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Judiciary Committee Public Hearing – March 16, 2012

RAISED BILL 5288, AN ACT CONCERNING CHILDREN OF INCARCERATED WOMEN

The Office of Chief Public Defender strongly supports ***Raised Bill 5288, An Act Concerning Children of Incarcerated Women*** and believes that the scope of the proposal should be broadened to include a more comprehensive look at the issue of how incarceration, recidivism and reentry issues impact pregnant and parenting women. This proposal would require the Department of Correction to examine the feasibility of establishing a nursery facility at the York Correctional Institution (YCI) in Niantic. This bill represents a start, a step in the right direction, as Connecticut recognizes that the incarceration of a pregnant woman and/or custodial parent has wide ranging implications. A study done by the Annie E. Casey Foundation showed that the number of incarcerated women has grown 50% since 1990[1]. The study showed that 75% of incarcerated women are mothers and approximately 66% of them have children under the age of 18. The Office of Chief Public Defender believes that the issue involves more than just focusing on maintaining custody and requires a broad examination of how the criminal justice system deals with accused people and their families.

As Connecticut tries to move towards a criminal justice system focused on reentry and successful outcomes, it is important to examine the support given to pregnant inmates and inmates who are the primary caretakers for minor children, including both mothers and custodial fathers. A parent's ability to successfully reenter the community and reunify with their family has major implications. Research indicates that stable family connections are a key factor in

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[1] Exploring Development in the Field and Opportunities for Growth, ***A Report Prepared for the Annie E. Casey Foundation,*** Stacey M. Bouchet, Ph.D. January 2008

preventing recidivism and relapse after release from custody[2]. Children of incarcerated parents have more difficulty in school, more issues with their peers and are more likely to be involved with the juvenile justice system than other children.[3] This proposal should be expanded to include the Department of Children and Families (DCF), the Department of Social Services (DSS) and other state and private partners who work with children and families.

An informal February 10, 2012, "point in time" study performed by the Connecticut Department of Children and Families indicated that of the 1084 women incarcerated at York CI on that date, 129 women had open DCF cases. There were 453 additional women who had past involvement with DCF. Of those 453, DCF indicated that there were 200 children impacted by the termination of parental rights. There was no information on what happened to the children of those women, but 2007 statistics show that in Connecticut, 16% of children who are subject to termination of the biological parent's rights ever find a permanent placement.[4] The rest remain in the care of DCF.

It is imperative that state policymakers look for a better way to keep families together. The 1997 federal Adoption and Safe Families Act, requires states to file a petition to terminate parental rights on behalf of any child who has been abandoned or who has been in foster care for 15 of the most recent 22 months. The law provides exceptions to this requirement in the following cases: 1) at the option of the state, the child is being cared for by a relative, 2) the state has documented a compelling reason for determining that termination of parental rights would not be in the child's best interest, or 3) the state has not provided the child's family with services that the state deems necessary for the safe return of the child to his or her home.[5] Although the Adoption and Safe Families Act does not explicitly require a termination of parental rights filing against incarcerated parents, the 15 of 22 months provision technically would apply in cases where reunification is delayed beyond 15 months due to a parent's incarceration, even if the parent is receiving services to facilitate reunification. The Department of Correction (DOC) should study the feasibility of keeping children and parents together and the ability to place children with an incarcerated parent would help. DOC will need to work with the Department of DCF, the DSS and the Judicial Branch, and non-profits to study how each agency's or Branch's mission and policies impacts the families of the incarcerated.

This is the time for state agencies and non-profits to work together to remove barriers to family reunification and successful reentry into the community after incarceration. The report

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[2] Visher and Courtney, 2006; Lavigne, Visher, and Castro, 2004).

[3] ***The Effects of Parental Incarceration on Children: Needs and Responsive Services*** Report of the Advisory Committee, December 2011, General Assembly of the Commonwealth of Pennsylvania JOINT STATE GOVERNMENT COMMISSION

[4] See www.fosteringconnections.org

[5] 42 USC 1305

contemplated in this Raised Bill should also include a requirement that there be an examination of how DCF and DOC work together to establish best practice policies for pregnant and parenting inmates, including the availability of services such as parenting classes, housing assistance, and child parent visiting. The impact of parental incarceration on the outcomes for children involved with DCF could also be studied and include a review of the following:

- How many inmates entering DOC have been identified as parents?
- How often was DCF already involved?
- How often did DOC make a referral to DCF?
- What were the outcomes for those children that were referred?
  - How many of these children were placed with family members through a temporary transfer of guardianship?
  - How many of these children had termination of parental rights petitions instituted while the parent was incarcerated?
  - How many of those termination petitions were granted?
  - How many children were reunified with the incarcerated parent?

Other states are studying the impacts of incarcerated parents as they struggle with the issues of high recidivism rates and shrinking child welfare budgets. Task forces, that have either completed or are continuing their work focusing on these issues have been created in many states and have either completed or are continuing their work in the area. Illinois (2002), Hawaii (2005 extended through 2012), Alabama (2010) and Oklahoma (2011) are a few examples. California and Washington have enacted legislation creating diversionary programs and special sentencing alternatives designed to address the unique issues associated with incarcerated parents. Similar legislative proposals are being considered in many other states.

It is also noteworthy that Connecticut's Sentencing Commission recently expressed awareness of the importance of this issue. The Commission's 2011 annual report contains a proposal that research be undertaken by the Commission to:

> *"Study the impact of supportive social ties - including family ties - on recidivism and other indicators of harm and success. Compare social-tie effects of incarcerated vs. non-incarcerated offenders, and trace the granular effects of incarceration on families and other sources of social support. Examine current DOC practices that support or weaken social ties, with a view toward security considerations. Also review the data of the impact of conjugal and full family visits on incarcerated offenders."*

There is a clear need that those who work in the criminal justice system be made more aware of the impact incarceration has on the families of the accused. Collateral consequences of conviction are not well understood or considered by the courts and the prosecution at this time. It is critical that everyone understand how convictions and even short periods of incarceration needlessly marginalize large segments of our society, especially when incarceration disrupts family integrity. Criminal court lawyers and judges may not always be aware that a collateral consequence of a prison sentence is the termination of parental rights, even in cases where the crime does not involve children. Across the country, jurisdictions are relying on family impact

statements, studies prepared by social workers that investigate and assess the emotional, financial and legal impact of the incarceration of a parent on his or her family.

As a result, the Office of Chief Public Defender has prepared a proposal requiring family impact statements to be prepared by our office and considered by the court in cases where a parent is being sentenced and incarceration is being considered. (See attached Legislative Proposal) **At the very least, the report required by Raised Bill 5288 should include recommendations that the group study the possibility of requiring family impact statements for pregnant or parenting women and fathers who are primary custodial parents for minor children.**

Such proposal would allow the courts to take into consideration the impact to a defendant's family should the defendant be facing a term of incarceration. This Office's proposal seeks to educate the court regarding the collateral consequences of incarceration for a parent who is a primary or sole caretaker of minor children. This Office's proposal would allow defense counsel to submit a "family impact" statement or study for the court's consideration of a community alternative to incarceration for non-violent misdemeanors and felonies. The study would inform the court of both the economic and emotional impact of a term of incarceration on the minor children which could include: loss of housing, loss of employment, commitment of the children to DCF foster care, loss of services for a special needs child, separation of sibling groups, and possible termination of parental rights. The study would also propose an alternative sentencing plan that would provide essential community support services as well as monitoring by probation.

National research strongly indicates that the disruption of family integrity is one of the reasons that offenders recidivate and children of prisoners enter the criminal justice system. The Division of Public Defender Services has trained all staff on collateral consequences for over a decade, but only recently has added training for criminal attorneys on the termination of parental rights due to the implications of the federal Adoption and Safe Families Act.

The Office of Chief Public Defender, with our expanded Agency mission that includes all child protection representation, believes that this is an opportune time to discuss such reforms as the majority of Commissioners and Agency Heads agree that strengthening families is important and are seeking opportunities for community alternatives to incarceration. This Office's Family Impact Proposal is unique as it anticipates that family support services from non-profits would be as important as monitoring by probation. This Office urges this Committee to vote favorably on Raised Bill 5288 and consider amending it to include this Agency's Family Impact Proposal.

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2012 Legislative Proposal

AN ACT CONCERNING FAMILY IMPACT STATEMENTS

Purpose: *This proposal would 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.*

(NEW)(Effective October 1, 2012) THE COURT SHALL CONSIDER A FAMILY IMPACT STATEMENT SUBMITTED BY THE DEFENSE IN ANY CASE IN WHICH THE DEFENDANT IS FACING A SENTENCE OF INCARCERATION AND THE DEFENDANT HAS PHYSICAL CUSTODY OF HIS/HER MINOR CHILDREN OR IS THE LEGAL GUARDIAN OF A MINOR CHILD WITH PHYSICAL CUSTODY. THE FAMILY IMPACT STATEMENT WILL ASSESS THE IMPACT UPON THE MINOR CHILDREN AND THE NEEDS OF THE FAMILY SHOULD THE DEFENDANT BE SENTENCED TO INCARCERATION AND CONSIDER FACTORS RELATED TO THE FINANCIAL IMPACT TO THE FAMILY, THE RELATIONSHIP BETWEEN THE PARENT AND THE CHILD, COMMUNITY AND FAMILY SUPPORT, THE PARENT'S EMPLOYMENT HISTORY AND AVAILABLE EMPLOYMENT OPPORTUNITIES, COMMUNITY PROGRAM AND COUNSELING THAT IS AVAILABLE TO ASSIST IN THE REHABILITATION OF THE PARENT IF NOT INCARCERATED, THE SERIOUSNESS OF THE CRIME AND THE PARENT'S CRIMINAL HISTORY.