



## State of Connecticut

### DIVISION OF PUBLIC DEFENDER SERVICES

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### Testimony of Susan I. Hamilton, MSW, JD Director of Delinquency Defense and Child Protection Office of Chief Public Defender

### Judiciary Committee - March 14, 2022 Raised S.B. 392 - An Act Concerning Statements Made by Juveniles

#### *Mission Statement of the Division of Public Defender Services*

*Striving to ensure justice and a fair and unbiased system, the Connecticut Division of Public Defender Services zealously promotes and protects the rights, liberty and dignity of all clients entrusted to us. We are committed to holistic representation that recognizes clients as individuals, fosters trust and prevents unnecessary and wrongful convictions.*

The Office of Chief Public Defender supports passage of ***Raised Bill 392, An Act Concerning Statements Made by Juveniles***. This proposal would change the law on the admissibility of statements made by children in a criminal proceeding against them. **Section Two** 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 children 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 children. For children under age 16, statements taken outside the presence of a parent are inadmissible in a later delinquency prosecution. 16- and 17-year-old children 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 locate 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

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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.<sup>1</sup> The United States and the Connecticut Constitutions require that any confession be knowing and voluntary.<sup>2</sup> 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 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 child without the assistance of counsel or at least a concerned adult. Extending the protections given to children under 16 to all children 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.<sup>3</sup> According to the Center on Wrongful Conviction of Youth at Northwestern University Law School, only 15 of the 50 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 child’s parents becomes admissible against the child once the case is transferred to adult court. In State v. Robin Ledbetter, 263 Conn. 1 (2003), the Connecticut Supreme Court held that 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 their rights or make legal decisions, has the counsel of a parent or guardian before choosing to speak to the police. The venue of the criminal prosecution should not dictate whether a statement made by a child is admissible, 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 46b-137e 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).

The Office of Chief Public Defender urges this Committee to act favorably on this proposal.

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<sup>1</sup> 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)

<sup>2</sup> US Constitution, Amendment 5, Connecticut Constitution, Article 1 Section 8

<sup>3</sup> J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404 (2011)