

Connecticut Public Defenders



The Leading Force for Equal Justice

2015 Legislative Package

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CRIMINAL JUSTICE PROPOSALS

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2015 Legislative Proposal

AN ACT CONCERNING THE ATTORNEY-CLIENT PRIVILEGE

Purpose: To clarify the statute in accordance with the attorney client privilege to exempt persons who obtain information through a privileged relationship from the statutory obligation as a mandated reporter.

Section 17a-101 of the general statutes is repealed and the following is substituted in lieu thereof (Effective upon passage):

NEW. (C) Notwithstanding any of the general statutes, no one shall be required to make such a report under this section when he or she obtains the information solely as a result of an attorney-client privileged communication. (Effective upon passage)

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2015 Legislative Proposal

AN ACT CONCERNING FAMILY IMPACT

Purpose: To require that a family impact statement be considered by the court prior to sentencing in any case in which a custodial parent will be incarcerated.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (Effective October 1, 2014) **(a) Prior to sentencing a defendant convicted of a criminal offense for which a sentence of imprisonment may be imposed, the court shall permit the defendant to submit a family impact statement if the defendant is the parent or guardian of a minor child and has physical custody of the minor child. The judge shall consider such family impact statement prior to pronouncing any sentence.**

(b) A family impact statement submitted by a defendant pursuant to subsection (a) of this section may address the impact on the minor child and other family members that would result if the defendant is sentenced to a term of imprisonment, including, but not limited to, the impact on the financial needs of the child and other family members, the relationship between the defendant and the child, the availability of community and family support for the child, the defendant's employment history and available employment opportunities, programs available to rehabilitate the defendant if the defendant is not sentenced to a term of imprisonment, the seriousness of the offense and the defendant's criminal history.

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2015 Legislative Proposal

AN ACT CONCERNING MISDEMEANORS

Purpose: To clarify that the maximum sentence for a Class A misdemeanor is less than one year.

Section 53a-26 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2015):

- (a) An offense for which a person may be sentenced to a term of imprisonment of [not more] **less** than one year is a misdemeanor.
- (b) Misdemeanors are classified for the purposes of sentence as follows: (1) Class A, (2) class B, (3) class C, (4) class D, and (5) unclassified.
- (c) The particular classification of each misdemeanor defined in this chapter is expressly designated in the section defining it.
- (d) Any offense defined in any section of the general statutes which, by virtue of an expressly specified sentence, is within the definition set forth in subsection (a) of this section, but for which a particular classification is not expressly designated, shall be deemed: (1) A class A misdemeanor if the maximum term of imprisonment specified is **364 days** [one year]; (2) a class B misdemeanor if the maximum term of imprisonment specified is six months; (3) a class C misdemeanor if the maximum term of imprisonment specified is three months; (4) a class D misdemeanor if the maximum term of imprisonment specified is thirty days; and (5) an unclassified misdemeanor if the maximum term of imprisonment specified is a term other than a term set forth in subdivision (1), (2), (3) or (4) of this subsection.

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2015 Legislative Proposal

AN ACT CONCERNING CRIMINAL MISCHIEF

Purpose: *To increase the values upon which the degrees of criminal mischief are based to mirror the values for the same misdemeanor classifications of larceny in the third and fourth degrees.*

SECTION 1. Section 53a-115 of the general statutes is repealed and the following is substituted in lieu thereof (Effective upon passage)

(a) A person is guilty of criminal mischief in the first degree when: (1) With intent to cause damage to tangible property of another and having no reasonable ground to believe that such person has a right to do so, such person damages tangible property of another in an amount exceeding [one thousand five hundred] **two thousand** dollars, or (2) with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that such person has a right to do so, such person damages or tampers with tangible property of a utility or mode of public transportation, power or communication, and thereby causes an interruption or impairment of service rendered to the public, or (3) with intent to cause damage to any electronic monitoring equipment owned or leased by the state or its agent and required as a condition of probation or conditional discharge pursuant to section 53a-30, as a condition of release pursuant to section 54-64a or as a condition of community release pursuant to section 18-100c, and having no reasonable ground to believe that such person has a right to do so, such person damages such electronic monitoring equipment and thereby causes an interruption in its ability to function, or (4) with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that such person has a right to do so, such person damages or tampers with (A) any tangible property owned by the state, a municipality or a person for fire alarm or police alarm purposes, (B) any telecommunication system operated by the state police or a municipal police department, (C) any emergency medical or fire service dispatching system, (D) any fire suppression equipment owned by the state, a municipality, a person or a fire district, or (E) any fire hydrant or hydrant system owned by the state or a municipality, a person, a fire district or a private water company, or (5) with intent to cause damage to tangible property owned by the state or a municipality that is located on public land and having no reasonable ground to believe that such person has a right to do so, such person damages such tangible property in an amount exceeding [one thousand five hundred] **two thousand** dollars.

(b) Criminal mischief in the first degree is a class D felony.

SECTION 2. Section 53a-116 of the general statutes is repealed and the following is substituted in lieu thereof (Effective upon passage)

(a) A person is guilty of criminal mischief in the second degree when: (1) With intent to cause damage to tangible property of another and having no reasonable ground to believe that such person has a right to do so, such person damages tangible property of another in an amount exceeding [two hundred fifty] **one thousand** dollars; or (2) with intent to cause an interruption or impairment of service rendered to the public and having no reasonable ground to believe that such person has a right to do so, such person damages or tampers with tangible property of a public utility or mode of public transportation, power or communication, and thereby causes a risk of interruption or impairment of service rendered to the public; or (3) with intent to cause damage to tangible property owned by the state or a municipality that is located on public land and having no reasonable ground to believe that such person has a right to do so, such person damages such tangible property in an amount exceeding [two hundred fifty] **one thousand** dollars.

(b) Criminal mischief in the second degree is a class A misdemeanor.

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2015 Legislative Proposal

AN ACT CONCERNING NARCOTIC RESIDUE

Purposes: *To create a class A misdemeanor for persons in possession of narcotic residue which is of such a small quantity that it cannot be used.*

Section 21a-279 of the general statutes as amended is repealed and the following is substituted in lieu thereof (Effective upon passage):

(a) Any person who possesses or has under his control [any] **a** quantity of any narcotic substance **which is greater than residue**, except as authorized in this chapter, for a first offense, may be imprisoned not more than seven years or be fined not more than fifty thousand dollars, or be both fined and imprisoned; and for a second offense, may be imprisoned not more than fifteen years or be fined not more than one hundred thousand dollars, or be both fined and imprisoned; and for any subsequent offense, may be imprisoned not more than twenty-five years or be fined not more than two hundred fifty thousand dollars, or be both fined and imprisoned. **For purposes of this section, residue is defined as a useless trace of a narcotic substance which is not enough that it can actually be used as a drug by the person who possesses it.**

(b) Any person who possesses or has under his control any quantity of a hallucinogenic substance other than marijuana or four ounces or more of a cannabis-type substance, except as authorized in this chapter, for a first offense shall be guilty of a class D felony, and for a subsequent offense shall be guilty of a class C felony.

(c) Any person who possesses or has under his control any quantity of any controlled substance other than a narcotic substance, or a hallucinogenic substance other than marijuana or who possesses or has under his control one-half ounce or more but less than four ounces of a cannabis-type substance, except as authorized in this chapter, (1) for a first offense, may be fined not more than one thousand dollars or be imprisoned not more than one year, or be both fined and imprisoned; and (2) for a subsequent offense, shall be guilty of a class D felony.

(d) (NEW) Any person who possesses or has under his control the residue of a narcotic substance, except as authorized in this chapter, shall have committed a class A misdemeanor.

(E)**(d)** Any person who violates subsection (a), (b), or (c) of this section in or on, or within one thousand five hundred feet of, the real property comprising a public or private elementary or secondary school and who is not enrolled as a student in such school or a licensed child day care center, as defined in section 19a-77, that is identified as a child day care center by a sign posted in a conspicuous place shall be imprisoned for a term of two years, which shall not be suspended and shall be in addition and consecutive to any term of imprisonment imposed for violation of subsection (a), (b) or (c) of this section.

(F) **(e)** As an alternative to the sentences specified in subsections (a) and (b) and specified for a subsequent offense under subsection (c) of this section, the court may sentence the person to the custody of the Commissioner of Correction for an indeterminate term not to exceed three years or the maximum term specified for the offense, whichever is the lesser, and at any time within such indeterminate term and without regard to any other provision of law regarding minimum term of confinement, the Commissioner of Correction may release the convicted person so sentenced subject to such conditions as he may impose including, but not limited to, supervision by suitable authority. At any time during such indeterminate term, the Commissioner of Correction may revoke any such conditional release in his discretion for violation of the conditions imposed and return the convicted person to a correctional institution.

(G)**(f)** To the extent that it is possible, medical treatment rather than criminal sanctions shall be afforded individuals who breathe, inhale, sniff or drink the volatile substances defined in subdivision (49) of section 21a-240.

(H) **(g)** The provisions of subsections (a) to (c), inclusive, of this section shall not apply to any person (1) who in good faith, seeks medical assistance for another person who such person reasonably believes is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, (2) for whom another person, in good faith, seeks medical assistance, reasonably believing such person is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or (3) who reasonably believes he or she is experiencing an overdose from the ingestion, inhalation or injection of intoxicating liquor or any drug or substance and, in good faith, seeks medical assistance for himself or herself, if evidence of the possession or control of a controlled substance in violation of subsection (a), (b) or (c) of this section was obtained as a result of the seeking of such medical assistance. For the purposes of this subsection, "good faith" does not include seeking medical assistance during the course of the execution of an arrest warrant or search warrant or a lawful search.

JUVENILE JUSTICE PROPOSALS

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2015 Legislative Proposal

AN ACT CONCERNING THE TRANSFER OF YOUTH TO
THE ADULT CRIMINAL DOCKET

Purpose: To ensure that children charged with a B Felony are provided with a hearing on their amenability to treatment in the juvenile court prior to being transferred to the adult criminal docket and to raise the minimum age for transfer from fourteen years to fifteen years of age.

SECTION 1. *Section 46b-127 of the general statutes is repealed and the following substituted in lieu thereof (Effective October 1, 2015):*

(a) ~~(1)~~ The court shall automatically transfer from the docket for juvenile matters to the regular criminal docket of the Superior Court the case of any child charged with the commission of a capital felony under the provisions of *section 53a-54b* in effect prior to April 25, 2012, a class A ~~[or B]~~ felony or a violation of *section 53a-54d*, provided such offense was committed after such child attained the age of ~~[fourteen]~~ **fifteen** years and counsel has been appointed for such child if such child is indigent. Such counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer. The child shall be arraigned in the regular criminal docket of the Superior Court at the next court date following such transfer, provided any proceedings held prior to the finalization of such transfer shall be private and shall be conducted in such parts of the courthouse or the building in which the court is located that are separate and apart from the other parts of the court which are then being used for proceedings pertaining to adults charged with crimes.

~~[(2) A state's attorney may, at any time after such arraignment, file a motion to transfer the case of any child charged with the commission of a class B felony or a violation of subdivision (2) of subsection (a) of *section 53a-70* to the docket for juvenile matters for proceedings in accordance with the provisions of this chapter.]~~

(b) (1) Upon motion of a prosecutorial official, the superior court for juvenile matters shall conduct a hearing to determine whether the case of any child charged with the commission of a class **B**, C, D or E felony or an unclassified felony shall be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court. The court shall not order that the case be transferred under this subdivision unless the court finds that (A) such offense was committed after such child attained the age of ~~[fourteen]~~ **fifteen** years, (B) there is probable cause to believe the child has

committed the act for which the child is charged, and (C) the best interests of the child and the public will not be served by maintaining the case in the superior court for juvenile matters. In making such findings, the court shall consider (i) any prior criminal or juvenile offenses committed by the child, (ii) the seriousness of such offenses, (iii) any evidence that the child has intellectual disability or mental illness, and (iv) the availability of services in the docket for juvenile matters that can serve the child's needs. Any motion under this subdivision shall be made, and any hearing under this subdivision shall be held, not later than thirty days after the child is arraigned in the superior court for juvenile matters.

(2) If a case is transferred to the regular criminal docket pursuant to subdivision (1) of this subsection, the court sitting for the regular criminal docket may return the case to the docket for juvenile matters at any time prior to a jury rendering a verdict or the entry of a guilty plea for good cause shown for proceedings in accordance with the provisions of this chapter.

(c) Upon the effectuation of the transfer, such child shall stand trial and be sentenced, if convicted, as if such child were eighteen years of age. Such child shall receive credit against any sentence imposed for time served in a juvenile facility prior to the effectuation of the transfer. A child who has been transferred may enter a guilty plea to a lesser offense if the court finds that such plea is made knowingly and voluntarily. Any child transferred to the regular criminal docket who pleads guilty to a lesser offense shall not resume such child's status as a juvenile regarding such offense. If the action is dismissed or nolleed or if such child is found not guilty of the charge for which such child was transferred or of any lesser included offenses, the child shall resume such child's status as a juvenile until such child attains the age of eighteen years.

(d) Any child whose case is transferred to the regular criminal docket of the Superior Court who is detained pursuant to such case shall be in the custody of the Commissioner of Correction upon the finalization of such transfer. A transfer shall be final (1) upon the arraignment on the regular criminal docket until a motion filed by the state's attorney pursuant to subsection (a) of this section is granted by the court, or (2) upon the arraignment on the regular criminal docket of a transfer ordered pursuant to subsection (b) of this section until the court sitting for the regular criminal docket orders the case returned to the docket for juvenile matters for good cause shown. Any child whose case is returned to the docket for juvenile matters who is detained pursuant to such case shall be in the custody of the Judicial Department.

(e) The transfer of a child to a Department of Correction facility shall be limited as provided in subsection (d) of this section and said subsection shall not be construed to permit the transfer of or otherwise reduce or eliminate any other population of juveniles in detention or confinement within the Judicial Department or the Department of Children and Families.

(f) Upon the motion of any party or upon the court's own motion, the case of any youth age sixteen or seventeen, except a case that has been transferred to the regular criminal docket of the Superior Court pursuant to subsection (a) or (b) of this section, which is pending on the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, where the youth is charged with committing any offense or violation for which a term of imprisonment may be imposed, other than a violation of section 14-227a or 14-227g, may, before trial or before the entry of a guilty plea, be transferred to the docket for juvenile matters if (1) the youth is alleged to have committed such offense or violation on or after January 1, 2010, while sixteen years of age, or is alleged to have committed such offense or violation on or after July 1, 2012, while seventeen years of age, and (2) after a hearing considering the facts and circumstances of

the case and the prior history of the youth, the court determines that the programs and services available pursuant to a proceeding in the superior court for juvenile matters would more appropriately address the needs of the youth and that the youth and the community would be better served by treating the youth as a delinquent. Upon ordering such transfer, the court shall vacate any pleas entered in the matter and advise the youth of the youth's rights, and the youth shall (A) enter pleas on the docket for juvenile matters in the jurisdiction where the youth resides, and (B) be subject to prosecution as a delinquent child. The decision of the court concerning the transfer of a youth's case from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters shall not be a final judgment for purposes of appeal.

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2015 Legislative Proposal

AN ACT CONCERNING STATEMENTS BY JUVENILES

Purpose: The statute currently applies to children under the age of 16. Raise the Age legislation re-defined the age of juveniles as under 18 years. The proposed legislative change would protect all children under the age of 18 regardless of the court's jurisdiction. It would also be in keeping with the original purpose of the law which was to protect children from undue influence by adults in authority in the absence of a parent or guardian.

SECTION 1. Section 46b-137 of the general statutes as amended is repealed and the following is substituted in lieu thereof (Effective October 1, 2015):

(a) Any admission, confession or statement, written or oral, made by a child under the age of [sixteen] **eighteen** to a police officer or Juvenile Court official shall be inadmissible in any proceeding concerning the [alleged delinquency of the] child making such admission, confession or statement unless made by such child in the presence of the child's parent or parents or guardian and after the parent or parents or guardian and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements, and (3) that any statements the child makes may be introduced into evidence against the child.

[(b) Any admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement, unless (1) the police or Juvenile Court official has made reasonable efforts to contact a parent or guardian of the child, and (2) such child has been advised that (A) the child has the right to contact a parent or guardian and to have a parent or guardian present during any interview, (B) the child has the right to retain counsel or, if unable to afford counsel, to have counsel appointed on behalf of the child, (C) the child has the right to refuse

to make any statement, and (D) any statement the child makes may be introduced into evidence against the child.]

[(c) The admissibility of any admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be determined by considering the totality of the circumstances at the time of the making of such admission, confession or statement. When determining the admissibility of such admission, confession or statement, the court shall consider (1) the age, experience, education, background and intelligence of the child, (2) the capacity of the child to understand the advice concerning rights and warnings required under subdivision (2) of subsection (b) of this section, the nature of the privilege against self-incrimination under the United States and Connecticut Constitutions, and the consequences of waiving such rights and privilege, (3) the opportunity the child had to speak with a parent, guardian or some other suitable individual prior to or while making such admission, confession or statement, and (4) the circumstances surrounding the making of the admission, confession or statement, including, but not limited to, (A) when and where the admission, confession or statement was made, (B) the reasonableness of proceeding, or the need to proceed, without a parent or guardian present, and (C) the reasonableness of efforts by the police or Juvenile Court official to attempt to contact a parent or guardian.]

[(d)] **(b)** Any confession, admission or statement, written or oral, made by the parent or parents or guardian of the child or youth after the filing of a petition alleging such child or youth to be neglected, uncared for or abused shall be inadmissible in any proceeding held upon such petition against the person making such admission or statement unless such person shall have been advised of the person's right to retain counsel, and that if the person is unable to afford counsel, counsel will be appointed to represent the person, that the person has a right to refuse to make any statement and that any statements the person makes may be introduced in evidence against the person, except that any statement made by the mother of any child or youth, upon inquiry by the court and under oath if necessary, as to the identity of any person who might be the father of the child or youth shall not be inadmissible if the mother was not so advised.

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2015 Legislative Proposal

AN ACT CONCERNING
MANDATORY MINIMUM SENTENCES AND JUVENILES PROSECUTED AS ADULTS

Purpose: To provide discretion to the court to depart from the mandatory minimum sentencing scheme in cases involving juveniles prosecuted as adults and fashion an appropriate penalty if good cause is shown. Recent court opinions and brain science development demonstrate why juveniles are different and should not be treated the same as adults.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) *(Effective upon passage)*

Notwithstanding the general statutes, the court shall have the discretion to depart from imposing the mandatory minimum sentence, for good cause shown, when sentencing any juvenile who is prosecuted as an adult.

CHILD PROTECTION PROPOSALS

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AN ACT CONCERNING TRANSFERS FROM PROBATE COURT

Purpose: To ensure that appointed counsel in cases transferred from probate court to juvenile court are subject to oversight and training of the Division of Public Defender Services.

Section 35a-19 of the General Statutes is repealed and the following is substituted in lieu thereof herewith (Effective October 1, 2015).

(a) When a contested application for removal of parent as guardian or petition for termination of parental rights or application to commit a child or youth to a hospital for the mentally ill has been transferred from the court of probate to the superior court, the superior court clerk shall transmit to the probate court from which the transfer was made a copy of any orders or decrees thereafter rendered, including orders regarding reinstatement pursuant to General Statutes § 45a-611 and visitation pursuant to General Statutes § 45a-612, and a copy of any appeal of a superior court decision in the matter.

(b) The date of receipt by the superior court of a transferred petition shall be the filing date for determining initial hearing dates in the superior court. The date of receipt by the superior court of any court of probate issued ex parte order of temporary custody not heard by that court shall be the issuance date in the superior court.

(c) Any appearance filed for any party in the court of probate shall continue in the superior court until a motion to withdraw is filed by counsel and granted by the court of probate or the superior court or another counsel files an "in lieu of" appearance on behalf of the party. ~~[Counsel previously appointed by the court of probate for indigent parties or for the minor child and paid by probate court administration who remain on the case in superior court shall be paid by the Public Defender Services Commission at the rate of pay established by the commission. If a motion to withdraw is filed and granted and]~~ If the party represented is indigent or is the child subject to the proceedings, new counsel shall be assigned from the list of Public Defender Assigned Counsel and shall be paid by the Public Defender Services Commission. The Juvenile Matters Court may request that the Division of Public Defender Services contract with probate counsel for representation if continued representation would be in the best interest of the client. Counsel for indigent parties or minor children appointed by probate court administration who remain on the case in superior court shall

be paid by the Public Defender Services Commission according to its policies at the rate of pay established by the Commission.

(d) (1) The superior court clerk shall notify appearing parties in applications for removal of guardian by mail of the date of the initial hearing which shall be held not more than thirty days from the date of receipt of the transferred application. Not less than ten days before the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for removal of guardian and an advisement of rights notice to be served on any nonappearing party or any party not served within the last twelve months with an accompanying order of notice and summons to appear at an initial hearing.

(2) Not less than ten days before the date of the initial hearing, the superior court clerk shall cause a copy of the transfer order and probate petition for termination of parental rights and an advisement of rights notice to be served on all parties, regardless of prior service, with an accompanying order of notice and summons to appear at an initial hearing which shall be held not more than thirty days from the date of receipt of the petition except in the case of a petition for termination of parental rights based on consent which shall be held not more than twenty days after the filing of the petition.

(3) The superior court clerk shall mail notice of the initial hearing date for all transferred petitions to all counsel of record and to the commissioner of the department of children and families or to any other agency which has been ordered by the probate court to conduct an investigation pursuant to *General Statutes § 45a-619*. The commissioner of the department of children and families or any other investigating agency will be notified of the need to have a representative present at the initial hearing.

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2015 Legislative Proposal

AN ACT CONCERNING RESTORATION OF
TERMINATED PARENTAL RIGHTS

Purpose: To allow a child over the age of 14, for who parental rights have been terminated and who has not yet been adopted to petition the juvenile court to restore the rights of the parent.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

(NEW) (Effective October 1, 2015)

(a) A child for whom parental rights have been terminated pursuant to section 17a-112 may file a petition in the Superior Court for Juvenile Matters to restore the parental rights of one or both parents provided that (1) the child reached the age of 14; or if the child is the younger sibling of such child, 14 years of age or older, for whom reinstatement of parental rights is being sought and the younger sibling independently meets the criteria set forth in this section; (2) the child has not been adopted; (3) at least three years have passed since the entering of the order terminating parental rights; and, (4) an affidavit is filed indicating that the parent whose rights are sought to be restored consents to the filing of the petition.

(b) The petition to restore terminated parental rights shall be filed in the Superior Court for Juvenile Matters where the termination of parental rights was ordered. A preliminary hearing shall be scheduled not more than 20 days from the filing. The child shall provide notice of the hearing date and cause the petition to be served upon (1) the Department of Children and Families; (2) any agency or individual to whom guardianship or custody of the child had been committed; (3) the respondent or respondents in the termination of parental rights proceeding. If the child is represented by Assigned Counsel from the Division of Public Defender Services, costs of the service shall be paid by the Division of Public Defender Services.

(c) At the preliminary hearing, if the court, by a preponderance of the evidence, determines that (1) the petition is appropriately filed pursuant to subsection (a) of this section (2) the parent whose rights are sought to be restored consents to the restoration and (3) consideration of reinstatement is in the child's best interest; the court shall order a full hearing on whether the terminated parental

rights should be reinstated. The hearing shall be scheduled within 30 days of the court's order, absent the agreement of the parties or good cause shown. The child shall be represented by counsel and if over the age of 12, the child shall have a right to be heard in the Court if the child requests. The court may appoint counsel for the parent or parents if the interests of justice require such appointment. Upon a finding that a parent is unable to afford counsel, the judicial authority may appoint an attorney to provide representation from a list of qualified attorneys provided by the Office of Chief Public Defender.

(d) The court may order the Department of Children and Families to conduct an investigation. The investigation shall include: 1) the circumstances of the child including but not limited to, (A) the need for ongoing services from DCF; (B) the child's current placement; and, (C) the circumstances of the parent, including a need for ongoing services. The Department shall report to the court its assessment of whether the reinstatement is in the best interest of the child and what services could be provided to support the reinstatement.

(e) The court shall conditionally grant the petition if it finds by clear and convincing evidence that (1) the child has not been adopted and is not likely to be adopted and (2) reinstatement of parental rights is in the child's best interest.

(f) In determining whether reinstatement is in the child's best interest, the court shall consider, but is not limited to (1) The age and maturity of the child, and the ability of the child to express his or her preference; and, (2) Whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order; (3) Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; or (4) if any other material changes in circumstances exist, that may have occurred which warrant the granting of the petition.

(g) If the court conditionally grants the petition, the case will be continued for six months and a temporary order of reinstatement entered. The Department shall develop a permanency plan for the child reflecting the plan to be reunification and shall provide transition services to the family as appropriate. Periodic review may be ordered as deemed appropriate by the court.

(h) Not later than six months after the conditional order, the court shall hold a hearing to determine if the reinstatement of parental rights should be made permanent. The court may (1) restore all rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child; or (2) extend the conditional reinstatement for up to an additional 6 months; or (3) determine that reinstatement is no longer in the best interest of the child and dismiss the petition.

(i) A proceeding to reinstate parental rights is a separate action from the termination of parental rights proceeding and does not vacate the original termination of parental rights. An order granted under this section reinstates the parental rights to the child. This reinstatement is a recognition that the situation of the parent and child has changed since the time of the termination of parental rights and the reinstatement of the legal parent-child relationship of the child with his or her biological parent is now appropriate.

(j) This section is retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

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2015 Legislative Proposal

AN ACT CONCERNING THE RIGHTS OF INCARCERATED PARENTS

Purpose: To provide parents with a reasonable opportunity to comply with court orders and services required for child reunification while the parent is incarcerated and thus prevent the unnecessary termination of parental rights.

Section 17a-111a of the General Statutes is repealed and the following is substituted in lieu thereof herewith (Effective October 1, 2015):

(a) The Commissioner of Children and Families shall file a petition to terminate parental rights pursuant to section 17a-112 if (1) the child has been in the custody of the commissioner for at least fifteen consecutive months, or at least fifteen months during the twenty-two months, immediately preceding the filing of such petition; (2) the child has been abandoned as defined in subsection (j) of section 17a-112; or (3) a court of competent jurisdiction has found that (A) the parent has killed, through deliberate, nonaccidental act, a sibling of the child or has requested, commanded, importuned, attempted, conspired or solicited to commit the killing of the child or a sibling of the child; or (B) the parent has assaulted the child or a sibling of a child, through deliberate, non-accidental act, and such assault resulted in serious bodily injury to such child.

(b) Notwithstanding the provisions of subsection (a) of this section, the commissioner is not required to file a petition to terminate parental rights in such cases if the commissioner determines that: (1) The child has been placed under the care of a relative of such child; (2) there is a compelling reason to believe that filing such petition is not in the best interests of the child;~~or~~ (3) the parent has not been offered the services contained in the permanency plan to reunify the parent with the child or such services were not available; **or, (4) the parent is incarcerated, or the parent's prior incarceration is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, provided the parent maintains a meaningful role in the child's life and the department has not documented another reason why it would be otherwise appropriate to file a petition pursuant to this section.** unless a court has determined that efforts to reunify the parent with the child are not required.

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2015 Legislative Proposal

AN ACT CONCERNING THE PLACEMENT OF CHILDREN

Purpose: To ensure that children are not transferred to the custody of the Department Corrections unless they have a case transferred to the adult criminal docket pursuant to Connecticut General Statute Section 46b-127.

Section 17a-12 of the General Statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2015):

(a) When the commissioner, or the commissioner's designee, determines that a change of program is in the best interest of any child or youth committed or transferred to the department, the commissioner or the commissioner's designee, may transfer such person to any appropriate resource or program administered by or available to the department, to any other state department or agency, **excluding the Department of Correction**, or to any private agency or organization within or without the state under contract with the department; provided no child or youth voluntarily admitted to the department under section 17a-11 shall be placed or subsequently transferred to the Connecticut Juvenile Training School; ~~and further provided no transfer shall be made to any institution, hospital or facility under the jurisdiction of the Department of Correction, except as authorized by section 18-87, unless it is so ordered by the Superior Court after a hearing. When, in the opinion of the commissioner, or the commissioner's designee, a person fourteen years of age or older is dangerous to himself or herself or others or cannot be safely held at the Connecticut Juvenile Training School, if a male, or at any other facility within the state available to the Commissioner of Children and Families, the commissioner, or the commissioner's designee, may request an immediate hearing before the Superior Court on the docket for juvenile matters where such person was originally committed to determine whether such person shall be transferred to the John R. Manson Youth Institution, Cheshire, if a male, or the Connecticut Correctional Institution, Niantic, if a female. The court shall, within three days of the hearing, make such determination. If the court orders such transfer, the transfer shall be reviewed by the court every six months thereafter to determine whether it should be continued or terminated, unless the commissioner has already exercised the powers granted to the commissioner under section 17a-13 by removing such person from the John R. Manson Youth Institution, Cheshire or the Connecticut Correctional Institution, Niantic.]~~ **and further provided no such transfer shall be made to any other state department or agency unless so ordered by the Superior Court after a hearing at which the child or youth shall be represented by counsel**

and a finding that such transfer is in the best interest of the child or youth.

(b) Unless ordered by the Superior Court at the time of commitment, no child or youth committed to the commissioner shall be placed in or transferred to a state-operated residential mental health facility under the jurisdiction of the commissioner without a hearing before the commissioner or the commissioner's designee. Such hearing shall be conducted in accordance with the provisions of chapter 54.

(c) Notwithstanding the provisions of subsection (b) of this section, (1) any delinquent child, if a male, may be placed at any time in the Connecticut Juvenile Training School, and (2) the commissioner may transfer any child or youth committed to the commissioner to any institution, hospital or facility for mentally ill children under the commissioner's jurisdiction for a period not to exceed fifteen days if the need for such emergency treatment is certified by a psychiatrist licensed to practice medicine by the state.