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**Testimony before the Judiciary Committee**

**March 3, 2014**

**Support for HB 5221**

Dear Senator Coleman, Representative Fox, and members of the Judiciary Committee:

We submit this testimony in support of HB 5221, An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Lengthy Sentences for Crimes Committed by a Child or Youth and the Sentencing of a Child or Youth Convicted of Certain Felony Offenses.

We have been working with other students, as well as professors, in Quinnipiac's Civil Justice Clinic, in efforts to reform juvenile sentencing practices in Connecticut. Joint efforts with the Yale Law School's Lowenstein Clinic produced a report entitled *Youth Matters: A Second Look for Connecticut's Children Serving Long Prison Sentences*. The report draws upon testimony presented to the Connecticut Sentencing Commission as well as interviews that students conducted with nine inmates who are currently serving sentences ranging from 20 to more than 60 years for crimes that occurred when they were children. This report incorporates the voices of these individuals. Many had childhoods of poverty, abuse, and neglect. Yet we found that these men and women, who have spent in some cases more than half their lives in prison, have become mature, thoughtful, and caring adults. They are tutoring fellow inmates and serving as certified nursing aids and hospice volunteers, and they are capable of making positive contributions to their communities.

**Along with Quinnipiac's Civil Justice Clinic, we support HB 5221**, which provides a "second look" for children serving lengthy prison sentences. This bill does not guarantee release, but rather the chance for a hearing after the individual has served a substantial portion of her sentence. The purpose of this hearing is for the parole board to determine whether an individual has truly rehabilitated and can be safely released into the community.

**Children Disadvantaged in an Adult Criminal Justice System**

Under current Connecticut law, children ages fourteen to seventeen charged with certain serious felonies are automatically transferred to adult court, treated as adults throughout the criminal process, and subject to adult penalties, including mandatory minimum sentences and parole ineligibility for certain offenses.

The U.S. Supreme Court has recognized that "the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings."<sup>1</sup> The most significant disadvantages faced by youth lie with their inability to communicate effectively with their counsel and aid in their defense, their flawed decisionmaking ability, and the role that stress, emotions and their peers play in the decisionmaking process.

It is well-documented that adolescents, and especially those with literacy or other learning disabilities, find it difficult to understand the criminal justice system. Research into juvenile decisionmaking in and outside the context of court proceedings confirms that while adolescents often properly identify the

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<sup>1</sup> Graham v. Florida, 560 U.S. 48, 78 (2010).

existence of risk, they underestimate long-term bad outcomes and overestimate good outcomes. Adolescents have difficulty weighing multiple factors and are more likely than adults to let emotion, stress, or peers affect decisions.<sup>2</sup> An adolescent is significantly disadvantaged in plea negotiations because of these factors. Indeed, a juvenile may end up serving a longer sentence than a more culpable adult because he or she rejects a plea offer and takes the case to trial.<sup>3</sup> The consequences of such decisions can be severe: the sentence received after a trial may be decades longer than the plea offer. Or, a juvenile may accept a plea agreement without understanding the consequences.

Adolescents often don't trust their own lawyers and do not communicate effectively with counsel. Indeed, the Supreme Court recognized that this "reluctance to trust defense counsel" puts adolescents at a disadvantage in navigating the criminal justice system.<sup>4</sup> Adolescents may lack the perspective to help counsel identify mitigating information, as they may perceive their own childhood experience as "normal" or "okay" even if it is not.<sup>5</sup> Further, adolescents tend to tell lawyers what they think the lawyers want to hear.<sup>6</sup> Communication between a juvenile and his or her lawyer may be further hindered by undiagnosed language impairments or learning disabilities, which are four times more common among incarcerated children than in the general population.<sup>7</sup>

As the Supreme Court has recognized, the disadvantages that youth face in navigating a criminal justice system designed for adults weigh in favor of taking youth into account at the time of sentencing and allowing for a "second look" at these cases after a portion of the sentence is served. HB 5221 addresses these issues by requiring judges to consider youth-related factors at sentencing and providing parole eligibility for juveniles sentenced as adults.

### **History of Trauma Among Children Serving Lengthy Sentences**

Sometimes the root cause of the behavior that brings children into the criminal justice system starts with trauma brought on by pervasive violence during their childhoods or adolescence. But evidence shows that children and adolescents who have lived through trauma have the ability to overcome the obstacles it poses after receiving treatment. They can be rehabilitated.

A national survey of juveniles serving life-without-parole sentences shows that 80% witnessed violence in the home.<sup>8</sup> The vast majority of those surveyed perceived their neighborhoods to be unsafe, saw drugs sold openly in their neighborhoods, and witnessed violence in their neighborhoods on a weekly basis. Additionally, many were victims of abuse.

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<sup>2</sup> Steinberg, *A Behavior Scientist Looks at the Science of Adolescent Brain Development*, 72 *Brain and Cognition* 160, 162 (2010); Grisso, *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 23 *Law & Hum. Behav.* 333, 336 (2003); Halpern-Felsher & Cauffman, *Costs and Benefits of a Decision: Decision-making Competence in Adolescents and Adults*, 22 *J. Applied Dev. Psych.* 257, 264-70 (2001).

<sup>3</sup> Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 27, 32-33 (2000). Beyer's qualitative study of 17 juveniles provides a telling example of this naïve risk perception: When asked whether a young girl who was with her boyfriend when he killed a cab driver should take a plea bargain for 8 years instead of risking 25 years at trial, "every delinquent given this question said, without hesitation, 'I'd tell her to go to trial. She didn't do it.'" *Id.* at 29.

<sup>4</sup> *Graham v. Florida*, 560 U.S. 48, 78 (2010).

<sup>5</sup> Substance Abuse and Mental Health Services Administration, *Tips for Talking With and Helping Children and Youth Cope After a Disaster or Traumatic Event: A Guide for Parents, Caregivers, and Teachers* 2 (2013).

<sup>6</sup> Beyer, *Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases*, 15 *Crim. Just.* 27, 32-33 (2000).

<sup>7</sup> LaVigne & Van Rybroek, *Breakdown in the Language Zone: The Prevalence of Language Impairments Among Juvenile and Adult Offenders and Why it Matters*, 15 *U.C. Davis J. Juvenile L. & Policy* 37, 44 (2010); Davis, *Language Skills of Delinquent and Nondelinquent Adolescent Males*, 24 *J. Comm. Disorders* 251, 252 (1991); Mears & Aron, *Urban Institute Justice Policy Center, Addressing the Needs of Youth with Disabilities in the Juvenile Justice System: The Current State of Knowledge* ii (2003).

<sup>8</sup> The Sentencing Project, *The Lives of Juvenile Lifers: Findings from a National Survey*, March 2012.

In a 2012 report of the Attorney General's National Task Force on Violence on Children Exposed to Violence, experts say that exposure to violence causes major disruptions of the basic cognitive, emotional, and brain functioning that are essential for optimal development; these disruptions often leave children traumatized.<sup>9</sup> Chronic, pervasive, environmental violence, such as living in a violent home or neighborhood, can cause children and adolescents to develop symptoms such as anxiety, helplessness, numbness, difficulties concentrating, and a belief that they have no future.<sup>10</sup> Furthermore, they may become desensitized to threat and engage in high levels of risk-taking and dangerous activities—with the root cause being trauma brought on by exposure to domestic and community violence. When exposed to trauma or mistreatment, a youth may cope by resorting to indifference, defiance, or aggression to protect her or himself.<sup>11</sup> These protective behaviors, which experts describe as a means to survive emotionally or literally, can bring youth into the juvenile justice system.

What is important to this discussion is that children exposed to violence are not beyond help. Evidence-based interventions can help repair the emotional damage done to children as a result of exposure to violence and can put them on a course to being well-adjusted, law-abiding, and productive citizens.<sup>2</sup> One such treatment is cognitive behavioral therapy, or CBT, which has been shown to be particularly effective for youth in the juvenile justice system.<sup>12</sup> Currently, the Connecticut Department of Correction runs cognitive behavior therapy programs, as well as trauma group programs.<sup>13</sup> Programs like these have great potential to help youth serving lengthy adult sentences become healthy, and overcome the trauma they've experienced. Additional programs supporting anger management techniques and alternatives to violence are run at a number of other facilities.<sup>6</sup>

Many youth victimized by pervasive violence react in ways that can involve them in the juvenile or criminal justice systems. With the right treatment, these youth can become healthy and rehabilitated adults. HB 5221 allows them a "second look," so that they can be reevaluated after serving a substantial portion of their sentence. Release would be possible only if, after thorough review, the parole board determined that someone had truly rehabilitated and could be safely released.

HB 5221 also provides criteria for the sentencing court to consider, including, among others, (1) the child's history of trauma, abuse or neglect and (2) the child's history of mental illness or substance abuse. As described above, traumatic incidents can dramatically influence child or adolescent behaviors. Thus, consideration of these factors is imperative in ensuring that the youth receives the appropriate sentence.

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<sup>9</sup> U.S. Department of Justice, *Report of the Attorney General's National Task Force on Children Exposed to Violence* (December 2012).

<sup>10</sup> National Child Traumatic Stress Network Juvenile Justice Working Group, *Victimization and Juvenile Offending* (2004).

<sup>11</sup> National Center for Mental Health and Juvenile Justice, *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions* (June 2007).

<sup>12</sup> National Child Traumatic Stress Network Juvenile Justice Working Group, *Trauma-Focused Interventions for the Juvenile Justice System* (2004).

<sup>13</sup> State of Connecticut, Department of Corrections webpage, [www.ct.gov/doc](http://www.ct.gov/doc).

