ACCY Advocates for Connecticut's Children and Youth

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Testimony Supporting:
H.B. 5676, An Act Concerning Children of Families with Service Needs
H.B. 6670, An Act Concerning the Standards for Defining a Family with Service Needs with Respect to Juvenile Matters
H.B. 1457, An Act Concerning Consensual Sexual Activity Between Adolescents Close in Age to Each Other
H.B. 902, An Act Concerning Youth Who Run Away

Testimony of Collin Law, Meagan Reed, William Bowen,[1] Mary Glassman and Shelley Geballe

April 9, 2007

Senator McDonald, Representative Lawlor, and distinguished members of the Judiciary Committee:

We testify on behalf of Advocates for Connecticut's Children and Youth (ACCY), a statewide, independent, citizen-based organization dedicated to speaking up for children and youth in the policy making process that has such a great impact on their lives. ACCY is the sister lobbying organization of Connecticut Voices for Children, on whose behalf we also testify.

I. ACCY strongly supports H.B. 5676, which would, pursuant to Public Act 05-250, institute new procedures to provide prompt treatment for at-risk Family With Service Needs (FWSN) youth and establish a network of community-based service centers to meet the needs of juvenile status offenders outside of a detention setting. This treatment-oriented approach to status offenders would reduce recidivism, lower criminal justice expenditures, foster stronger families, and improve outcomes for Connecticut's highest risk youth.

Status offenders are by definition *not* delinquent. Rather, they are children who need the help of parents, schools, communities, and, sometimes, the state to get back on track. The General Assembly recognized in July 2005 that these status offenders—including truants and youth who run away from home—do not belong in the juvenile justice system by enacting Public Act 05-250, which will become effective on October 1st of this year. The Act reforms Connecticut's approach to dealing with youthful status offenders who violate FWSN orders but have not committed any crimes. On October 1, 2007, this category of children can no longer be incarcerated in juvenile facilities or adjudicated as delinquents. Once it comes into effect, Act 05-250 also will require a court to find that there is no less restrictive alternative appropriate to a child and community's needs before ordering an out-of-home placement or DCF commitment of a FWSN child.

[1] Mr. Law, Ms. Reed and Mr. Bowen are Yale Law students participating in the Yale Legislative Services program and have prepared this testimony under the supervision of Attorney Shelley Geballe (President of Connecticut Voices for Children), Attorney Mary Glassman (Director, Advocates for Connecticut's Children and Youth) and Professor J.L. Pottenger, Jr., (Legislative Advocacy Clinic, Yale Law School).

The General Assembly took an important step in 2005 when it enacted PA 05-250, but additional steps are needed this session to successfully implement the scheduled change. Connecticut does not yet provide the necessary support services to address the needs of status offenders and prevent them from further involvement in the Juvenile Court. In 2005, 906 FWSN children were at high risk of further court intervention and had ongoing specific needs. Additionally, in 2005, 50% of FWSN children were referred for delinquency proceedings. By providing effective support services, Connecticut can **promote positive developmental outcomes among FWSN youth and thereby reduce recidivism and the likelihood of these youth becoming involved in the criminal justice system in the future**. Fulfilling the intent of Public Act 05-250, the procedures and services described in H.B. 5676 are designed to *effectively* address this group of children's mental health, emotional and behavioral needs.

Studies of juvenile delinquency and its management show that the de-emphasis of criminal punishment for youthful offenders must be accompanied by successful treatment of these youth to prevent future problems. A 2003 survey of such studies explained, "The juvenile court has long served as a dumping ground for a wide variety of problem behaviors of children that other institutions (e.g., social, mental health, and children protective services) fail to serve adequately. Although collaboration between juvenile justice and child and adolescent social services was once considered the cornerstone of a comprehensive childcare system, the two systems are severely fragmented. De-institutionalization and diversion policies [such as Public Act 05-250]…have turned child delinquents away from juvenile courts, resulting in sparse program development for these children."[2] **H.B. 5676 would help provide badly-needed treatment services to status offenders.**

The Families with Service Needs (FWSN) Advisory Board, created by section 42 of Public Act 06-188, was charged with making written recommendations to implement Public Act 05-250. The Board, which consists of a wide range of professionals including judges, public defenders, prosecutors, child advocates, service providers, and legislators, unanimously supports **H.B. 5676** as a path to effectively implement Public Act 05-250. We concur for the following reasons:

A. H.B. 5676 would revise procedures concerning families with service needs in order to promptly provide these at-risk children and their families with more appropriate treatment options and services. H.B. 5676 would create a **front-end, diversionary** approach to deal with at-risk FWSN youth. Currently, when an eligible authority figure files a FWSN complaint with a local Juvenile Court, the matter is immediately referred to the courts where a Juvenile Court judge rules on the complaint. **H.B. 5676** would require initial screening and assessment, followed by referral of the child to appropriate services. A probation officer would screen complaints and promptly direct the child and family to a suitable community-based or other service provider. If the service provider later determines that the child and child's family cannot benefit from its services, the probation officer will again review the case and either terminate the FWSN petition or refer the child and child's family to a family support center for additional services. If these services are not beneficial, as determined by the director of the family support center, then the probation officer will have the option of filing a formal FWSN petition with the Juvenile Court.

B. Staff-secure placement would be employed as a last resort, to be used only after community-based services have proven ineffective, and only after a child has refused to follow court orders and been deemed an imminent threat to himself/herself or others. These changes introduced by

[2] R. Loeber, D. Farrington, & D. Petechuk. "Child Delinquency: Early Intervention and Prevention," *Child Delinquency Bulletin*, May 2003. Available online at http://www.ncjrs.gov/html/ojjdp/186162/page1.html.

H.B. 5676 would comply with the letter and spirit of Act 05-250's requirement that a court first find that there is no less restrictive alternative appropriate to a child's and community's needs before ordering out-of-home placement or DCF commitment of a FWSN child.

C. Community-based service centers would provide many crucial services for these at-risk youth who currently are underserved due to a lack of treatment options. Status offender "systems" were first established in the 1960's to help parents, schools, and communities get their disobedient—but not delinquent—children back on track by providing treatment, counseling, and supervision. Most modern systems attempt to leverage the power and authority of the family court to compel behavioral change in a young person, but lack the alternative programs, services, or resources to help these kids and their families truly improve.[3] In Connecticut, while detention of these youth will no longer be an option after Act 05-250 becomes effective in less than six months, state-provided treatment and services remain largely unavailable for FWSN children—a category that includes over 900 of Connecticut's most at-risk youth.[4] The community-based family support centers proposed by **H.B. 5676** would initially screen and assess status-offending youth and then offer appropriate services based on individual needs and risk factors. Services would include 24-hour crisis intervention, short-term residences for those seeking temporary respite (e.g. from abuse), trauma and mental health treatment, mediation, social activities, and educational advocacy.

Connecticut's status offenders, like other high-risk youth and juvenile detainees, often lack access to adequate mental health services. The Governors' Mental Health Policy Council found that at least 62 percent of Connecticut's juvenile detainees suffered from mental health needs requiring treatment. According to national studies, as many as 20 percent of those involved in the juvenile system suffer from serious mental illnesses, such as psychotic disorders, ADD/ADHD, post-traumatic stress disorder, anxiety, and mood and conduct disorders.[5] Studies also indicate that between 50 and 75 percent of juvenile delinquents have both mental health disorders and substance abuse problems. A 1999 study by the Substance Abuse and Mental Health Services Administration demonstrated that youths with emotional and behavioral problems are more likely to abuse alcohol and drugs.[6]

These studies, while they relate specifically to juvenile delinquents and detainees rather than status offenders, are nonetheless highly relevant because status offenders include Connecticut's most at-risk youth. By proactively addressing this population's mental health issues, family needs, and other problems, Connecticut can prevent many of today's status offenders from becoming tomorrow's delinquents.

In a study aptly titled The 8% Solution, researchers found that 8% of youthful offenders commit 55% of the juvenile crime in Orange County, California. They further asserted that most of the "8%" can be identified before the age of 15 after just one or two referrals to law enforcement, and that they tend to exhibit characteristic difficulties with family and school, substance abuse problems, and antisocial behavior. **Connecticut would best serve its highest-risk youth, as well as statewide social and economic interests, by identifying these children early and then aggressively providing necessary services and support before they become the adult criminals of tomorrow**.

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[3] Tina Chiu and Sara Mogulscu. "Changing the Status Quo for Status Offenders: New York State's Efforts to Support Troubled Teens," Vera Institute of Justice Issue in Brief, 2004.
[4] As reported by the Families with Service Needs Advisory Board in February, 2007.
[5] Adelia Yee. "Mental Health Needs of Juvenile Offenders," National Conference of State Legislatures *LegisBrief*, Vol. 8, No. 32 (Aug/Sept. 2000).
[6] *Id.*

Female status offenders are particularly in need of support services that provide treatment for mental health and substance abuse, as well as for sexual and physical abuse. Female youth comprise 40% of the status offender population but are 170% more likely to be referred to juvenile court for status offenses than males.[7] They also have a higher risk of having mental, emotional, and substance-abuse problems during puberty. In previous testimony before the General Assembly, the Office of the Child Advocate noted that many status-offending girls suffer from severe depression and attempt suicide 3-5 times more often than boys. Many female status offenders are teen mothers and many more are fleeing sexual or other kinds of abuse. Gender-specific treatment programs provided through family support centers could help address these needs.

D. Providing children living in Families with Service Needs with community-based support services will help to reduce status offenses and prevent more serious delinquency. Connecticut can learn from other states' evidence-based and cost-effective approaches to working with status offenders. Some jurisdictions—such as Cook County, IL (Chicago) and Maricopa County, AZ (Phoenix)—have been working for years to develop effective crisis response interventions, partnerships with community-based providers, and alternatives to detention and custodial placement to better serve status offenders and their families. Local reformers in New York State have diverted status-offending youth from the court system and into supportive services in the community and developed community-based alternatives to detention and placement.[8]

In response to a 2001 legislative change in New York State's status offender laws allowing for the classification of sixteen- and seventeen- year-old youth as status offenders, New York City's Department of Probation and the Administration of Children's Services (ACS)—the two agencies primarily responsible for administering and funding the city's status offender system—collaborated to design and implement an innovative approach to the intake and assessment of status offenders—the Family Assessment Program (FAP). Launched in December 2002, FAP seeks to quickly connect status-offending children and their families to appropriate services in the community, reduce the city's reliance on family court, and decrease the number of out-of-home placements for status offenders. By placing family assessment and service delivery at the beginning of the status offender intake process, FAP is conserving resources at subsequent stages of the process, resulting in significant financial and administrative savings for the city. FAP has freed up the probation system to concentrate on its juvenile delinquency caseload. It has reduced referrals to court, thus conserving judicial resources. And, with fewer cases in court, fewer youth are being placed out of the home—the most expensive and often least effective outcome for families with service needs.

A study commissioned by the city two-and-a-half years after it began implementing the FAP program revealed that the city was already reaping significant benefits from the program: families were receiving assistance more immediately; probation intakes had dropped by more than 80%; court referrals were down by more than half as youth were being informally connected to services without the need for a family court order; and out of home remands and placements for status offending youth—the most expensive and often least effect service option—were reduced by more than 20%. All of this progress

[7] M. Chesney-Lind & R.G. Sheldon (1998). "Girls,delinquency, and juvenile justice." Belmont CA: Wadsworth.
[8] Tina Chiu and Sara Mogulscu, "Changing the Status Quo for Status Offenders: New York State's Efforts to Support Troubled Teens," Vera Institute of Justice Issue in Brief, 2004, at 1-3.

occurred despite the fact that the number of youth eligible for status offender diversion increased dramatically with the introduction of 16- and 17-year-old youth into the system.[9]

Albany County, New York similarly has been restructuring youth services countywide. The county created and implemented the Juvenile Release under Supervision (JRUS) program in September 2003 to provide a credible, community-based alternative to detention for some status offending youth. JRUS provides intensive supervision and services to youth who previously would have been remanded to detention. Specialized probation officers provide daily contact with teens supervised under JRUS, and youth and families in the program are referred to necessary services such as mediation, respite care, or parent support groups. After ten months of the program's operation, 82% of all youth enrolled in the program completed it without being remanded to detention. Since the introduction of JRUS, county expenditures on non-secure detention have decreased by an estimated $50,000 annually.[10]

Onondaga County, New York, which includes the city of Syracuse, has long operated a number of community-based alternatives for status offenders to reduce their involvement with the juvenile justice system. Its PRISM program, for example, provides each adolescent with a comprehensive treatment plan that includes services such as individual therapy, family counseling, drug or alcohol treatment, pro-social skills instruction, and aggression replacement therapy. In 2002, local official incorporated the evidence-based program Family Function Therapy (FFT) to offer an intensive level of services to the most troubled families. By relying on community-based alternatives to placement, the county has dramatically reduced the number of youth placed in secure facilities by 95 percent--from 67 cases in 1995 to just 5 in 2003.[11]

Connecticut's statewide provision of services to FWSN youth through community-based support centers has significant potential to reduce future delinquency, giving status offenders the chance to succeed at home and in their schools and communities.

II. ACCY also strongly urges the passage of three related bills under consideration.

H.B. 1457, An Act Concerning Consensual Sexual Activity between Adolescents Close in Age to Each Other, if passed, will provide that consensual sexual activity between young persons close in age is not a criminal offense. Under the current statute, consensual sexual activity between a 15-year-old and 17-year-old would result in criminal liability for the 17-year-old individual.

H.B. 6670, An Act Concerning the Standards for Defining a Family with Service Needs with Respect to Juvenile Matters, would amend the definition of FWSN with respect to juvenile matters to ensure that the needs of at-risk children are appropriately served by the new procedures and programs that **H.B. 5676** would create.

Consistent with proposed bill **H.B. 1457**, **H.B. 6670** would remove youths 13 years of age or older who have consensual sex with youths within two years of their age from the category of children of families with service needs. It would also exclude the families of children who engage in "immoral or indecent conduct" from this classification.

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[9] Claire Shubik and Ajay Khashu, "A Study of New York City's Family Assessment Program," Vera Institute of Justice, 2005.
[10] *Id.* at 6-7.
[11] *Id.* at 7-8.

Sexuality "is a vital aspect of teens' lives."[12] While sexual activity is associated with many risks, including sexually transmitted diseases and teen pregnancy, **education – and not criminalization – is the best policy toward encouraging safe and responsible sexual behavior among adolescents.** Despite the fact that both young men and young women are maturing faster physically than previous generations,[13] the proportion of adolescents reporting sexual intercourse decreased substantially from 1991 to 2001.[14] These youths attributed their abstinence to having made the conscious decision to avoid sex and not being emotionally prepared for sexual intercourse. It seems that social mores and education are doing an effective job of discouraging intercourse.

Laws that criminalize sexual activity between consenting adolescents are unnecessary and may also be counterproductive. The Canadian AIDS Society has stated that "increasing the age of consent could result in young people being more secretive about their sexual practices and not seeking out the information they need. This will place youth at an increased risk of contracting HIV and other sexually transmitted infections."[15]

The movement toward reforming age of consent laws has existed for many years. In 1974, the British Sexual Law Reform Society concluded that the statutory presumption that minors lack the ability to consent to sexual activity (no matter what evidence was provided to the contrary) was a "legal fiction."[16] Today, **close in age exceptions to age of consent laws exist in many states**, including Delaware (where adolescents 12-years-old and up may legally engage in sexual activity with another adolescent no more than four years their senior),[17] Kentucky (where persons 14 years of age or older may engage in sexual activity with persons no more than five years their senior),[18] Missouri (permitting those 14-years-old or older to engage in sexual activity with youth up to the age of 21 without criminal sanction),[19] New Hampshire (providing for a three-year age difference between sexual partners one of whom is aged 13-16).[20] New York (providing an affirmative defense for defendants four years older, or less, than the "victim"),[21] North Carolina (providing a six-year buffer for sexual activity with 13-15-year-olds),[22] Texas (providing a three-year window of consent for those under 17 years of age),[23] and Washington (which exempts consensual sexual activity between those under the age of 16 with a partner five years older or less from prosecution).[24]

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[12] Lynn Ponton (2000). *The Sex Lives of Teenagers* (New York: Dutton), p. 2..
[13] Id, at 3.
[14] Alexandra Hall. "The Mating Habits of the Suburban High School Teenager". *Boston Magazine* (May 2003) (showing a decrease in high school seniors reporting having had sexual intercourse, from 54% to 46%).
[15] http://www.cdnaids.ca/web/position.nsf/pages/cas-pp-0298.
[16] A. Grey (1997). Speaking Out: Writings on Sex, Law, Politics and Society 1954-1995, p. 45 (London: Cassell).
[17] Delaware Criminal Code, Section 11, Chapter 5.II.A §762(d).
[18] Kentucky Revised Statute Section 510.130(b).
[19] RSMo 566.032, RSMo 566.034, RSMo 566.062 and RSMo 566.064.
[20] NH Criminal code Section 632-A:3 and Section 632-A:2.
[21] New York Penal Code Section 130.25.
[22] North Carolina General Statutes §14-27.2, 14-27.4 & 14-27.7A.
[23] Texas Penal Code Section 21.11(b).
[24] RCW 9A.44.096.

As Judith Levine has written, "Legally designating a class of people categorically unable to consent to sexual relations is not the best way to protect children… Criminal law, which must draw unambiguous lines, is not the proper place to adjudicate family conflicts over youngsters' sexuality."[25]

H.B. 902, An Act Concerning Youth Who Run Away, will permit courts to order youth in crisis to return to the custody of their parents or guardians. **H.B. 902** would provide parents and courts with the authority to order 16- and 17-year-olds who have run away *without just cause* to return home. As the law currently stands, 16- and 17-year-olds fall into a strange loophole in the law whereby courts and police have no authority to return these no-longer-children but not-yet-adults home against their will. A January 2004 article from *Governing* explains:

> Connecticut is one of three states in the country where 16- and 17-year-olds are referred automatically to adult court… But running away from home isn't a crime under state law, merely a "status offense," and adult court doesn't deal with those… The "Youth in Crisis" law… clearly allowed any runaway to be referred to juvenile court, but since that court's jurisdiction extended only through age 15, anything a judge did there would be only a suggestion, not a ruling.[26]

The article continues to recount how a standoff with one 16-year-old girl runaway, Makayla Korpinen, ended in her fatal overdose on ecstasy, despite the fact that police and her family knew where she was and had been urging her to return home – with no legal authority, and, in the end, to no avail.

Subsequent efforts to reform the law have not yet accomplished what **H.B. 902** seeks to achieve – giving judges the power to compel reluctant 16- and 17-year-olds to return to their parents' care and thereby providing a legal avenue to extricate older runaways from potentially dangerous and destructive situations. As summarized in a 2006 Office of Legislative Research Report,

> "Running away or disregarding parental authority are status offenses (i. e. misbehavior that would not be unlawful if committed by adults), not crimes. Parents can (1) report this situation to their local police department, (2) file a court complaint asking the judge to designate the child a "Youth in Crisis," or (3) both. If they seek court intervention, the judge can order, among other things, that the child return home… **But courts have limited authority to enforce these orders**" (emphasis added).[27]

According to the Connecticut General Statutes (Sec. 46b-121h), the goals of the juvenile justice system include "[r]etain[ing] and support juveniles within their homes whenever possible and appropriate," "[i]nclud[ing] the juvenile's family in the case management plan," and "[p]rovid[ing] follow-up… services to juveniles who are returned to their families or communities." **To achieve these goals it is important that judicial orders directing 16- and 17-year-old runaways to return home be *legally enforceable*.** To be sure, judges retain discretion over whether or not to exercise this power, and

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[25] Judith Levine (2002). Harmful to Minors: The Perils of Protecting Children from Sex. (Minneapolis: University of Minnesota Press), p. 88.
[26] Sarah Wheaton. "Law Enforcement: An Awkward Age," *Governing* (Congressional Quarterly, Inc.: Jan 2004). Available at http://governing.com/textbook/runaways.htm.
[27] Susan Price. "Parents' Options When 16- or 17-Year-Olds Are Beyond Their Control" (Office of Legislative Research, August 1, 2006). Available at http://search.cga.state.ct.us/dtsearch_olr.html.

exceptions are made for situations in which youths have run away with cause (e.g. circumstances involving parental abuse or neglect).

Community-based programs are more cost-effective than previously used detention measures. When considering the potential costs of operating the proposed service centers, it is essential to remember that the costs of detention are significantly higher than is the provision of services, and that the money saved by the elimination of detention for status offenders in Public Act 05-250 will more than offset the costs of the treatment programs that **H.B. 5676** proposes. According to figures supplied by the Court Support Services Division and referenced by the Families with Service Needs Advisory Board in February, 2007, the operation of a community-based service center would cost, per child, at least 75% less than detention and at least 150% less than a residential program, with potential savings of thousands of dollars per child. The experiences of other states show that there are also substantial longer-term savings to be achieved as recidivism and delinquent behavior are reduced by more appropriate treatment-oriented responses to these youth and their families.

For the foregoing reasons, we urge you to approve **H.B. 5676, An Act Concerning Children of Families with Service Needs, H.B. 6670, An Act Concerning the Standards for Defining a Family with Service Needs with Respect to Juvenile Matters, H.B. 1457, An Act Concerning Consensual Sexual Activity Between Adolescents? Close in Age to Each Other, H.B. 902, An Act Concerning Youth Who Run Away.**

Thank you for your time and consideration