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R.B. 5546, An Act Concerning Sentence Modification for Juveniles

The Office of Chief Public Defender supports *R.B. 5546, An Act Concerning Sentence Modification for Juveniles*. As drafted, the bill would require the Connecticut Sentencing Commission to continue its work and agree upon whether to recommend a process by which a person who committed an offense as a juvenile and who had been convicted and sentenced as an adult can apply for a release after serving a portion of the sentence. As a member of the Connecticut Sentencing Commission, its Legislative Subcommittee and the smaller working group discussed in the Commission's testimony submitted today, this office was very involved in the detailed discussion that took place. This Office agrees with all of the testimony as submitted by the Commission today. In light of the recent U.S. Supreme Court decision in *Graham v. Florida*, 560 U. S. ____ (2010), (see also, *Roper v. Simmons*, 543 U. S. 551 (2005)) and scientific evidence regarding brain development, this Office totally supports moving forward with the discussions as contemplated by this Raised Bill.

The Commission permitted detailed discussions on the process to a group which included this Office, the Chairman of the Board of Pardons and Parole, the Chief State's Attorney, the Victim Advocate and a member of the Connecticut Criminal Defense Lawyers Association. Each of the areas proposed for future review and discussion contained in subsection (b) of Section 1 of the Raised Bill were discussed in great detail

through the course of several meetings. As a result, this Office indicated its position on each as follows:

1. *Whether the proceedings should be before the superior court, the Board of Pardons and Paroles or other agency:*

Initially, this Office was of the opinion that such hearings should be before the court. However, after much discussion, this Office believed that a meaningful hearing could be had before the Board of Pardon and Parole.

If before a Court - Public defenders, prosecutors and judges are all already at the court locations. As a result, counsel could be appointed if the person was indigent. In addition, it may be more convenient for persons to attend a hearing if it was located at the location where the sentencing took place. However, at the hearing for a sentence modification, in order to satisfy the meaningful review as contemplated by "Graham", evidence would need to be prepared and presented. Such might include documentary evidence or witness testimony. Such a hearing may also be adversarial in nature as the remedy sought would be modification of the sentence imposed by the court. The prosecutor would represent the state. The victim could also be present and speak at the hearing. After the hearing, the court would make a determination as to whether the person is eligible for parole consideration, modify the person's sentence by decreasing it, or releasing the person on parole or probation.

If the court does not modify the sentence and/or release the person on probation but makes a determination that the person is eligible for parole, the person would be able to apply to the Board of Pardons and Parole for a hearing to determine whether he/she was suitable to be released on parole. Whether this second hearing may be somewhat duplicative is a question. If so, the duplicative process would impact not only on the financial resources of the criminal justice system but also the victim who is confronted with attendance at two such hearings.

If before the Board of Pardons and Parole - Assume there was no court hearing. Assume that the person is eligible for parole by law. The person could apply to the Board of Pardons and Parole and it would be the Board which would determine whether the person met the criteria of suitability for release on parole. Although not an adversarial hearing, per se, the person would still have the right to counsel. If indigent, counsel could still be appointed. The parties would have the right and opportunity to present documents and reports to the Board. Counsel would be permitted to be present to answer questions.

It is important that passage of legislation that would make a person convicted of an offense committed as a juvenile but convicted in adult court merely eligible for parole does not provide the authority for the person to be released on parole. The question would remain as to whether the person was suitable for release on parole after consideration of a number of factors including those articulated in the Graham decision.

2. *Whether counsel should be appointed for the petitioner:*

This Office absolutely believes that Counsel should be appointed for a person, if indigent, regardless of where the hearing is held. There could be issues pertaining to illiteracy and/or mental health issues that are present that might hinder a person's ability to proceed. In addition, counsel would be in the best position to obtain the information necessary to go forward at the appropriate time.

3. *Whether such release should be applicable to any offense committed by a person under the age of eighteen:*

This Office supports the concept that release should be applicable to any offense that a person committed as a juvenile and convicted as an adult.

4. *Whether parties should have a reasonable opportunity to present testimony:*

This Office supports the concept that the parties have a reasonable opportunity to present testimony through written or oral testimony regardless of where the hearing is. If at the court, the witness can testify live at the bequest of the party. At the parole hearing, the Board has the discretion to ask for oral testimony. The parties however, are not precluded from presenting information by way of a report or affidavit.

5. *Whether the petitioner should have more than one opportunity for a hearing:*

Yes. It is possible that additional information could come to exist due to scientific advancements or changes in the law.

6. *The scope of such hearings:*

Referring to the response to (1) above, this Office believes that the hearings be as comprehensive as possible to afford the greatest opportunity to the parties to present the evidence necessary.

In conclusion, this Office supports the future review and deliberation of the Commission and is thankful for the opportunity to serve on it.