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COMMITTEE ON CHILDREN
MARCH 6, 2018

H.B. No. 5328 (RAISED)
AAC THE ADMISSIBILITY OF ADMISSIONS, CONFESSIONS AND STATEMENTS OF CHILDREN UNDER THE AGE OF EIGHTEEN

The Office of Chief Public Defender (OCPD) supports **HB 5328 – AAC THE ADMISSIBILITY OF ADMISSIONS, CONFESSIONS AND STATEMENTS BY CHILDREN UNDER THE AGE OF EIGHTEEN** and appreciates this Committee raising this bill on our behalf. This bill would amend *C.G.S. §46b-137, Admissibility of confession or other statement in juvenile proceedings* to eliminate the disparate rules for admissibility of statements for juveniles and apply the current protections to cases that have been transferred to the adult court from the juvenile docket. Currently, C.G.S. § 46b-137 has two different standards for admissibility of statements of juveniles. For children under age 16, statements taken outside the presence of a parent are inadmissible in a later delinquency prosecution. Conversely, 16 and 17 year olds can *ask* to have their parents present, but the police are not required to stop questioning them and are only obligated to make reasonable efforts to contact a parent or guardian.

There is no reason to treat 16 and 17 year olds differently than younger children. When Connecticut raised the age of juvenile court jurisdiction in 2010, we recognized that young people should be held accountable differently from adults. In the recent line of cases dealing with how the death penalty

and life without parole are applied to juveniles, the United States Supreme Court recognized that children have been scientifically proven to be less able to understand the consequences of their actions than adults[1]. The United States and the Connecticut Constitutions require that any confession be knowing and voluntary[2]. Multiple studies and plain common sense tell us that children and youth are more susceptible to be overrun or coerced by an adult authority figure. Children will often tell an adult what they want to hear without regard for the consequences.

As a result, there is always a question of whether a truly knowing and voluntary waiver can be taken from a juvenile without the assistance of counsel or at least a concerned adult. Extending the protections given to children under 16 to all juveniles who come into contact with law enforcement is appropriate and consistent with how the law relating to young people is evolving nationally. In line with the cases adopting a different standard of accountability for children, the United States Supreme Court has indicated that all statements must be reviewed using the "reasonable child standard' to determine if a child waived their right to remain silent in a knowing and voluntary manner[3]. According to the Center on Wrongful Conviction of Youth at Northwestern University Law School, only fifteen of the fifty states do not require that a parent be present for interrogations. It simply makes sense that any minor would need the assistance of their parent to make such an important decision.

Under current Connecticut case law, this same statement that was made without the presence of a juvenile's parents becomes admissible against the child once the case is transferred to adult court. In State v. Robin Ledbetter the Supreme Court held that C.G.S. § 46b-137 does not apply to a child whose case is transferred to adult court. C.G.S. § 46b-137 was originally passed to ensure that a minor, who is not legally able to waive his rights or make legal decisions, has the counsel of a parent or guardian before choosing to speak to the police. Whether a statement made by a juvenile is admissible should not be dictated by the venue of the criminal prosecution. Nor should it provide motivation for the prosecution to transfer the matter from the juvenile court to the adult court. Including statements by such children in the protections of C.G.S. § 46b-137 would be in keeping with its original purpose (i.e., to protect children from undue influence by adults in authority in the absence of a parent or guardian).

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[1] Roper v. Simmons, 543 U.S. 1 (2005); Graham v. Florida, 130 S. Ct. 2011, 2010; Miller v. Alabama 132 S. Ct. 2455, 2464 (2012)
[2] US Constitution, Amendment 5, Connecticut Constitution, Article 1 Section 8
[3] J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404 (2011)