

App. 1

APPENDIX A
SUPREME COURT
STATE OF CONNECTICUT

NO. PSC-13-0415

State of Connecticut

v.

Chandra Bozelko

ORDER ON PETITION FOR
CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal, it is hereby ordered that said petition be, and the same is hereby dismissed.

BY THE COURT,

/s/ Alan M. Gannuscio
ALAN M. GANNUSCIO
ASSISTANT CLERK-APPELLATE

Dated: 5/29/2014

Notice sent: May 29, 2014

Clerk, Superior Court, Ansonia/Milford at G.A. 5,
CR05 0128445

Clerk, Appellate Court

Reporter of Judicial Decisions

SAO

Chandra Bozelko, self represented party

Paul Gaetano, Supervisory Assistant State's Attorney
Office of the Chief State's Attorney-Appellate Bureau

App. 2

Chandra Bozelko, self represented party in support of
petition; Timothy J. Sugrue, Senior Assistant State's
Attorney, in opposition.

App. 3

APPENDIX B

**STATE OF CONNECTICUT
OFFICE OF THE CLERK
SUPERIOR COURT**

[SEAL] Telephone: (203) 236-8100
400 Grand Street, FAX: (203) 236-8090
Waterbury, Connecticut 06702

18 October 2012

Dear Miss:

Enclosed please find a copy of the *Sentence Modification Application, Motion and Order* you filed with this Court. Please be advised that this Modification Request has been ***opposed*** by the State's Attorney. As opposition occurred for this matter, statutorily this Court has ***NO*** jurisdiction to hear this matter. As such, the Honorable Roland Fasano, Presiding Judge for the Judicial District of Waterbury, *is obligated by statute to concur with the State's Attorney and deny said Motion.*

Further, neither the State nor the Court is under any statutory obligation for articulation regarding the opposition to this request.

Very truly yours,

/s/ Steven C. Iles
Steven C. Iles
Paralegal..
J.D. of Waterbury

enclosure

App. 4

STATE OF CONNECTICUT
SUPERIOR COURT

**SENTENCE MODIFICATION
APPLICATION, MOTION AND ORDER**

[SEAL]

JD-CR-68 Rev. 4-11

Gen.Stat. §§ 53a-39, 54-227

Pr. Bk. Sec. 43-21

Fill out 3 copies of this form. File 2 copies with the Clerk. File the 3rd copy with prosecuting attorney who presented the case to the trial court. Do not use this form to ask the court for additional jail credit.

Instructions to Clerk

1. Do not accept this form if the only relief being sought is additional jail credit.
2. Do not accept this Application if the Defendant indicates being in the custody of the Department of Correction and fails to submit a completed JD-VS-3, Inmate Notice of Application.
3. Stamp form, on filing: File original as pending matter. Give one copy to Presiding Judge.
4. Prepare Judgment in triplicate. After judgment, distribute: The original and one copy to Records Center, one for filing with original Information, and one for filing under date of this order: One copy to defendant or his/her counsel: If the defendant is confined, one copy to the record's office of the correctional facility in which he/she is confined: One copy to probation, if defendant is placed on probation or the existing probation is modified.

App. 5

Inmate number			
Docket number CR05-0128445-S		State of Connecticut vs. Chandra Bozelko	
Geographical Area Number 5	Place of sentencing (Town) Milford	Date of sentencing 12/07/07	
Crime(s) of which the defendant was convicted Attempt Larceny 1, Attempted Identity Theft 1, Forgery 3, Illegal Use of a Credit Card		Date of birth	
Original sentence (<i>Specify period of suspension, if any; and fine, if any. If original sentence was modified, so state and also specify new sentence.</i>) 10 years E/S/A 5 years followed by 4 years probation			
Name of Judge entering original sentence Cronan, J.	Name of jail	Date jail sentence began 12/07/07	Amount of fine paid, if any

Motion For Modification

I, the Defendant or the Attorney for the Defendant signing below, affirm that this motion does 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 and request that the sentence of the defendant be modified by:

- ☐ suspending execution of the unexecuted portion of the jail sentence.
- ☒ Reducing/eliminating probation

App. 6

Complete the following questions:

- a) Was the defendant sentenced to a definite sentence of more than three years? ☐ No ☒ Yes
- b) Was a motion for a modification of sentence previously filed in this case? ☐ No ☒ Yes
- c) Is the Defendant presently in the custody of the Department of Correction? ☒ No ☐ Yes*

* If yes, a completed form JD-VS-3, Inmate Notice of Application, is attached to this application as proof of notice to the Office of Victim Services and to the Department of Correction.

Reason for request (Attach sheet, if necessary)

The requirements of probation interfere with my ability to work. I must check in weekly for four months and this prevents me from working any distance away because I depend on others for rides.

OPPOSE

Dated at (Town) Orange	On (Date) 03/24/14	Signed (Defendant or Attorney for Defendant) [Illegible Signature]
I ☐ concur with ☒ oppose the defendant's request to seek review of the sentence.	On (Date) 3/25/14	Signed (State's Attorney) (Complete if defendant sentenced to more than 3 years) Paul O. Gaetano Paul O. Gaetano

App. 7

Judgment

The foregoing motion having been presented to and considered by the Court,

- ☐ 1. The motion for modification is denied.
- ☐ 2. The sentence of said defendant is hereby modified in the following respect(s) only:
 - ☐ Execution of the unexecuted portion of the jail sentence is to be suspended on (date) ____ and after release the defendant is:
 - ☐ committed to the custody of the Probation Officer, for the term of _____
 - ☐ discharged from custody.
- ☐ (Other)

Judgment on motion entered at (Town)	On (Date)	By order of the court (Name of Judge)
--	-----------	--

Signed (Assistant Clerk)

App. 8 .

APPENDIX C

State of Connecticut

OFFICE OF THE CLERK

[SEAL] SUPERIOR COURT G.A. 5

106 Elizabeth Street
Derby, CT 06418

Telephone:
(203) 735-7438

FAX:
(203) 735-2047

www.jud.ct.gov

RETURN OF PAPERS
SENTENCE MODIFICATION

Date: 3-27-14

RE: State vs. Bozelko, Chandra

Dear Sir or Madam:

The Court is returning your sentence modification papers for the following reasons.:

- ___1. Sentence Modification Application *must* be submitted in triplicate, with an original signature.
- ___2. A Notice of Application and Inmate Affidavit (JD-VS-3) must be filled out, signed and notarized (original signatures). Please follow the directions on the form (enclosed) and file the completed Notice of Application with your Sentence Modification.
- ___3. Not a Sentence Modification issue. Please address this matter through the appropriate venue in the Department of Corrections, or file the appropriate motion with the Court.
- X 4. Pursuant to CGS 53a-39(b); because the definite sentence imposed in this case exceeds three years,

App. 9

the agreement of the State's Attorney is needed in order to seek review of this sentence. The State's Attorney's Office opposes your request to seek a review of the imposed sentence. Therefore, this application cannot be accepted.

___5. The Court has received the Application for Sentence Modification in the above-referenced case. After review, the application has been DENIED by the Court. Enclosed please find a copy of the Court's order.

___6. The Court has received the Application for a Sentence Modification in the above referenced case. After review, the Court has GRANTED a Sentence Modification. Enclosed please find a copy of the Court's order. If there are any questions regarding this matter, please contact the Clerk's Office at the number listed above.

Clerk's Office
Derby Superior Court

APPENDIX D

S.C.

STATE OF : SUPREME COURT
CONNECTICUT : STATE OF
V : CONNECTICUT
BOZELKO, CHANDRA : APRIL 1, 2014

PETITION FOR CERTIFICATION
TO THE SUPREME COURT OF THE
STATE OF CONNECTICUT

I. QUESTION PRESENTED FOR REVIEW

Does certain language within Connecticut General Statute §53a-39 hereinafter “§53a-39”) violate the Due Process and Equal Protection clauses of the United States Constitution and Articles One and Eight of the Constitution of the State of Connecticut by preventing an unbiased decider from deciding the subject matter jurisdiction of an application for a sentence modification based on a suspect classification, namely being sentenced to three years or more?

II. BASIS FOR CERTIFICATION

The Supreme Court of the State of Connecticut should certify this question because the constitutionality of a statute, particularly whether it denies due process and/or equal protection to litigants, is a question of great public importance. Review of questions of great importance is expressly authorized by Connecticut Practice Book Section 84-2(4).

The unconstitutional portions of §53a-39 prevent Petitioner from appealing the denial of her sentence modification application to the Appellate Court because there is no trial court decision/judgment to review, making this Petition Petitioners (and others') only remedy at law. *See* discussion, *infra*, at Section IV(B)(2)(b): Insufficient Safeguards Exist to Prevent Abuse.

III. SUMMARY OF FACTS

Defendant-Petitioner, sentenced to ten years incarceration, execution suspended after five, followed by four years of probation, applied to have her sentence modified using Judicial Form CR-68. State's Attorney Paul Gaetano checked the box indicating that he did not concur with the Defendant-Petitioner's application and therefore, the application was "not accepted" by the court at all: no court action even occurred to provide basis for appeal. *See* denied application and accompanying letter at Exhibit A.

After a defendant in a criminal prosecution has been sentenced, §53a-39 authorizes the sentencing court to modify her sentence. *See* copy of §53a-39 at Exhibit B. For sentences of three years or more, any application to modify one's sentence must be approved, or "concurred with," by the state's attorney. If the state's attorney does not concur with the application for sentence modification, the trial court must deny the application as a matter of law because only the state's attorney's concurrence with the application confers

subject matter jurisdiction over the application. If the state's attorney does not concur with the application, the sentencing court cannot adjudicate it over the prosecutor's objection because the sentencing court has no jurisdiction to decide the motion. See copy of Waterbury Judicial District's form denial letter attached as Exhibit C.

IV. ARGUMENT IN SUPPORT OF THE PETITION

Tenets of due process require that neither party to an action adjudicate the matter. The statute in question allows the prosecutor to do exactly that to defendants sentenced to three years or more of incarceration. When the state's attorney denies the defendant's sentence modification application and moves it beyond the court's subject matter jurisdiction, the state's attorney effectively decides the application and denies the defendant due process of law.

The minimum due process procedures required to prevent the state-created right to seek sentence modification from being abrogated include that the application be decided by a neutral decision maker. "[O]ne is entitled as a matter of due process of law to an adjudicator who is not in a situation which would offer possible temptation to the average man as judge . . . which might lead him not to hold the balance nice, clear and true," *Concrete Pipe & Products of Col., Inc. v. Construction Laborers Pension Trust for Southern Cal*, 508 U.S. 602, 617-18 (1993). Even "purportedly fair" adjudicators

“are disqualified by their interest in the controversy . . .” *Tumey v. Ohio*, 273 U.S. 510, 522 (1927).

**A. CURRENT STATUTE DIFFERENTIATED
FROM §53a-39 PREVIOUSLY EXAMINED
BY CONNECTICUT’S HIGHEST COURT**

The Supreme Court of the State of Connecticut previously examined the constitutionality of C.G.S. §53a-39 in *Mainiero v. Liburdi*, 214 Conn. 717 (1990) but the statute was different at the time of the decision. Under the former §53a-39, all sentence modification applications were heard by neutral decision makers and, under the former §53a-39, no party to the proceeding could deny the opposing party access to either trial courts or the Sentence Review Division, both neutral decision makers.

B. DUE PROCESS DICTATES

“The touchstone of due process is protection of the individual against arbitrary action of government,” *Dent v. West Virginia*, 129 U.S. 114, 123 (1889).

In general, “identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and

the fiscal and administrative burdens that the additional or substitute procedural requirement would entail," *Matthews v. Eldridge*, 424 U.S. 319, 334-35 (1976). See also *Goldberg v. Kelly*, 397 U.S. 254, 263-271 (1970).

1. FIRST FACTOR: PRIVATE INTEREST AFFECTED BY C.G.S. §53a-39

Through §53a-39's language "... the sentencing court or judge may, after hearing and for good cause shown, reduce the sentence . . .," the State of Connecticut confers upon the sentenced defendant in a criminal prosecution a liberty interest in the sentence modification process. "[A] person's interest is equally protected, even when the liberty itself is a statutory creation of the state," *Dent v. West Virginia*, at 123.

As such, minimum procedures must be in place "to insure that the state-created right is not arbitrarily abrogated," *Wolff v. McDonnell*, 418 U.S. 556, 557 (1974). In its current form, §53a-39 does not afford a defendant adequate procedures preserve his rights because the statute permits the prosecutor to deny the defendant access to a neutral decision-maker and then prevents appellate/habeas review.

2. SECOND FACTOR: EXTREME RISK OF ERRONEOUS DEPRIVATION OF SUCH INTEREST

"[O]fficers acting in a judicial or quasi-judicial capacity are disqualified by their interest in the controversy

to be decided is . . . the general rule,” *Tumey v. Ohio*, 273 U.S. 510, 522 (1927).

A criminal prosecution is an adversarial process involving the state, represented by the state’s attorney/prosecutor/district attorney, and a defendant, represented by defense counsel or by himself. *See, e.g., Kerpen v. Deluca*, 2010 Ct. Sup. 12478, 12482. The roles and duties of state’s attorney, defense attorney and judge are usually well-delineated. Accordingly, through the very nature of criminal proceedings, a prosecutor represents a party whose interests often oppose the interests of the defendant, which is why a judge decides the dashing positions between the state and the defendant. The nature of prosecutors’ duties disqualify them from acting in a judicial capacity, yet §53a-39a specifically permits them to do so.

§53a-39 conflates the prosecutor’s duty as a representative of an interested party with the duties of the judge. When “an official perforce occupies two practically and seriously inconsistent positions, one partisan and the other judicial, [this situation] necessarily involves a lack of due process of law . . .” *Tumey v. Ohio*, 273 U.S. 510, 534 (1927). This also creates a grave risk that a defendant’s liberty interest under §53a-39 will be adversely impacted thus depriving him of his right to have his sentence modification application heard by the trial court.

a. DUE PROCESS REQUIRES AN UNBIASED DECIDER OF SENTENCE MODIFICATION APPLICATIONS UNDER C.G.S. §53a-39

Even “enemy combatants” under President George W. Bush’s 2011 “Authorization to Use Military Force Law” are entitled to neutral decision-makers. *See Hamdi v. Rumsfeld*, 542 U.S. 507, 538 (2004). Thus §53a-39 accords defendants less protection than potential terrorists receive. *See* discussion, *supra*, at IV: Argument in Support of the Petition.

b. INSUFFICIENT SAFEGUARDS EXIST TO PREVENT ABUSE

“Certain safeguards are essential to criminal justice. The court must be uncoerced, . . .” *Adams v. United States ex. rel. McCann*, 317 U.S. 269, 275 (1942) (citing *Moore v. Dempsey*, 201 U.S. 86 (1923)).

§53a-39 does not include sufficient safeguards to prevent abuse by prosecutors. Their decisions do, in fact, coerce the court’s actions in sentence modification applications. Indeed, the Judicial District of Waterbury’s form letter for sentence modification denials, found at Exhibit C, reads “[a]s such, [the judge] is *obligated by statute* to concur with the State’s Attorney . . .” For applications from defendants sentenced to more than three years of incarceration, only concurrence with the application confers subject matter jurisdiction on the application; no judge may decide a sentence modification application from someone sentenced to more than

three years of incarceration if the prosecutor does not agree. The state's attorney, the party and the decision-maker, is the end of the road for sentence modification applications.

Any jurisdiction to modify a sentence must be expressly authorized. *See State v. Ramos*, 306 Conn. 125, 134-35 (2012). §53a-39 grants jurisdiction to the trial court to modify a sentence, not to the prosecutor.

Subject matter jurisdiction is a matter of law not a matter of court discretion, much less prosecutorial discretion. *See State v. Ramos*, 306 Conn. 125, 133 (2012). *See also State v. Das*, 291 Conn. 356, 361 (2009). It certainly is not a matter of one party's discretion. Just as "[a] party cannot confer subject matter jurisdiction on the court, either by waiver or consent," *Fleet National Bank v. Nazareth*, 75 Conn. App. 791, 793 (2003) neither can a party take subject matter jurisdiction away.

Under the older version of §53a-39 examined by the *Mainiero* Court, applicants for sentence modification directly applied either to the trial court or the Sentence Review Division, both purportedly unbiased, neutral decision-makers. The decisions of those authorities were subject to appellate and/or habeas review for abuse of discretion. But in the current version of §53a-39, the prosecutor's decision has finality that cannot be reviewed anywhere, neither appellate courts nor habeas courts, but particularly not the trial court because the prosecutor's disagreement swipes subject matter jurisdiction right out from judges' feet.

Assuming, *arguendo*, that a defendant whose sentence modification application is denied by the prosecutor appeals the denial of his application to the state's appellate court. Theoretically, he has two possible grounds for his appeal and both are frivolous because there is no legitimate grounds for appeal given the language of §53a-39. First, he can argue that the court erred in deciding that it did not retain subject matter jurisdiction, that the court did, in fact, have continuing jurisdiction over the modification application per §53a-39. But §53a-39 explicitly states that modification applications that lack a prosecutor's approval must be denied as a matter of law. The defendant who appeals the denial of his sentence modification application on these grounds loses before he starts.

The second possible grounds for appeal are that the court abused its discretion in denying the application.¹ Yet, the court has no discretion to abuse under §53a-39; all discretion is invested in the prosecutor and it is his decision that is final, for all intents and purposes, which is why the statute is unconstitutional. Ultimately, the defendant seeking to modify a sentence enjoys no procedural safeguards or opportunity for post-decision review.

¹ This type of appeal would be differentiated from the facts of *Coleman v. Commissioner*, 111 Conn. App. 138 (2008) where the court held that denying jurisdiction was tantamount to a denial of the modification application.

3. THIRD FACTOR: GOVERNMENTAL INTEREST DOES NOT OUTWEIGH

The governmental interest in rehabilitation and public safety does not outweigh an individual's right to due process by having his sentence modification application heard by an unbiased decision maker. Such an assertion by the State of Connecticut presupposes that all applications will be granted if they are decided by the neutral decider of the sentencing court and not by the prosecutor. It is entirely possible that every application will be denied by the trial court if the court is allowed to decide them.

In fact, Connecticut's own statutory scheme for sentencing defendants in criminal cases gives discretion to the judge alone, ostensibly because superior court judges are the most trustworthy and best-trained evaluators of the law, rehabilitation and public safety. The state has not vested total discretion for sentencing in judges because they do not know what they are doing.

Allowing defendants to apply directly to the sentencing court for a sentence modification regardless of the prosecutor's position on the matter will not overburden the courts, otherwise the Committee on the Judiciary of the Connecticut General Assembly would not have proposed "An Act Concerning Sentence Modification," Raised Bill No. 6539, to delete the language "of three years or less" from subsection (a) of §53a-39 and delete subsection (b) entirely. It may, in fact, be the legislature's intention to assure that a neutral decision

maker decides sentence modification applications. See “An Act Concerning Sentence Modification” at Exhibit D which shows text of the bill, votes from the Committee on the Judiciary and estimated savings approximately \$3 million per 100 sentence modification applications) from deleting the unconstitutional portion of the statute. Until the law changes, however, the unconstitutional portions of §53a-39 – the very portions that “An Act Concerning Sentence Modification” seeks to strike – remain and violate the due process rights of defendants who seek to modify their sentences.

C. EQUAL PROTECTION

The Fourteenth Amendment’s Equal Protection Clause and Connecticut Constitution’s Articles One and Eight require that similarly situated persons be treated equally and not classified in suspect ways. *Miller v. Heffernan*, 173 Conn. 506, 509 (1977).

“The appropriate test, therefore, by which to determine whether [a] classification . . . is constitutional is to inquire whether the legislative classification is founded on a rational basis,” *State v. Simmat*, 184 Conn. 222, 224 (1981). See also *McGinnis v. Royster*, 410 U.S. 263, 270 (1973). Rationality of legislative classification is presumed “unless the classification created by the statute is clearly irrational and unreasonable,” *State v. Simmat* at 224. Essentially, defendants sentenced to less than three years’ incarceration enjoy the full protection of the Constitution if they apply to modify their sentences, while someone sentenced to three

years and one day does not. This legislative classification is arbitrary and therefore unreasonable because the three-year cutoff does not rationally relate to severity of crime or any other rehabilitative or public safety goal. To wit, under C.G.S. §53a-36, defendants convicted of misdemeanors face a maximum sentence of one year whereas, under §53a-35a, felony defendants are usually sentenced to a minimum of one year incarceration. But §53a-39 does not employ this one-year sentence cutoff.

If §53a-39 required prosecutor's concurrence with sentences greater than two years, such a requirement might be rationally related to C.G.S. §53a-125a which divides aspiring parolees into two pools: defendants with sentences of two years or less whose parole is within the sole discretion of the warden of their correctional facilities and defendants sentenced to more than two years whose parole must be voted upon by the Board of Pardons and Paroles. But §53a-39 does not employ this two year cut-off.

When compared to other statutes, the three-year line seems to be arbitrary and affords differing levels of protection to similarly-situated defendants. Theoretically, two people convicted of the same crime can receive different sentences, one less than three years and the other greater than three years. There is no reason why they both should not receive the same protection from §53a-39. *Cf. Mainiero v. Liburdi*, 214 Conn. 717, 724 (1990). *Cf. also State v. Dupree*, 196 Conn. 655-663 (1985) and *State v. Millhouse*, 3 Conn. App. 497 (1985).

App. 22

WHEREFORE, since the Highest Court of the State of Connecticut is the only entity that can review the constitutionality of §53a-39 because the statute's unconstitutional portions prevent direct appeal, this court should grant certification to examine a statute that violates criminal defendants' Due Process and Equal Protection rights.

RESPECTFULLY SUBMITTED,
THE PETITIONER
CHANDRA BOZELKO

/s/ Chandra Bozelko

183 Wild Rose Drive
Orange, CT 06477

CERTIFICATION

This is to certify that the foregoing motion and attached Appendix are in compliance with Practice Book §§663 and 84-5, and that a copy of the same was mailed postage prepaid, this day 2nd day of ~~April~~ May 2014, to all counsel and pro se parties of record as follows:

Paul Gaetano, Esquire
Supervising Assistant State's Attorney
106 Elizabeth Street
Derby, CT 06418

App. 23

Kevin Kane, Esquire
Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067

/s/ Chandra Bozelko
Chandra Bozelko, Pro Se

APPENDIX E

General Assembly

File No. 654

***January session,
2011***

House Bill No. 6539

House of Representatives, April 28, 2011

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING SENTENCE MODIFICATION

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

Section 1. Section 53a-39 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2011*):

(a) At any time during the period of a definite sentence, [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 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)] (b) 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)] (c) 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.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	53a-39

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the

App. 26

General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund - Effect	FY 12 \$	FY 13 \$
Pub. Defender Serv. Com.	GF - Cost	180,000	240,000
Criminal Justice, Div.	GF - Cost	180,000	240,000
Judicial Dept.	GF - Cost	147,000	196,000
Correction, Dept.	GF - Cost/ Savings	See Below	See Below
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	120,460	160,600
Judicial Dpt. (Probation)	GF - Savings	Potential	Potential

¹ The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with personnel changes in 23.76% of payroll in FY 12 and FY 13. In addition, there could be an impact to potential liability for the applicable state pension funds.

Municipal Impact: None

Explanation

The bill entitles inmates sentenced to prison for three years or more to have one hearing to consider sentence modification regardless of whether the state's attorney assents to the review; such hearings are routinely denied under current law.² This change will result in workload increases to various criminal justice agencies, with costs identified in the table below:

Agency	FY 12	FY 13
Judicial Department	\$ 147,000	\$ 196,000
Division of Criminal Justice	\$ 180,000	\$ 240,000
Public Defenders	\$ 180,000	\$ 240,000
Comptroller (Fringe)	\$ 120,460	\$ 160,600
Total	\$ 627,460	\$ 836,600

There are currently more than 5,000 sentenced offenders who would qualify for such hearings. Assuming that it takes two hours to prepare for and participate in any such hearing, the bill could generate approximately 10,000 hours of additional work for court staff and state prosecutors and 7,500 hours for public

² Under current law, any person serving up to three years can seek sentence modification and any person serving more than three years must first get the state's attorney's approval. The bill permits any inmate (regardless of sentence length) to make an initial request without getting the state's attorney's approval; any subsequent requests would require the state's attorney's approval.

defenders (who handle roughly 75% of cases processed in Judicial District courts). This would require four additional caseload coordinator positions for the Judicial Department, four additional prosecutor positions for the Division of Criminal Justice and four additional attorney positions for the Public Defender Services Commission in order to handle this workload increase.

Approximately 2% of offenders for whom sentence review hearings are held have their sentences altered (in all cases reduced). Provided this rate of change holds for sentence modification hearings held under the bill, approximately 100 inmates could have their sentences reduced. To the extent that these changes increase the likelihood that offenders would have their sentences reduced, potential savings for incarceration and/or probation supervision in the community would result. On average, it costs the state \$3,785 to supervise an offender on probation in the community as compared to \$48,545 to incarcerate the offender.

The majority of inmates seeking court hearings could be transported from prison via the Department of Correction's routine transport system. However, higher risk inmates require direct supervision en route to and while at court. Average costs of \$350-\$400 per day are incurred for overtime and mileage/fuel in these cases. While the exact number of high-risk individuals seeking court hearings in response to the bill's enactment cannot be known in advance, it is likely that costs in excess of \$50,000 will be incurred. This estimate is

based upon a projection that at least 140 inmates³ would require supervised transport.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Core-CT Financial Accounting System

Judicial Department Offenses and Revenue Database

OLR Bill Analysis

HB 6539

AN ACT CONCERNING SENTENCE MODIFICATION.

SUMMARY:

Current law establishes different procedures for seeking sentence modification. Defendants serving a sentence of less than three years can ask the sentencing court or judge to modify the sentence; however, those serving a sentence of more than three years must get the state's attorney to agree to have the court or judge consider the request.

This bill eliminates the second procedure. Instead, it allows all defendants, regardless of their sentence

³ Ten percent of the 1,400 sentences imposed in excess of three years in 2009.

App. 30

length, to request a modification without first getting the state's attorney's approval.

By law, unchanged by the bill, a sentencing court or judge may reduce a defendant's sentence, order him or her discharged, or order him or her discharged on probation or conditional discharge. The decision to modify a sentence can only be made after a hearing and for good cause. A mandatory minimum sentence may not be suspended or reduced by the court.

EFFECTIVE DATE: October 1, 2011

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 29 Nay 15 (04/15/2011)

TOP

APPENDIX F

**STATE OF CONNECTICUT [SEAL]
SUPERIOR COURT**

**SENTENCE MODIFICATION
APPLICATION, MOTION AND ORDER**

JD-CR-68 Rev. 8-17

C.G.S. §§ 53a-39, 54-227

Pr. Bk. 43-21

Instructions to Defendant

1. Fill out 3 copies of this form, and file 2 copies with the Clerk at the court where you were sentenced.
 - *If your prison sentence, including any time that was suspended by the judge, is for more than 3 years, you must get the State's Attorney to agree to your application and sign this form before you file it with the court*
 - *If you are in prison now, you must also attach a completed Notice of Application form (JD-VS-3) to this application*
2. Give the third copy to the State's Attorney for your case.
3. Do not use this form to ask the court for more jail credit.

Instructions to Clerk

1. Do not accept this form if the only relief requested is additional jail credit, if a defendant with a sentence of more than 3 years has not gotten the signature of the State's Attorney, or if an incarcerated defendant has not attached a completed Notice of Application form (JD-VS-3).

App. 32

2. Stamp form on filing. File original as a pending matter. Give the copy to the Presiding Judge.
3. **After Judgment:** Prepare copies of judgment, and distribute as follows:
 - Original and 1 copy to the Record Center (*for filing with original information and under date of this order*)
 - One copy to defendant or defendant's attorney
 - If the defendant is incarcerated, 1 copy to the Records Office of the defendant's correctional facility
 - If the defendant is placed on probation or the existing probation is modified, 1 copy to Adult Probation

Inmate number		
Docket number CR05-0128445-S		State of Connecticut vs. Chandra Bozelko
Geographical Area Number 5	Place of sentencing (Town) Millford	Date of sentencing 12/07/07
Crime(s) of which the defendant was convicted Larceny, 1st Degree; Identify Theft, 1st Degree; Illegal Use of Credit Card; Forgery, 3rd Degree		Date of birth 07/01/72

Original sentence (*include any part of the sentence that was suspended and any fine ordered. If original sentence was modified before, say when and include the new sentence.*)

Ten years, suspended after five, followed by four years of probation. Term of probation ends 3/18/18//

Name of Judge entering original sentence Cronan, J.	Name of jail York CI	Date jail sentence began 12/07/07	Amount of fine paid, if any
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Motion For Modification

I, the Defendant or the Attorney for the Defendant signing below, affirm that this motion does not apply to any portion of a sentence that is a mandatory minimum sentence for an offense that may not be suspended or reduced by the court, and I ask that the sentence of the defendant be modified (changed) by

- ☐ suspending execution of the unexecuted portion of the jail sentence.
- ☒ Eliminating the remainder of the sentence of probation

Complete the following questions:

- a) Was the defendant sentenced to a definite sentence of more than three years? ☐ No ☒ Yes
- b) Was a motion for a modification of sentence previously filed in this case? ☐ No ☒ Yes
- c) Is the Defendant presently in the custody of the Department of Correction? ☒ No ☐ Yes*

*(If yes, the state's atty. must sign below
agreeing to seek a review of sentence.)
(Date filed)*

** If yes, a completed form JD-VS-3, Inmate Notice of Application, is attached to this application as proof of notice to the Office of Victim Services and to the Victim Services Unit within the Department of Correction.*

Reason for request (*Attach another sheet, if necessary*)
 Defendant's work related travel plans are impacted by her status as a probationer.

Dated at (Town) Orange	On (Date) 2/28/18	Signed (Defendant or Attorney for Defendant) Chandra Bozelko
I ☐ agree with ☐ oppose the defendant's request to seek review of the sentence.	On (Date)	Signed (State's Attorney) (Complete if defendant sentenced to more than 3 years)

Judgment

The motion having been presented to and considered by the Court, is

☐ **Denied**

☐ **Granted**, good cause having been shown, and the sentence is modified as follows:

Judgment on motion entered at (Town)	On (Date)	By order of the court (Name of Judge)
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Signed (Assistant Clerk)