Testimony in Support of
H.B. 5546: An Act Concerning Sentence Modification for Juveniles; and
S.B. 417: An Act Concerning Juvenile Matters and Permanent Guardianships

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Judiciary Committee
March 23, 2012

Senator Coleman, Representative Fox, distinguished members of the Judiciary Committee,

We are testifying today on behalf of Connecticut Voices for Children, a research-based public education and advocacy organization that works statewide to promote the well-being of Connecticut's children, youth, and families.

We support HB 5546, *An Act Concerning Sentence Modification for Juveniles,* which takes steps towards the creation of a process that establishes a "second look" at long prison sentences for juveniles after they have served a portion of their time.

We also support the provisions in **SB 417, *An Act Concerning Juvenile Matters and Permanent Guardianships*,** which change the competency determination and transfer procedures for juveniles to better reflect the needs and rights of children and young adults.

With the spread of magnetic resonance imaging (MRI) and exhaustive studies conducted over the last two decades, a scientific consensus has emerged around the fact that children's brains are not fully developed until far into their twenties, and that the last features to develop are those that control judgment, decision-making, and proper understanding of the consequence of actions.[1] This information about teenage brain development ought to have significant impact on how we view young people's culpability, competency, and potential for rehabilitation, and therefore how the courts try and sentence juveniles.

The US Supreme Court has recognized this importance, noting "[j]uveniles' susceptibility to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult'" as justification for striking down the juvenile death penalty.[2] The Supreme Court reaffirmed this position in 2010, striking down life sentences for juveniles for all crimes other than homicide because, since "juveniles have lessened culpability they are less deserving of the most serious forms of punishment" and therefore the state "must impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation."[3] This week, the Supreme Court heard testimony on two cases regarding whether to ban life-without-parole sentences for juveniles in all cases.[4]

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[1] *See, for example,* Kendall Powell, "Neurodevelopment: How Does the Teenage Brain Work?," *Nature* 442 (24 August 2006): 865-867, available at: http://www.nature.com/nature/journal/v442/n7105/pdf/442865a.pdf. *See also,* Jay M. Giedd, "The Teen Brain: Insights from Neuroimaging," *Journal of Adolescent Health* 42 (2008): 335-343, available at: http://brainmind.umin.jp/Jay_2.pdf *and* Debra Bradley Ruder, "The Teen Brain," *Harvard Magazine*, (September – October 2008) available at: http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf

[2] *Roper v. Simmons*, 543 U.S. 551 (2005)

[3] *Graham v. Florida*, No. 08-7412, Supreme Court of the U.S. May 17, 2010

[4] *Miller v. Alabama*, No. 10-9646, Supreme Court of the U.S. Argued March 23, 2012 and *Jackson v. Hobbs*, No. 10-9647, Supreme Court of the U.S. Argued March 20, 2012.

The two bills under consideration here today move Connecticut law and practice forward towards better reflecting the decreased culpability, immaturity, and greater possibility for rehabilitation of young people.

Even after the recent Raise the Age legislation, juveniles as young as 14 are still automatically tried as adults if they commit certain crimes, and can be subject to adult sentences of 50 years or more without a chance of parole. **We support HB 5546, *An Act Concerning Sentence Modification for Juveniles*,** which creates a process to give these young offenders a chance for a second look at their sentences after they have served a significant period and had the chance to prove increased maturity and rehabilitation. If passed, we would urge the task force established pursuant to the bill to adopt the following recommendations in their report:

- Require the appointment of counsel for the petitioner;
- Allow sentence review for all juveniles regardless of offense committed;
- Provide parties a reasonable opportunity to present testimony;
- Allow petitioners more than one opportunity for a hearing;
- Include a focus on rehabilitation of the individual when establishing standards for granting a sentence reduction;
- Establish ten years as the period of imprisonment such person should serve before being eligible to petition for sentence reduction.

We also support a number of provisions in **SB 417, *An Act Concerning Juvenile Matters and Permanent Guardianships*,** including those which set at seven the age of capacity, establish a clear process for determining the competency of juveniles to stand trial, and improves transfer procedures for juveniles.

Though prosecution of children under seven is infrequent, when it does occur, arrest and appearance in court are highly traumatic for these very young children, and they are unlikely to understand what is happening. Setting capacity at age seven will keep our youngest children out of court and instead focus on connecting them and their families with services.

Despite ample evidence of neurological differences between children, teenagers, and adults, Connecticut currently determines juvenile competency using the adult competency statute.[5] SB 417 would improve this process by requiring that at least one of the evaluators have experience in child and adolescent psychology. It also provides the Court more options in the case that child is determined to be incompetent, allowing them to pursue less restrictive placements than commitment to the Department of Children and Families (which is the de-facto only option under the present statutes).[6]

[5] Conn. Gen. Stat. Sec. 54-56d

[6] *See*, Conn. Gen. Stat. Sec. 54-56d(m), which states that "If at any time the court determines that there is not a substantial probability that the defendant will attain competency within the period of treatment allowed by this section, or if at the end of such period the court finds that the defendant is still not competent, the court shall consider any recommendation made by the examiners pursuant to subsection (d) of this section and any opinion submitted by the treatment facility pursuant to subparagraph (C) of subsection (j) of this section regarding eligibility for, and the appropriateness of, civil commitment to a hospital for psychiatric disabilities and shall either release the defendant from custody or order the defendant placed in the custody of the Commissioner of Mental Health and Addiction Services, the Commissioner of Children and Families or the Commissioner of Developmental Services."

Connecticut law currently requires that juveniles accused of committing certain crimes be automatically transferred to adult court or transferred at the discretion of the prosecutor or the court, in both cases without hearings. Only once in adult court may they petition to be transferred back to juvenile court.[7] Consistent with current practice, SB 417 would move class B felonies from the automatic transfer to discretionary transfer provisions. Additionally, SB 417 would change the transfer hearings process such that for offenses that fall within the discretionary transfer category, hearings would occur in juvenile court prior to transfer to adult court. This allows a hearing to take place before judges who are more familiar with adolescent issues and development and the range of services available to youth through the juvenile courts. It also promotes due process by allowing the accused youth to maintain his right to juvenile status subject to a hearing, rather than revoking the status and reinstating it later. Finally, SB 417 establishes clear criteria upon which the transfer determination should be based.

We believe these provisions of SB 417 put Connecticut's laws more firmly in line with the scientific research on adolescent brain development, protect the rights of juveniles, and promote the wellbeing of children involved in the court system, and therefore urge this committee to report favorably on the bill.

Because the Department of Mental Health and Addition Services does not provide services to persons under 18, the Department of Children and Families becomes the only option for children without developmental disabilities.

[7] *See,* Conn. Gen. Stat. Sec. 46b-127 (a), which states, "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, 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 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…A state's attorney may, not later than ten working days 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." *See also,* Conn. Gen. Stat. Sec. 46b-127(b), which states, "Upon motion of a prosecutorial official and order of the court, the case of any child charged with the commission of a class C or D felony or an unclassified felony shall be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court, provided such offense was committed after such child attained the age of fourteen years and the court finds ex parte that there is probable cause to believe the child has committed the act for which he is charged."