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Office of The Attorney General
State of Connecticut

September 30, 2011

Hon. Leo C. Arnone
Commissioner of Correction
24 Wolcott Hill Rd.
Wethersfield, CT 06109

Dear Commissioner Arnone,

You have requested a legal opinion as to whether Administrative Directive (A.D.) 9.12, signed by you on September 30, 2011, is binding and effective on the Department of Correction as of the date it is issued. A.D.9.12 is effective and binding on the Department of Correction immediately upon your signing as the Commissioner, and members of the Department of Correction are compelled to comply with its requirements at that point in time.

A.D. 9.12 is an inmate classification directive and is found within Chapter 9, the Classification Chapter of your agency's directives. These directives also include A.D. 9.2 which defines classification to include, "the ongoing process of collecting and evaluating information about each inmate to determine the inmate's risk and need level for appropriate confinement location, treatment, programs, and employment assignment whether in a facility or the community. *See* A.D. 9.2, ¶3A.

A.D. 9.12 sets forth the time period to classify and guidelines necessary for the supervision of persons convicted under Conn. Gen. Stat. § 14-215 and § 14-227a. In this case, A.D. 9.12 provides for a mandatory period of 10 days incarceration in order to complete the necessary assessment and classify persons convicted under those statutes, including but not limited to a determination of whether those persons so convicted should serve the remainder of any term of imprisonment as home confinement. This directive is intended in part to implement the provisions of Public Act 11-51, section 26 which provides as follows:

Sec. 26. (NEW) (*Effective July 1, 2011*) Notwithstanding any provision of the general statutes, whenever a person is sentenced to a term of imprisonment pursuant to subsection (g) of section 14-227a of the general statutes or section 14-

215 of the general statutes, and committed by the court to the custody of the Commissioner of Correction, the commissioner may, after admission and a risk and needs assessment of such person, release such person to such person's residence subject to the condition that such person not leave such residence unless otherwise authorized. Based upon the assessment of such person, the commissioner may require such person to be subject to electronic monitoring, which may include the use of a global positioning system and continuous monitoring for alcohol consumption, and to any other conditions the commissioner deems appropriate. Any person released pursuant to this section shall remain in the custody of the commissioner and shall be supervised by employees of the department during the period of such release. Upon the violation by such person of any condition of such release, the commissioner may revoke such release and return such person to confinement in a correctional facility. The commissioner shall establish an advisory committee for the purpose of developing a protocol for the training of correctional staff assigned to the assessment and supervision of offenders eligible for release pursuant to this section, evaluation of outcomes of participation in such release, the establishment of victim impact panels and the provision of treatment to such participants. For purposes of this section, "continuous monitoring for alcohol consumption" means automatically testing breath, blood or transdermal alcohol concentration levels and tamper attempts at least once every hour regardless of the location of the person being monitored.

While section 26 of P.A. 11-51 authorizes the Commissioner of Correction to release a person so convicted to home confinement, the Commissioner has the discretion to decline to authorize any such person to be released, and may require the inmate to serve the entire term of imprisonment in a correctional facility. Obviously, if the Commissioner has the authority to require the inmate to serve the entire term of imprisonment incarcerated in a correctional facility, he has the lesser included power to require certain mandatory assessment periods and the length of incarceration required, at a minimum, for such assessment, in order to properly classify an inmate.

Conn. Gen. Stat. §18-81 gives the Commissioner of Correction the authority to classify inmates, and specifically states, in relevant part,

The Commissioner of Correction shall administer, coordinate and control the operations of the department and shall be responsible for the overall supervision and direction of all institutions, facilities and activities of the department. He shall establish rules for the administrative practices and custodial and rehabilitative methods of said institutions and facilities in accordance with recognized correctional standards. . . . He shall be responsible for establishing disciplinary, diagnostic, classification, treatment . . . programs throughout the department. . . .

Both the Connecticut Appellate and the Supreme Courts have recognized that DOC Administrative Directives are binding on DOC and become effective upon signing by the

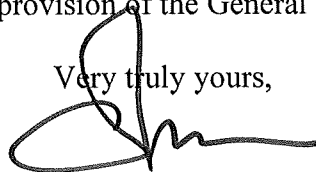
Commissioner. See Beasley v. Commissioner of Correction, 50 Conn. App. 421, 424-425 (Conn. App. Ct. 1998), affirmed, 249 Conn. 499; 733 A.2d 833 (1999). In Beasley, the Appellate Court stated:

[T]he commissioner testified, and the court found, that his authority is established pursuant to General Statutes § 18-81. Pursuant to this authority, the commissioner has promulgated a set of directives, which are written guidelines pertaining to several correctional facilities. These directives were *not* promulgated in accordance with the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-166 et seq., and are utilized to establish the parameters for the operation of the facilities. These directives set forth procedures for dealing with inmates, define inmate classifications and are used as guidelines to adhere to the department's mission to maintain secure, safe and humane correctional facilities.”

Beasley, 50 Conn. App. at 424-425 (emphasis added).¹ see also Abed v. Commissioner of Correction, 43 Conn. App. 176, 682 A.2d 558, cert. denied, 239 Conn. 937, 684 A.2d 707 (1996), Abed v. Armstrong, 209 F.3d 63 (2d Cir. 2000), cert. denied, 531 U.S. 897 (2000). Accordingly, A.D. 9.12, like other DOC administrative directives, is not subject to notice, comment and other review requirements set forth in the UAPA, but rather requires only your signature to become effective.

For all the foregoing reasons, I conclude that the Commissioner of Correction has the discretion and authority to immediately implement A.D. 9.12, effective September 30, 2011, and that the provisions of this directive are binding and effective commencing September 30, 2011, notwithstanding any other provision of the General Statutes.

Very truly yours,



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¹ In 1997, classification regulations were added to the list of DOC regulations which did not have to be promulgated pursuant to the UAPA, not only prospectively but also retroactively, to validate any procedural defect that may have occurred during the pre-1997 adoption and enforcement of regulations such as Administrative Directive 9.4. Beasley v. Commissioner of Correction, 50 Conn. App. 421, 436 (1998).