

CCDLA
"Ready in the Defense of Liberty"
Founded in 1988

**Connecticut Criminal Defense Lawyers
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**Judiciary Committee Public Hearing
Criminal Justice Reform
November 27, 2007**

**TESTIMONY OF EDWARD J. GAVIN, PRESIDENT ELECT, OF THE CONNECTICUT
CRIMINAL DEFENSE LAWYERS ASSOCIATION, IN REGARD TO PROPOSALS
REGARDING CRIMINAL JUSTICE REFORM**

Chairman McDonald, Chairman Lawlor, and Distinguished Committee members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of approximately 350 lawyers, in both the public and private sectors, dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by ensuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished. At the same time, CCDLA strives to improve and suggest changes to the laws and procedures that apply to criminal justice.

**CCDLA's POSITION ON THE 14 SUBMITTED PROPOSALS ON CRIMINAL
JUSTICE REFORM**

CCDLA supports intelligent and fair Criminal Justice Reform. It is the position of the Connecticut Criminal Defense Lawyers Association that the Cheshire case shows the glaring problems that Parole and Probation face in reintegrating released prisoners back into society. Rather than increasing funding for new prisons, the money would be better allocated toward providing re-assimilation housing and treatment programs for released prisoners. CCDLA strongly oppose any new prison expansion policy. While it is true that the system is currently in the middle of a crisis,

the appropriate response is not to deny Parole to individuals who had nothing to do with the Cheshire incident.

CCDLA asks the Panel to recognize that Corrections is currently facing a crisis based on the number of prisoners, both pretrial and sentenced who are currently beset with mental health issues. The response should not be to build more prisons to house the mentally ill. The appropriate response should be to build a new state psychiatric facility with differing levels of security and to provide greater funds to the community for mental health treatment. When the state closed down two state psychiatric hospitals in the early 80's, reducing the state psychiatric hospitals to a singular facility, not enough monies were provided to the local communities to deal with the burgeoning mental health problems in the general population. It is a sad commentary that the systemic reaction has been to put those afflicted with mental health problems in jail. It is DMHAS, rather than DOC that should be lobbying for those funds and facilities. This along with mental health diversion in the criminal justice system would substantially reduce the prison population.

It is the further position of CCDLA, that the Legislature would be making a significant mistake in allowing an extreme case such as the Cheshire case to drive sentencing policy. As practicing Criminal Defense lawyers who work in the system each and every day, we feel that Criminal Justice Reform should be approached with

measured and deliberate caution.

Overreaction to the Cheshire case will most severely affect the minority population both in the prisons, on parole or probation and in the court system. Connecticut already has one of the worst racial disparity sentencing percentages in the country.

The imposition of greater mandatory minimum sentences also makes the system more dishonest. Instead of plea bargaining sentences the parties will engage in charge bargaining to get to the plea agreement that everyone thinks is fair.

We have a very comprehensive persistent offender statute on the books right now. Those statutes were not compromised by the recent Connecticut Supreme Court decision requiring a jury finding of fact to enhance the sentencing. The suggested removal of the history and character provision is unnecessary and serves to take away from the individuality of sentencing, which is a bedrock principle of American jurisprudence. This would result in a fundamental change in sentencing policy and should not be taken lightly without further study as to its' current level of use and consequence.

Many of the proposals are the kinds of policy changes that would be perfect for a sentencing commission or sentencing research and policy board review. The legislatively mandated Sentencing Task Force is reviewing the creation of such a body that would have a research and policy oriented focus with accessibility and

representation of all three branches of government. The Sentencing Task Force, which was created prior to the Cheshire event, should be allowed to continue its analysis regarding the creation of such a commission or board. It would also be the repository of all research data such as that recommended by the SHIELD proposal. However it would even be more inclusive and comprehensive. Such an apolitical body could answer the important questions raised by so many of the proposals. How many people would this affect? Is this duplicitous of what we are already doing? What is the financial impact of such legislation? Do we have the money allocated for this proposal? What are the future trends based on the past and current data? What is the racial impact of this shift in policy?

The Connecticut Criminal Defense Lawyers Association would ask the Committee on Criminal Justice Reform to Consider the following Points:

- 1. There is a Legislatively Mandated 2 Year Sentencing Task Force already impaneled to address the concern raised in these "Proposals" and it is better to work through the existing Committee.**
- 2. We acknowledge that the Cheshire case is a tragedy, but we need to take a through review of any statutory changes before acting in a popular, knee-jerk reaction.**

3. The Connecticut Criminal Defense Lawyers Association never has, and never will, support legislative proposals that encompass the imposition of mandatory minimum sentences. The imposition of mandatory minimum sentences will hinder the plea bargaining process which efficiently ensures convictions, clogs the trial dockets of the Connecticut Courts as defendants would rather take their chances at trial in the face of mandatory minimum sentences, and cost the taxpayers of Connecticut considerably more money. In addition, mandatory minimum sentences undermine judicial discretion in sentencing and fail to account for the individual circumstances of each case. Judges are uniquely qualified to fairly and in an unbiased manner impose appropriate sentences in each case.

4. The Imposition of Mandatory “3 Strike Laws” are unnecessary. Our Legislature has already enacted and our Supreme Court has already ruled Constitutional Sentencing enhancement statutes for Persistent Felony Offenders. As we in the Court system are well aware, not all repeat offenders are violent. Many, if not most of the repeat offenders are dual diagnosed as suffering from Psychological impairments coupled with substance abuse problems. By trying to fit square pegs into round holes, we will be limiting the Judges unique abilities to impose fair, just, and reasonable sentences.

5. As recently reported in the Quinnipiac University poll, 63 percent of Connecticut Citizens polled want sentences to be determined on a case by case basis. The system is specifically designed to have sentences fashioned by Judges after input from Prosecutors, Victims, Defense Lawyers, Mental Health Professionals, Probation Officers and other health care professionals that are uniquely qualified to provide sentencing courts with all of the necessary data to impose proper sentences for repeat offenders.

6. As popular as it may be to impose Mandatory Sentences Post-Cheshire, the reality is that there is no corresponding reduction in crime rates as a consequence of the "3 Strike Laws". The Mandatory Sentence provisions do not have the deterrent effect on crime rates. Instead, limited resources that could be used on Mental health and Substance abuse issues that drive crime rates up, are taken away and used to warehouse prisoners who simply are not rehabilitated. A Rand Corporation 1996 study indicates that California's three strike laws requires an increase from 9-18 % of the state budget being allocated to corrections, which in turn requires a massive 40 % reduction in other social service budgets like education and health, if taxes are not to be increased

As any experienced defense lawyer will tell you, the enactment of mandatory minimum sentences in the Federal System has only lead to the prosecution of small scale drug dealers without the anticipated reduction in drug trafficking. Prosecutors, judges, and defense lawyers all are loathe to deal with predetermined sentences that handcuff the process.

7. Mandatory minimum sentences are discriminatory in application. They create sentencing disparities based on race. Studies show that blacks and Hispanics are more likely to receive MMS more often than whites charged for the same crime.

“Racial and ethnic disparity is a complex problem in the criminal justice system. The Commission of Racial and Ethnic Disparity in the Criminal Justice System reported, for example, that African American and Latino/Hispanic defendants were more likely to be charged with felonies and the charges were more likely to be associated with mandatory minimum sentences. The commission reported Caucasian offenders have a lower incarceration rate than African American or Latino/Hispanic offenders. This rate is significantly below the national average for incarceration rates, and Connecticut ranks the highest in the United States in its level of disparity in the incarceration rates of Caucasian, African American, and Latino/Hispanic offenders.”

See The Commission of Racial and Ethnic Disparity in the Criminal Justice System . The Commission within the Judicial Branch was statutorily created in 2000 (P.A. 00-154), to compile research about and make recommendations addressing racial and ethnic disparity in Connecticut's adult criminal justice and juvenile justice systems. The commission's first report was published in 2002 and it released its second (covering 2003-2004) in January 2005.

8. Public Act 04-234 directed the Legislative Program Review and Investigations Committee to study mandatory minimum sentencing laws. The committee adopted a scope of study on April 11, 2005. It's report contains the following:

"One underlying principle of mandatory minimum sentencing laws is to reduce crime. Currently, there is no accurate method to draw a correlation between the imposition of mandatory minimum penalties and any change in the state's crime rate. Mandatory minimum sentencing laws are, at best, one of many factors that impact the crime rate."

CCDLA recognizes that the State does not have unlimited assets to dedicate to Criminal Justice Reform. We believe that a large percentage of the clients we represent and those that are currently incarcerated are dual diagnosed with underlying Mental Health issues coupled with Substance Abuse problems. We believe that the focus of the reforms should be directed at providing Mental health treatment through the construction of a new state psychiatric facility with differing levels of security and to provide greater funds to the local communities for establishing outpatient mental health treatment programs.

As reported in the Associated Press, a financial analysis conducted by the Office of Fiscal Analysis shows that more than a dozen proposed changes to Connecticut's criminal justice system could cost tens of millions, if not hundreds of millions of dollars.

A proposal to build two new correctional facilities, including a 1,000-bed medium security prison and a 1,200-bed medical and mental health facility for inmates would cost the state about \$400 million over 20 years to build them.

The three strike proposal to impose a mandatory life prison sentence for anyone convicted of a third dangerous felony, is estimated to cost the state's court system about \$5 million more a year and the prison system about \$4.3 million more a year.

The Associated Press reports the following cost estimates for other proposed changes under consideration:

- Establishing mandatory minimum prison sentences for certain burglary offenses would affect about 230 offenders and cost the state about \$9.6 million more a year to keep them in prison longer.

- Changing members of the Board of Pardons and Paroles to a full-time staff would cost about \$1.9 million a year.

- Requiring global positioning tracking of any person sentenced to probation or conditional discharge for first- or second-degree burglary would cost about \$941,600 a year.

- Establishing a registry of people released from prison to parole would cost of about \$1.6 million to \$2 million.

- Requiring psychiatric exams for certain offenders eligible for parole would cost annually about \$232,000.

- Creating about 200 beds for sex offenders in secure residential treatment facilities would cost the state about \$15 million to \$20 million a year.

Some of the Proposals submitted are fair and supported by CCDLA. The Proposal submitted by the Judicial Department regarding the Participation of Probation Officers in Warrant Squads is appropriate. Proposal 11 submitted by Representative Fox concerning Information Provided to the Board of Pardons is well thought out and well reasoned. We support this proposal.

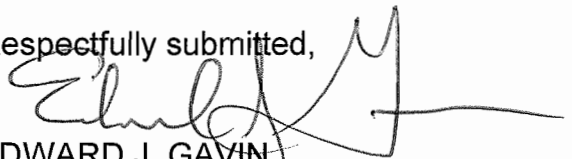
Proposal number 5 submitted by Representative Cafaro and the House Republicans regarding expediting the Death Penalty Appeal Process is strongly opposed by CCDLA. We would ask the Panel to consider the tortured history of James Tillman and his wrongful conviction. It should be pointed out that had the complainant in the James Tillman prosecution died during that incident, with the proposed expedited process, James Tillman would have been executed prior to being exonerated. The potential for wrongful execution counsels against expedited Appellate Review Process.

Proposal number 10 submitted by Representative O' Neill regarding Persistent Burglary Offenders is the perfect example of a knee-jerk proposal. This proposal calls for the classification of an individual as a Persistent Burglary Offender if the individual has been **CHARGED** in the past with the Commission of a Burglary, not previously **CONVICTED** of a burglary. CCDLA opposes this proposal as unconstitutional and ill conceived.

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CCDLA applauds the efforts of the Committee and looks forward to providing useful testimony to the Committee as our Criminal Justice System is reformed. CCDLA will provide written and oral testimony to the Committee once the proposals are crafted as proposed legislation. We are uniquely qualified to provide hands-on input as legislation effects the every day affairs of our Criminal Justice System.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edward J. Gavin', with a long horizontal flourish extending to the right.

EDWARD J. GAVIN
CCDLA President-Elect
On behalf of the Connecticut Criminal
Defense Lawyers Association