Connecticut
Sentencing
Commission

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The Honorable
David M. Borden, Chair

Undersecretary
Mike Lawlor, Vice Chair

Andrew J. Clark, Acting
Executive Director

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

By Hon. David M. Borden
Chair, Connecticut Sentencing Commission

Good afternoon Senator Coleman, Representative Fox, Ranking Members Kissel and Rebimbas, and members of the Judiciary Committee. I am David M. Borden, the Chair of the Connecticut Sentencing Commission, and I am here to testify in support of Raised Bill No. 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. This is item 6 on your agenda. In addition to my testimony on this bill, Andrew Clark, the Acting Director of the Sentencing Commission, and Professor Sarah Russell, of Quinnipiac Law School, will testify in support of item 1 on your agenda, An Act Concerning The Recommendations Of The Connecticut Sentencing Commission With Respect To Certificates Of Rehabilitation.

I'd first like to give you some brief background about the Sentencing Commission. We are a permanent commission created about three years ago, consisting of all of the stakeholders in the criminal justice system of Connecticut. Our membership includes the commissioners of Corrections, Emergency Services and Public Protection, and Mental Health and Addiction Services; the Chief State's Attorney; the Chief Public Defender; the Victim Advocate; Judges; representative of the business community; community activists interested in the criminal justice system; the chair of the Board of Pardons and Parole; a municipal police chief; the undersecretary of the criminal justice policy and planning division; as well as others vitally engaged in the criminal justice system. We have adopted a policy of making consensus recommendations to you. So both of the bills we are supporting today are

the result of our consensus process. In this respect, however, we do have two minor amendments to offer to you as to Raised Bill No. 5221 which represent the consensus of the Commission as to that bill. These two amendments did not get into the draft of the bill that is before you and we request that you consider them.

And now to Raised Bill No. 5221. This bill is essentially the same bill that was passed overwhelmingly in the House last year but, unfortunately, did not reach the Senate Calendar at the end of the session. It brings Connecticut law into line with the reasoning of two recent United States Supreme Court decisions, which I will refer to as the Graham and the Miller decisions. The virtue of this bill is that it addresses the difficult issues raised by those decisions legislatively—and now--so that all cases are treated consistently, rather than leaving their resolution to the delays and uncertainties of litigation.

Both these decisions were based upon the results of brain science and sociological studies that show (1) a lack of maturity and an underdeveloped sense of responsibility in youth—defined by the Supreme Court as persons under the age of eighteen at the time of the commission of a crime—that often leads to impetuous and ill-considered actions and decisions, (2) a greater susceptibility to negative influences and outside pressures, including peer pressure, and (3) fundamental differences between the juvenile and adult brains, especially in the parts of the brain involved in behavior control. As a result, the Court stated that, because the character of a juvenile (again, defined as under the age of 18) is not as well formed as that of an adult and because juveniles are more capable of change than adults, even the commission of a serious crime by a juvenile cannot ordinarily be considered as evidence that he or she is of a permanent bad character and incapable of reform.

In Graham, the Court held that the U.S. Constitution prohibits a sentence of life without parole for a youth convicted of a non-homicide offense. The state must give the offender the opportunity for a second look

at his sentence—in the words of the Court, a "meaningful opportunity" to obtain release before his maximum sentence "based on demonstrated maturity and rehabilitation." In Miller, the Court extended this principle to homicide offenses, and added that, at the time of sentencing, the trial court must take into account the differences between the juvenile and adult brains.

We emphasize that this bill does not ensure the release at any time of any serious offender. It merely provides that a youth given a lengthy sentence be afforded a special parole hearing at which the parole board would consider whether the offender has demonstrated the necessary maturity and rehabilitation to afford him parole release.

The Graham, or second look, part of the bill applies to any youth who received a sentence of 10 years or more. More specifically, if the sentence imposed is 50 years or less, the offender would be eligible for parole consideration after serving 60 percent of the sentence or 12 twelve years, whichever is greater. If the sentence imposed is more than 50 years, the offender would be eligible for parole consideration after serving 30 years. We estimate that this will apply to approximately 250 people, of whom 51 are serving sentences of 50 years or more, most with no current eligibility for parole.

The Miller, or sentencing, part of the bill applies prospectively to any youth who is transferred from the juvenile docket to the regular criminal docket and is convicted of a class A, B or C felony. At the time of sentencing, the court must take into account the science regarding the differences between the juvenile and adult brains and, if it proposes to impose a sentence under which it is likely that the youth will die in prison, consider how that science counsels against such a sentence. In this regard, the Judicial Branch is required to establish reference materials to assist courts in sentencing such youths.

The two amendments that we offer in line with the consensus of the Commission are as follows. First, in lines 176-182, we propose the following substitute language: "After the hearing, the Board shall articulate its decision and the basis for such, for the record. The Board may reassess such person's appropriateness for a new parole hearing at a later date to be determined at the discretion of the board." The purpose of this language is to make clear that the Parole Board makes a proper record of its decision and to make clear that it is solely up to the Board to decide whether, in its discretion, any future hearings are held.

Second, in lines 131-134, we propose the following substitute language: "At least twelve months prior to such hearing, the Board shall notify the office of the Chief Public Defender, the appropriate state's attorney, the office of Victim Services, the Department of Correction Victim Services Unit, and the office of the Victim Advocate of such person's eligibility for parole release pursuant to this section." The purpose of this language is to add the office of the Victim Advocate to the list of recipients of the one year statutory notice of the special parole hearing.

We respectfully ask you to consider these two minor amendments to the bill as currently drafted.

I thank you for your consideration of this testimony. I will be glad to answer any questions you might have.