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Testimony of
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Governor's Bill No. 18
An Act Concerning a Second Chance Society

The Office of Chief Public Defender supports ***Raised Bill No. 18, An Act Concerning a Second Chance Society*** as proposed by Governor Malloy. This Office applauds the Governor in proposing this detailed legislation which clearly appreciates the advances in understanding juvenile brain development, and the evolving body of law which clearly defines juveniles as being different from adults.

Most important, the bill would raise the age of juvenile jurisdiction by one year beginning on July 1, 2017 until such jurisdiction reached the age of 20 on July 1, 2019. Also, throughout the bill, the term "convicted" has been deleted from the juvenile statutes and replaced most appropriately with the term, "adjudicated". Youth and children are different from adults, biologically and mentally. As such, they make bad decisions, are more impulsive and do not appreciate the ramifications of their actions. The wealth of research pertaining to brain development of youth and children is overwhelming and significant and supportive of why they are less culpable than adults.

Section 1
This Section provides definitions as currently exist in the law and retains the definition of a "child" as currently provided and makes technical changes to the definition of a "youth". Under the bill, there is a new definition, "young adult", for which the age of a juvenile is raised by one year each year until the juvenile jurisdiction age cutoff is 20 years of age. The Office of Chief Public Defender would also suggest that there should be serious consideration of raising the minimum age of juvenile jurisdiction from 7 years to a more appropriate age. Furthermore , our Office would suggest limiting the designations of serious juvenile repeat offender and serious juvenile sexual offender statutes to "youth" or "young adults" 16-20 years of age only. The intent of the change would be to provide appropriate services and sanctions to youth or young adults in these serious cases without transferring youth or young adults to the adult court.

Section 2
The Office of Chief Public Defender requests that the Committee not delete the term "youth" in Section 2 at lines 214 & 216 as it amends subsection (b) of C.G.S. §46b-121. This sub-section (b) pertains to the court's ability to place orders directed to parents "to secure the welfare, protection, proper care and suitable support of a child or youth subject to the court's jurisdiction or otherwise committed to or in the custody of" DCF. Since by definition the age of youth remains as16 or 17, then "youth" should remain within the statute so that it is clear that the court can place orders on the parents, guardians or others who owe a legal duty to the child or youth. Throughout the bill the term "adjudicated" has been inserted in lieu of "convicted". As a result, this Office agrees with the language of **Section 7** of **Raised Bill 5642, *An Act Concerning The Recommendations Of The Juvenile Justice Policy Oversight Committee,*** which eliminates the phrase "punish the child" in favor of "provide individualized supervision, care, accountability and treatment in a manner consistent with public safety to such child." This phrase more accurately reflects the philosophy of our current juvenile court and the growing body of law and science that recognizes that children should be held accountable in therapeutic and rehabilitative manner.

Section 4
This Section amends C.G.S. § 46b-127, but continues to require that a judge find that the *best interests of the child or young adult* ***and*** *the public* will not be served by maintaining the case in the juvenile court. The Office of Chief Public Defender believes that it is critically important to maintain this language as it currently exists in the statute. This Office is opposed to any change of this language that would phrase this in the disjunctive as this change would result in more juveniles being inappropriately transferred to the adult court based only upon the interests of public safety. As such this would seem to be inconsistent with research on juvenile brain development, and the evolving body of law issued by the U.S. Supreme Court.

The U.S. Supreme Court is clear as to the necessity of evaluating juveniles individually. In fact, the factors espoused in Miller v Alabama, 567 U.S. ___ (2012) should be considered by the court at any hearing prior to the court determining whether to grant a discretionary transfer to transfer juvenile to the adult court. The factors include not only the child's age, but the child's immaturity, impetuosity and failure to appreciate the risks and consequences, the child's home environment, the child's family, the child's role in the offense and the child's potential to be rehabilitated.

Our Office proposes that C.G.S. §46b-133(b) be amended at lines 695-698 of the bill to permit law enforcement to set bail for 18-21 year olds. It makes sense to allow law enforcement to set bail for 18-21 year olds, since they may have the financial ability to bail themselves out. Bail has always been available in juvenile matters through a court order**.** This Office would also suggest that C.G.S. §46b-133c be amended at line 709 as follows to permit the juvenile population to benefit from the Governor's bail reform proposal, particularly the proposal regarding no bail for misdemeanors and a 10% cash option. Suggested language is as follows:

> *(3) in the case of a young adult, set a reasonable bond to assure appearance in court; [3](4)…*

Section 5
This **Section** eliminates the ability of the court to order a juvenile placed in "detention". As a result, it is unclear where juveniles ordered detained by the court may be placed. In addition, it is also unclear what provisions will be made for detaining female and transgender youth. Clarification of where a juvenile can be ordered detained is needed especially if further detention facilities are closed due to budget constraints.

Section 6
As suggested in **Section 4**, the Office of Chief Public Defender proposes that the factors espoused in the U.S. Supreme Court line of cases Roper v Simmons, 543 U.S. 551 (2005), Graham v. Florida, 130 S. Ct. 2011 (2010) and Miller v Alabama, 132 S. Ct. 2455 (2012) should be considered by the court at any hearing prior to the court determining whether to designate a proceeding as a serious juvenile repeat offender prosecution. The factors, which better reflect the growing knowledge about brain development, include not only the child's age, but the child's immaturity, impetuosity and failure to appreciate the risks and consequences, the child's home environment, the child's family, the child's role in the offense and the child's potential to be rehabilitated.

In addition, the Office of Chief Public Defender requests that language be inserted to require that designation of a proceeding as a serious juvenile repeat offender prosecution by a judge occurs only after the prosecutorial official shows by clear and convincing evidence that it is in the *best interests of the child or young adult* ***and*** *will serve public safety.* There should also be consideration of Miller factors by the court prior to the court designating a proceeding as a serious juvenile repeat offender prosecution.

Section 16
This **Section** permits a judge to appoint an attorney to represent certain juveniles, their parents or guardians or custodian, if the court determines that such appointment will be in the "interest of justice", even when no request for appointment of counsel has been made. Due to the severe budgetary constraints that currently exist the Office of Chief Public Defender requests that the "interest of justice" standard be removed from *C.G.S. §46b-136.* The Public Defender Services Commission is currently required by this statute to incur and pay the expense of providing counsel even if the parties are not indigent or eligible for public defender services. In the alternative, these costs should be absorbed by the Judicial Department.

Consistent with the current statutes pertaining to the appointment of counsel in criminal and child protection cases, the Office requests that this costly statute be put into compliance with the controlling appointment of counsel statute, *C.G.S. §51-196, Designation of public defender for indigent defendant, codefendant. Legal services and guardians ad litem in family relations matters and juvenile matters. Contracts for legal services.* Pursuant to C.G.S. §51-196 a person must first request that counsel be appointed and make an application under oath attesting to the fact that the applicant is indigent. Upon review, the employee of the Division of Public Defender Services would make a recommendation to the court to appoint counsel if the applicant is actually indigent pursuant to the financial eligibility guidelines as promulgated by the Public Defender Services Commission.

Section 17
This Section amends C.G.S. §46b-137 in regard to the admissibility of admissions, confessions or statements made by a child, a youth or a young adult. Current law provides that a parent must be present for any statement taken from a child under the age of 16 to be admissible, gives youth aged 16 and 17 the right to have a parent present during questioning from law enforcement or a Juvenile Court official and sets specific criteria to be considered when a court is determining is a statement was given in a knowing, intelligent and voluntary manner.

This Office proposes that any person under the age of 18 should be treated equally and should have a parent or guardian present during questioning before a statement, admission or confession can be admissible in a court of law. By doing so, all juveniles under the age of 18, regardless of the court's jurisdiction, would be protected from undue influence by law enforcement or adults in authority acting as agents of the state in the absence of a parent or guardian.

As for subsections (b) and (c) this Office proposes that any reference to a child 16 or 17 years of age or a "youth" as defined be deleted and that the term "young adult" be inserted instead. The intent is to codify the criteria contained in subsection (b) and (c) to apply to young adults as the bill currently lacks criteria for admissibility for "young adults" in these circumstances.

Suggestion and/or further discussion:

- The Office of Chief Public Defender suggests inserting "youth" at line 1755 in subsection (a), so that this subsection is applicable to a child under the age of 16 and a youth aged 16 or 17.

- At line 1785 of C.G.S. §46b-137(c), insert "or young adult", in lieu of "youth" so that the admissibility of a statement, admission or confession of a youth adult shall be determined by considering the totality of the circumstances at the time when the young adult made the statement, admission or confession.

Section 20
This Section contains minor technical changes. However, the Office of Chief Public Defender requests that language should be added in subsections (j) and (k) as to what is contemplated in regard to transgender juveniles who are committed to DCF.

Section 21
This Section provides that a copy of any order that modifies or enlarges the conditions of probation be provided to certain individuals. This Office requests that language be added first to assure that at the hearing the child or youth was represented by counsel who was given notice of the proposed modification, and also that any such order that modifies or enlarges probation conditions be provided to counsel for the child or youth.

The Office of Chief Public Defender thanks the Governor for this Bill and is available to provide further information pertaining to the suggestions made herein. Thank you.