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Re: S.261 – An act relating to eliminating life without parole

The Office of the Defender General continues to support S.261 – eliminating the imposition of life without parole reflects not only our understanding that the severity of an individual's offense often is not a reflection of their capacity for change and rehabilitation. We know that nobody – not judges, psychologists, corrections officials, or lawyers – is able to accurately predict a convicted offender's likelihood of reoffense, amenability to rehabilitation, or capacity for personal growth many years into the future. Such decisions should not be made speculatively from the bench, but should be made on a case-by-case basis by the parole board – giving even serious offenders a chance for eventual release and a motivation for change and growth.

While we understand that there is resistance to retroactively eliminating life without parole because that requires upsetting sentences that have already been imposed, if there is no retroactivity provision, we will be left with the injustice of people serving life without any opportunity for release for non-homicide offenses while more recently sentenced multiple-homicide offenders serve lesser sentences. Additionally, even a cursory examination of the current roster of life-without-parole offenders reveals the arbitrariness of the application of such a severe sentence. For example, there are at least two inmates serving life without parole for their role in felony-murder[1] cases where the people who actually committed the killing did *not* get life without parole.

However, if blanket retroactivity is not possible, the legislation should include some ability for prosecutors and defense attorneys to – by agreement – reduce severe sentences or charges. Currently, there is no mechanism for reducing a sentence except by post-conviction relief (PCR). A PCR allows a reduction only if the parties prove that the sentence was illegal. There is no provision that allows the prosecution and defense to jointly agree to reduce a sentence for other reasons – for example, we have people serving life without parole who were sentenced for offenses committed during late-adolescence (18-25). They were sentenced in the early and mid 90's, before MRI technology allowed the research that has showed that much late-adolescent offending behavior is driven by impulsivity, trauma

[1] Felony-murder allows an offender to be prosecuted for first-degree murder even if they did not actually kill anyone if they were participants in the commission of a felony where someone was killed – for example, if three people burglarize a house together and one of the people kills a resident, all can be prosecuted and sentenced for the murder.

reactions, and peer influence which wane as the connections between the frontal lobe and the rest of the brain mature.

A provision that would allow prosecutors and defense attorneys to jointly move for sentence or charge reductions for reasons other than the illegality of the sentence would allow offenders currently serving the most significant sentences to be granted a reduction in sentence *only* with the agreement of the state. This would allow prosecutors to reduce sentences where it is appropriate – in those cases where the life without parole sentence reflected a lack of understanding of adolescents' capacity for rehabilitation, for example – but would not apply in any case where the prosecutor felt that the life without parole sentence was appropriate. Even if we wish to preserve already-imposed life without parole sentences in some of the most egregious cases, it is indisputable that some of the current life without parole sentences are a reflection of harsh sentencing practices of the 90s, a lack of scientific knowledge of brain development, or inconsistent application of severe sentences. We should include a mechanism for adjusting those sentences where the state and defense can agree.

The following changes to 13 V.S.A. § 7042 and 13 V.S.A. § 7131 would allow for such sentence reduction only where the state agrees that a reduction is necessary:

> *§ 7042. Sentence review*
> (a) Any court imposing a sentence under the authority of this title, within 90 days of the imposition of that sentence, or within 90 days after entry of any order or judgment of the Supreme Court upholding a judgment of conviction, may upon its own initiative or motion of the defendant, reduce the sentence.
> (b) A State's Attorney or the Attorney General, within seven business days of the imposition of a sentence, may file with the sentencing judge a motion to increase, reduce, or otherwise modify the sentence. This motion shall set forth reasons why the sentence should be altered. After hearing, the court may confirm, increase, reduce, or otherwise modify the sentence.
> (c) After a motion is filed under subsection (b) of this section, a defendant's time for filing an appeal under 12 V.S.A. § 2383 shall commence to run upon entry of a final order under subsection (b).
> <u>(d) The court imposing sentence shall reduce the sentence if the parties at any time jointly move for a reduction.</u>
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> *§ 7133. Notice and hearing*
> Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the State's

Attorney and Attorney General, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. The court may entertain and decide the motion without requiring the production of the prisoner at the hearing but the prisoner may attend if he or she so requests. If the court finds that the judgment was made without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to make the judgment vulnerable to collateral attack, it shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or her or grant a new trial or correct the sentence as may appear appropriate. <u>The court shall also vacate and set the judgment aside, grant a new trial, or resentence the prisoner upon stipulation of the parties.</u>