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DIVISION OF PUBLIC DEFENDER SERVICES

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**Testimony of**  
**Deborah Del Prete Sullivan, Legal Counsel, Director**  
**Office of Chief Public Defender**

*Raised Bill No. 5221*

**An Act Concerning the Recommendations of the**  
**Connecticut Sentencing Commission Regarding Lengthy Sentences**  
**for Crimes Committed by a Child or Youth and the Sentencing of a Child or**  
**Youth Convicted Of Certain Felony Offenses**

**Judiciary Committee Public Hearing**  
**March 3, 2014**

The Office of Chief Public Defender strongly supports *Raised Bill No. 5221, An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Lengthy Sentences for Crimes Committed by a Child or Youth and the Sentencing of a Child or Youth Convicted of Certain Felony Offenses*. In light of the U.S. Supreme Court decision in Graham v. Florida, 560 U. S. \_\_\_\_ (2010), passage of this bill is necessary in order for Connecticut to be in compliance with Graham constitutionally which held that there must be a meaningful opportunity for release of a child so sentenced in a non-homicide case. Chief Public Defender Susan O. Storey is a member of the Connecticut Sentencing Commission. On May 21, 2013, House Bill 6581 passed the House during the 2013 legislative session overwhelmingly with bipartisan support and with only four votes in opposition. Unfortunately, the bill did not get called in the Senate prior to the close of session. As a result, more than 70 filings have been made statewide by persons impacted by the Graham decision. These filings have been in the form of a Motion to Correct an Illegal Sentence or a habeas corpus petition, all of which have been filed in an effort to have the sentences reviewed in light of Graham.

R.B. 5221    **An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Lengthy Sentences for Crimes Committed by a Child or Youth And the Sentencing of a Child or Youth Convicted Of Certain Felony Offenses**

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This office was very involved in the detailed discussions that took place in its Legislative Sub-committee and a smaller working group which was comprised of Attorney Robert Farr; Chief State's Attorney Kevin Kane of the Division of Criminal Justice; Erica Tindall, Chairman of the Board of Pardons and Paroles; Attorney Thomas Ullmann representing the Connecticut Criminal Defense Lawyers; initially Attorney Michelle Cruz, the former Victim Advocate and the current Victim Advocate, Garvin Ambrose; and, myself on behalf of the Office of Chief Public Defender.

**Section 1** of this bill would provide for a meaningful review of the sentence imposed upon a person who committed an offense and was under the age of 18 years and subsequently convicted of the crime in adult court and sentenced as an adult to a lengthy term of incarceration. The bill is totally inapplicable to any offenses for which a person was 18 years of age or older when committed. Youth and children are different from adults, biologically and mentally. As such, they should not be treated as adults for purposes of sentencing. Youth and children make bad decisions, are more impulsive and do not appreciate the ramifications of their actions. The wealth of science pertaining to brain development of youth and children is overwhelming and significant and supportive of why they are different from adults.

Passage of this legislation would make a person convicted of an offense committed when under the age of 18 years but convicted and sentenced in adult court **eligible** for parole. The fact that a person is eligible does not mean that the person is to be automatically released on parole. It is the Board of Pardons and Paroles that would determine whether the person was suitable for release on parole after consideration of a number of factors including those articulated in the Graham decision. The bill would provide that such a person would be *eligible* for parole release after being incarcerated for a specific amount of time. A person serving a sentence of fifty years or less, would be eligible to be released on parole after serving twelve years or 60% of the sentenced imposed, whichever is greater. A person serving a sentence of more than fifty years would be eligible for parole after serving thirty years of the sentence imposed. Therefore, a person who committed an offense at the age of 15 who is sentenced to sixty years of incarceration would not be eligible for parole until he was at least 45 years of age having served at least ½ of his sentence or 30 years.

The bill creates a procedure by which the Board of Pardons and Paroles would provide notice to the Office of Chief Public Defender and the state's attorney that a person has become eligible for parole release. Counsel would be assigned by the Office of Chief Public Defender if the

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person is indigent. Once the person reaches the threshold for parole eligibility, the person would be permitted to appear at a hearing before the Board of Pardons and Paroles for a determination of whether he/she should actually be released on parole. The hearing is not adversarial in nature. The person would be provided the opportunity to demonstrate his/her suitability for parole release based upon information and reports from any source including the Department of Correction that the Board obtains which demonstrate that:

“(A) there is a reasonable probability that such person will live and remain at liberty without violating the law;

(B) the benefits to such person and society that would result from such person's release to community supervision substantially outweigh the benefits to such person and society that would result from such person's continued incarceration; and

(C) such person has demonstrated substantial rehabilitation since the date such crime or crimes were committed considering such person's character, background and history, as demonstrated by factors including, but not limited to, such person's correctional record, the age and circumstances of such person as of the date of the crime or crimes, whether such person has demonstrated remorse and increased maturity since the date of the crime or crimes, such person's contributions to the welfare of other persons through service, such person's efforts to overcome substance abuse, addiction, trauma, lack of education or obstacles that such person may have faced as a child or youth in the adult correctional system, the opportunities for rehabilitation in the adult correctional system and the overall degree of such person's rehabilitation in light of the nature of the crime or crimes.”

Subsection (C) articulates the criteria as articulated by the U.S. Supreme Court in Graham. As a result, the parties would have a reasonable opportunity to present testimony through written or oral testimony and the parties are not precluded from presenting information by way of a report or affidavit. Subsections (A) and (B) track the requirements in place for suitability. The inclusion of the language in subsection (C) is crucial in order to comply with the holding in the Graham case as this specific pool of individuals are unique in that they are convicted of offenses which they committed when under the age of 18 years and for which they received lengthy sentences in excess of ten years.

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The Board of Pardons and Paroles would determine whether to release the person on Parole. If the Board determined that continued incarceration was warranted, the bill requires the Board to articulate its reasons and reassess the person's suitability for Paroles release at a later date to be determined by the Board. The bill provides that the Board's determination is final and not appealable.

Lastly, this office supports the provision of providing notice of the parole hearing to the victim through the state victim advocacy agencies.

Passage of **Section 2** of this bill which is new, is necessary in order to comply with the recent U.S. Supreme Court decision in Miller v. Alabama, 132 S. Ct. 2455 (2012) which prohibited the imposition of a life sentence without the possibility of parole, the harshest of sentences, for a child who was under the age of 18 when he/she committed the offense for which he/she was prosecuted in adult court, without having first considered mitigating evidence and other factors. Currently, children as young as 14 years of age are sentenced in this state to mandatory sentences in excess of 50 years without ever having an opportunity to seek parole. These mandatory life sentences have been imposed without the benefit of consideration by the court of brain development science and certain mitigating factors which are relevant to children and which distinguish their thought process and conduct from that of an adult. Basically, in Connecticut, these current mandatory sentences have resulted in children as young as 14 being sentenced to incarceration for the rest of their lives.

In conclusion, this Office urges this Committee to vote favorably on this bill and support passage of this bill.