CCDLA
"READY IN THE DEFENSE OF LIBERTY"
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March 12, 2014

Hon. Eric D. Coleman, Co-Chair
Hon. Gerald M. Fox, Co-Chair
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised Bills 259 and 361

Dear Chairmen Coleman and Fox:

CCDLA is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

Raised Bill 259 AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS

CCDLA supports Raised Bill 259. Raised Bill 259 would reasonably reduce the size of the school/day care centers/public housing enhanced penalty zone from 1,500 feet to 200 feet.

The essence of the proposed legislation is to decrease the size of a school/daycare/public housing zone from 1500 ft. to 200 ft., in order to effectively and rationally protect school aged children through appropriately tailored legislation. The unintended effect of the current 1500 ft. zone is to discriminate against urban citizens by punishing them more severely than suburban or rural individuals who commit the same offense resulting in the disparate treatment of similarly situated individuals. The disproportionate charging and convicting of urban individuals of a separate crime calling for a mandatory sentence running consecutive to the penalty for the underlying offense results from the 1500 ft. proximity of prohibited schools/residences from nearly any location in a city and the sale or possession of drugs does not directly or collaterally endanger any child. As proposed, Raise

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Bill No. 259 will sufficiently protect the intended children without causing prejudice to urban defendants allowing for the fair and equal administration of justice in Connecticut.

The purpose of enhanced penalties for selling or possessing drugs near schools and daycare centers was to penalize defendants who distribute to, or use drugs in front of, kids and near schools. If a defendant is charged with the enhanced penalty nearly anywhere he/she commits the offense in the city of New Haven, for instance, then what deterrence is there from doing it in the very locations we seek to protect? By restricting the enhanced penalty zone to the immediate areas sought to be protected, defendants are theoretically deterred from entering those identified zones with drugs recognizing that if caught in these areas an enhanced sentence can be imposed to run consecutive to any sentence they receive for the actual offense.

Raised Bill 259, if passed, does not make Connecticut soft on crime involving drug sales in school, day care or public housing zones. It makes current law more effective in deterring the kind of crime the enhanced penalty provisions seek to punish by specifically protecting areas around schools. Connecticut has strict drug laws in place; reducing the 1500 ft. zone to 200 ft alerts the public of the identified protected areas and punishes those evenly throughout the state who offend in the protected areas.

Raised Bill 361 AN ACT CONCERNING FAMILY IMPACT STATEMENTS

CCDLA supports Raised Bill 361. Raised Bill 361 would require a sentencing court to consider the impact of incarceration on a defendant's family.

Currently courts are permitted to consider at sentencing the impact that incarceration of a defendant will have on his family and children; however, they are under no obligation to do so. Raised Bill 361 obligates courts to consider, in circumstances where the defendant is the parent or guardian of a minor child and has physical custody of the minor child, the impact on the financial needs of the child and other family members, the relationship between the defendant and the child, the availability of community and family support for the child, the defendant's employment history and available employment opportunities, programs available to rehabilitate the defendant if the defendant is not sentenced to a term of imprisonment, the seriousness of the offense and the defendant's criminal history.

In rendering punishment, courts are required to consider the impact of the defendant's crime on the victim, as well as on society in general (implicit in the court's imposition of a sentence are the following objectives, most of which are intended to benefit society: general and specific deterrence, protection from future crimes of the defendant, retribution or punishment, and rehabilitation). Significantly, Connecticut courts have never been required to consider the impact of incarceration on the family of the defendant.

In federal court, when a defendant raises "extraordinary family circumstances" as a ground for a "downward departure" from the federal Sentencing Guidelines, the sentencing court must consider the claim before pronouncing sentence. Additionally, pursuant to 18

U.S.C. § 3553, federal judges must consider the nature and characteristics of defendants, which more often than not encompass their family circumstances. Various states are beginning to accept and incorporate family impact statements into their sentencing schemes. According to a recent publication by the Osborne Association, several jurisdictions consider Family Impact Statements in some capacity: San Francisco's Probation Department adopted FIS into its Pre-Sentencing Investigation reports in 2009; California Senate Concurrent Resolution 20 was adopted in 2009 and encourages county-level adoption of family impact statements; Arkansas Voices for the Children Left Behind submits Family Impact Statements for review in sentencing hearings in a limited number of cases; Oklahoma state law requires judges to ask if a convicted and sentenced individual is a single custodial parent and to inquire about child care arrangements; Family Impact Statements are used to a limited extent in Tennessee; at least two departments of probation in New York are considering integrating FIS into their pre-sentence investigation reports.

The impact of incarceration on innocent, vulnerable and dependent children must not be ignored as a collateral consequence of the sentencing process. Requiring courts to consider the Family Impact Statement and impose sentences based in part on that statement is consistent with the usual objectives of sentencing, and it does not excuse or minimize criminal conduct. Studies demonstrate that children of incarcerated parents are likely to suffer short and long term deleterious consequences as a result of a parent's incarceration. A court's consideration of the impact that a parent's incarceration will have on a child promotes sentencing objectives: rehabilitation of the defendant. Studies demonstrate that close ties with family assist in reducing recidivism, and long term deterrence. A court's effort to consider and protect the child by reducing the disruption and trauma that the parent's incarceration will have on the child, may render it less likely that the child will engage in criminal conduct in the future.

Please contact me if you have any questions on our position. Thank you.

Sincerely,

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