronic testimony for the public record can be submitted to the Commission via email: SentencingCommission@ccsu.edu. Speakers will be limited to three minutes of testimony. Testimony should be limited to matters related to the proposals on the agenda.

If you have any questions, please contact the Commission at (860) 832-1681 or via e-mail at the address listed above.

Appendix A

Proposed Recommendations on the Registry, Management and Sentencing of Sex Offenders

The Sentencing Commission is planning to reintroduce legislation based on the recommendations from its Study of the Sex Offender Sentencing, Registration, and Management System: http://ctsentencingcommission.org/wpcontent/uploads/2018/05/Sex_Offender_Report_December_2017.pdf

Special Act 15-2 required the Sentencing Commission to study sex offender sentencing, registration and management system and provide recommendations to the Governor and Connecticut General Assembly. This proposal is the result of two years of rigorous study and discussions with multiple stakeholders – academics, practitioners, as well as state and national experts on this subject matter.

The key aspect of the proposal is a move from a conviction-based registry to a risk-based registry focused on the risk, needs and responsivity model supported by research and evidence-based practices.

The categories of sex offenders who must register with the Department of Emergency Services and Public Protection based on the crime for which they were convicted would remain the same. However, the length of time on the registry, the compliance requirements and whether it is a public or a law enforcement-only registry would be determined by evaluating the registrant's risk of reoffending.

Connecticut is one of the very few jurisdictions that currently does not allow the opportunity for individuals to be removed from its registry. The removal provision of the proposal, which would be prospective only, establishes a process to petition the superior court for removal from the registry. However, some individuals who were retroactively placed on the registry at the time the registry went into effect (i.e., offenders who were convicted prior to January 1, 1998, without knowledge that they would be subject to registration requirements) would be eligible to petition the court for removal.

The proposal would allow for more focused monitoring and management of individuals who have engaged in sexual violence, and at the same time provide mechanisms for individuals who have rehabilitated themselves to more fully reintegrate into their communities.

Appendix B

Proposed Changes to the Sentence Review and Sentence Modification Statutes.

Section 51-195 of the general statutes is repealed and the following is substituted in lieu thereof:

Any person sentenced on one or more counts of an information to a term of imprisonment for which the total sentence of all such counts amounts to confinement for three years or more, may, within thirty days from the date such sentence was imposed or if the offender received a suspended sentence with a maximum confinement of three years or more, within thirty days of revocation of such suspended sentence, except in any case in which a different sentence could not have been imposed or in any case in which the sentence or commitment imposed resulted from the court's acceptance of a plea agreement, [or] in any case in which the sentence imposed was for a lesser term than was proposed in a plea agreement, or in instances when the plea agreement provides that the term of imprisonment will not exceed an agreed upon maximum term, but provides that the person sentenced may request a term of imprisonment lower than the agreed upon maximum term, file with the clerk of the court for the judicial district in which the judgment was rendered an application for review of the sentence by the review division. Upon imposition of sentence or at the time of revocation of such suspended sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the term within the limits fixed by law. A form for making such application shall accompany the notice. The clerk shall forthwith transmit such application to the review division and shall notify the judge who imposed the sentence. Such judge may transmit to the review division a statement of his reasons for imposing the sentence, and shall transmit such a statement within seven days if requested to do so by the review division. The filing of an application for review shall not stay the execution of the sentence.

Section 53a-39 of the general statutes is repealed and the following is substituted in lieu thereof Sec. 53a-39.

(a) At any time during [the period of a definite sentence] a sentence in which a defendant has been sentenced to an executed period of incarceration of three years or less, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

(b) At any time during [the period of a definite sentence] a sentence in which a defendant has been sentenced to an executed period of incarceration of more than three years, upon agreement of the defendant and the state's attorney to seek review of the sentence, the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence, order the defendant discharged, or order the defendant discharged on probation or conditional discharge for a period not to exceed that to which the defendant could have been originally sentenced.

(c)The provisions of this section shall not apply to any portion of a sentence imposed that is a mandatory minimum sentence for an offense which may not be suspended or reduced by the court.

(d) At a hearing held by the sentencing court or judge under this section, such court or judge shall permit any victim of the crime to appear before the court or judge for the purpose of making a statement for the record concerning whether or not the sentence of the defendant should be reduced, the defendant should be discharged or the defendant should be discharged on probation or conditional discharge pursuant to subsection (a) or (b) of this section. In lieu of such appearance, the victim may submit a written statement to the court or judge and the court or judge shall make such statement a part of the record at the hearing. For the purposes of this subsection, "victim" means the victim, the legal representative of the victim or a member of the deceased victim's immediate family.

Appendix C

An Act Concerning Misdemeanor Sentences

Section 1. (NEW) (Effective October 1, 2019) (a) Notwithstanding any provision of the general statutes, any offense which constitutes a breach of any law of this state for which a person may be sentenced to a term of imprisonment of up to but not exceeding one year shall be punishable by imprisonment for a period not to exceed three hundred sixty-four days. A misdemeanor conviction for which a person was sentenced to a term of imprisonment of one year shall continue to be deemed a misdemeanor conviction after the maximum term of imprisonment is reduced pursuant to this section.

(b) The provisions of this section apply to any term of imprisonment for which a person was sentenced to on or after October 1, 2019.

Rationale for the Proposal

By changing the maximum sentence for misdemeanor offenses by a single day, we hope to limit some of the most severe immigration consequences for offenses Connecticut only considers misdemeanors. This small change primarily targets two categories of offenses that trigger deportation and other immigration consequences under the Immigration and Nationality Act for all noncitizens, including green card holders. First, noncitizens convicted of a single offense where the maximum possible sentence is at least one year can be subject to deportation, regardless of the actual sentence imposed. Second, noncitizens actually sentenced to at least one year for certain offenses are subject to mandatory detention and deportation for conviction of an "aggravated felony," even where the sentence is suspended. A one-day reduction in maximum sentences would help address the disconnect between the state's misdemeanor offenses and the stark and asymmetrical immigration consequences that can result.

Under the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101 et seq., a single "crime involving moral turpitude" is a deportable offense if it is committed within five years of entry and punishable by a sentence of a year or more. 8 U.S.C. § 1227(a)(2)(A)(i). This ground of deportability is based on whether the offense is "a crime for which a sentence of one year or longer may be imposed," not the actual length of the sentence imposed. 8 U.S.C. § 1227(a)(2)(A)(i)(II). Not only does this conviction render a person deportable, but it also renders individuals without green cards ineligible for cancellation of removal, an important form of discretionary relief from removal for individuals with longstanding family and community ties to the United States. 8 U.S.C. § 1229b(b)(1)(C). It thus prevents immigration judges from exercising discretion they would otherwise have to consider the totality of the circumstances in deciding a particular case.

A "crime involving moral turpitude" covers a broad swath of offenses. Although this area of law is still in flux, this term generally includes most assault offenses (*Guevara v. Holder*, 533 F. App'x 23, 27 (2d Cir. 2013)), almost all offenses involving fraud (*Mendez v. Mukasey*, 547 F.3d 345, 347 (2d Cir. 2008)), and almost all offenses involving theft, including petty theft offenses (*Chiaramonte v. INS*, 626 F.2d 1093, 1097 (2d Cir. 1980)). *See* Jorge L. Baron, et al., A Brief Guide to Representing Non-citizen Criminal Defendants in Connecticut 27-69 (revised May 2017), https://law.yale.edu/system/files/documents/pdf/Clinics/vlsc_CrimImmGuide.pdf.

The INA further classifies as "aggravated felonies" certain offenses that carry a sentence of one year or more, regardless of whether they are misdemeanors under state law or if the entire sentence imposed was suspended. The "aggravated felony" designation in turn triggers mandatory detention and deportation. The INA's definition of aggravated felony includes "a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year" and "a crime of violence (as defined in section 16 of title 18, but not including a purely political offense) for which the term of imprisonment at least one year." 8 U.S.C. § 1101(a)(43)(F)-(G). *See also Forbes v. Lynch*, 642 F. App'x 29, 30 (2d Cir. 2016) (unpublished) (upholding classification of third-degree larceny under Connecticut law as a theft offense constituting a deportable aggravated felony); *United States v. Pacheco*, 225 F. 3d 148 (2d Cir. 2000) (upholding classification of theft of $10 videogame with one year suspended sentence as "aggravated felony"). If a person is convicted of an aggravated felony, that person becomes ineligible for nearly all forms of discretionary immigration relief, like asylum (which protects individuals with a well-founded fear of persecution in the country they fled), cancellation of removal, and special protections for certain victims of domestic violence. *See* 8 U.S.C. § 1158(b)(2)(B)(i) (rendering a person ineligible for asylum if convicted of aggravated felony); 8 U.S.C. § 1229b(b)(1)(C) (person convicted of aggravated felony is ineligible for cancellation of removal or adjustment of status); 8 U.S.C. § 1229(b)(2)(iv) (person convicted of aggravated felony is also ineligible for cancellation of removal or adjustment of status as a battered spouse or child).

While this minor change would protect noncitizens convicted of certain misdemeanor offenses, for some offenses it would not stave off deportation consequences under separate provisions of the INA, regardless of the maximum possible or actual sentence. These convictions include offenses relating to domestic violence, violating an order of protection, drug offenses, and firearm convictions. *See, e.g.*, 8 U.S.C. § 1227(a)(2)(B) (deportable for a single controlled substance conviction); 8 U.S.C. § 237(a)(2)(C) (deportable for a single firearm conviction); 8 U.S.C. § 1227(a)(2)(E) (deportable for a single domestic violence conviction or conviction for violating an order of protection). A noncitizen would also be deportable for multiple convictions for "crimes involving moral turpitude," regardless of the maximum penalty for each offense. 8 U.S.C. § 1227(a)(2)(A)(ii).

This one-day change can shield Connecticut's residents from some of the most severe immigration consequences that can result from a single misdemeanor conviction.

Appendix D

An Act Concerning the Adoption and Safe Families Act

The Connecticut Sentencing Commission is considering proposing legislation that would seek to protect the rights of incarcerated parents to their child. Currently, the Adoption and Safe Families Act (ASFA) requires the state to permanently remove a parent's rights to their child if that child has been in foster care for 15 consecutive months or 15 of the most recent 22 months. Termination proceedings can be triggered by parental incarceration, even when that parent attempts to remain engaged in services designed to support reunification and to remain engaged in their child's life while serving his/her sentence.

The proposed changes would:

- Ensure that an incarcerated parent's lack of participation in a required program does not count against them if that parent did not have reasonable access to that program while serving his/her sentence with the Connecticut Department of Corrections.

- Guarantee that an incarcerated parent's lack of involvement in their child's life, when caused by factors beyond that parent's control and despite the parent's good faith efforts, do not count against that parent in termination of parental rights proceedings.

- Further protect an incarcerated parent's ability to participate in child welfare case hearings with the Connecticut Department of Children and Families, including by phone or video, if in-person attendance is not possible.

- Provide a statutory definition for "compelling reason" as to why a petition to terminate the parental rights of an incarcerated parent is not in the best interests of the child. Those reasons include cases where:
    - The parent maintains a meaningful role in the child's life;
    - The parent's incarceration is the primary reason why the child has been in foster care for fifteen of the last twenty-two months; and
    - There are no other grounds for filing a petition to terminate

Appendix E

An Act Concerning Automatic Erasure of Certain Records

Section 1. Section 54-142a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2019):

(a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.

(b) Whenever in any criminal case prior to October 1, 1969, the accused, by a final judgment, was found not guilty of the charge or the charge was dismissed, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased by operation of law and the clerk or any person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased; provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition for erasure with the court granting such not guilty judgment or dismissal, or, where the matter had been before a municipal court, a trial justice, the Circuit Court or the Court of Common Pleas with the records center of the Judicial Department and thereupon all police and court records and records of the state's attorney, prosecuting attorney or prosecuting grand juror pertaining to such charge shall be erased. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect.

(c) (1) Whenever any charge in a criminal case has been nolled in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolles entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased.

(2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be

nolled upon motion of the arrested person and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolled cases.

(d) (1) Whenever prior to October 1, 1974, any person who has been convicted of an offense in any court of this state has received an absolute pardon for such offense, such person or any one of his heirs may, at any time subsequent to such pardon, file a petition with the superior court at the location in which such conviction was effected, or with the superior court at the location having custody of the records of such conviction or with the records center of the Judicial Department if such conviction was in the Court of Common Pleas, Circuit Court, municipal court or by a trial justice court, for an order of erasure, and the Superior Court or records center of the Judicial Department shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(2) Whenever such absolute pardon was received on or after October 1, 1974, such records shall be erased.

(e) (1) Whenever a person was convicted of one or more misdemeanors committed while such person was under eighteen years of age, and the offense or offenses occurred on or after January 1, 1999 and before July 1, 2012, all police and court records and records of the state's or prosecuting attorney shall be deemed erased by operation of law. This subdivision shall not apply to a motor vehicle offense, a violation under title 14, or a violation of section 51-164r. The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under this subdivision and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency and the state’s or prosecuting attorney to which he knows information concerning the arrest has been disseminated direct that all law enforcement and records of the state’s or prosecuting attorney pertaining to such case to be erased.

(2) Whenever a person was convicted of one or more misdemeanors committed while such person was under eighteen years of age, and the offense or offenses occurred before January 1, 1999, such person may file a petition with the superior court at the location in which such conviction was effected for an order of erasure, and the superior court shall direct all police and court records and records of the state's or prosecuting attorney pertaining to such case to be erased.

(3) Notwithstanding subsection (g) of this section, the provisions of this subsection shall not apply in cases in which there has been conviction of any charge for which erasure would not apply arising from the same information as the misdemeanor charge or charges.

Appendix F

Proposed Recommendations Concerning Voting Rights

The Sentencing Commission is considering a proposal concerning (1) the restoration of voting rights of convicted felons on parole and (2) a study of procedures to facilitate voting by eligible persons who are incarcerated.

I. Under current law, a person who has been convicted of a felony and committed to confinement can have their electoral privileges restored when discharged from prison and all fines are paid. Convicted felons who are on parole may not become electors until discharged from both confinement and parole. However, a person on probation is permitted to register and vote. The Commission is considering a proposal to restore electoral privileges for all those released from confinement who have returned to their communities, including parolees. Such a change eliminates the difference in treatment for those on parole and probation, removes confusion regarding their eligibility, and promotes reengagement in the community for parolees.

II. Certain individuals, though incarcerated and under the supervision of the Department of Correction (DOC), are eligible to register and vote if they are being held in pre-trial detention with no disenfranchising conviction or are confined on a misdemeanor charge. In practice, few such individuals exercise their right to apply for and cast an absentee ballot though engagement in the electoral process is an important element of civic responsibility and connection with community.

The Commission proposes that the Secretary of the State and the Commissioner of Correction jointly study the feasibility of implementing voter registration and voting in DOC's facilities by those who are eligible. The study should be conducted in collaboration with the Registrars of Voters Association of Connecticut, the Connecticut Town Clerks Association, the Connecticut Sentencing Commission, and Connecticut Legal Services.

The study should examine processes to facilitate voter registration and absentee voting by eligible persons confined to a correctional institution who want to vote. The study should include, but not be limited to, consideration of and recommendations for (1) a process for informing pretrial detainees and offenders convicted of a misdemeanor that they are eligible to register and vote and (2) procedures to facilitate registering to vote, applying for an absentee ballot, and voting in correctional facilities.

Appendix G

An Act Concerning Accelerated Pretrial Rehabilitation

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 54-56e of the general statutes is repealed and the following is submitted in lieu thereof: (Effective October 1, 2019):

(a) There shall be a pretrial program for accelerated rehabilitation of persons accused of a crime or crimes or a motor vehicle violation or violations for which a sentence to a term of imprisonment may be imposed, which crimes or violations are not of a serious nature. Upon application by any such person for participation in the program, the court shall, but only as to the public order the court file sealed. Notwithstanding the order sealing the court file, the clerk of the court or any criminal justice agency having information contained in their records, upon proof of proper identification, may provide to the victim of identity theft a copy of the victim's complaint to a law enforcement agency and the law enforcement agency's report of such allegation or an arrest warrant application pertaining to such allegation. The victim may disclose such information to correct erroneous information concerning the victim's identity. Any person who falsely obtains a criminal complaint or law enforcement agency report pursuant to this section shall be guilty of a class D felony.

Rationale for the proposal:

Once a defendant makes an application for participation into the accelerated rehabilitation program, a victim of identity theft cannot obtain a copy of their complaint and a police report for the purpose of providing it to an entity that maintains erroneous information concerning the victim's identity. This proposal would enable an identity theft victim to obtain a copy of these records when a defendant has made an application into the accelerated rehabilitation program. It also allows the victim to submit a copy of their complaint and the ensuing police report to any entity (including a credit reporting agency, a Department of Motor Vehicles, and the U.S. Social Security Administration) to correct erroneous information.

Appendix H

Proposed Recommendations to Reform the Child Pornography Statutes

The Sentencing Commission is considering recommending a change to the child pornography statutes primarily to remedy the inflexibility of the harsh minimum mandatory sentences that prevent prosecutorial and judicial discretion in certain cases that might warrant leniency, such as in cases involving non-dangerous and/or autistic individuals. At the same time, the Commission is considering an enhanced penalty for those individuals convicted of child pornography who have been previously convicted of a serious contact offense.