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**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER
JUDICIARY COMMITTEE
March 30, 2015**

RAISED BILL 7050, AN ACT CONCERNING THE JUVENILE JUSTICE SYSTEM

The Office of Chief Public Defender supports passage of **Raised Bill 7050, An Act Concerning Children in the Juvenile Justice System**, and urges this Committee to report favorably on this proposal. This bill includes a number of important concepts that will make the juvenile justice system fairer to the children who enter the juvenile court each year. Much of what appears in Raised Bill 7050 is not new. The proposals regarding Class B felonies and discretionary transfers, the admissibility of statements for 16 and 17 year olds and shackling have been proposed by our Office and debated before this committee in past sessions. Given recent statutory changes and Supreme Court rulings, the Office of Chief Public Defender believes that these proposals are more important than ever and should receive favorable consideration.

Section 1 addresses the law on the transfer of cases from the juvenile matters docket to the adult criminal docket. This proposal moves Class B felonies from the mandatory transfer provisions of Conn. Gen. Stat. Sec. 46b-127a to the discretionary transfer section, 46b-137b. Nothing in this proposal will prevent a court from transferring a child to the adult criminal justice system. Mandatory transfer will be reserved for young people charged with the most serious crimes, murder, aggravated sexual assault, arson and kidnapping. Youth charged with Class B felonies would still be eligible to have their cases transferred to adult court. This proposal will provide the youth with a hearing where a judge would determine if the circumstances of the crime justified such a transfer. The court would then balance the child's background and circumstances with the availability of services in the juvenile court and the interests of the community.

Giving the courts the discretion to decide if the facts and circumstances surrounding a child charged with a B felony warrant transfer to adult court is consistent with the emerging body of law on the treatment of juveniles. Both the United States and the Connecticut Supreme Courts have held that that an individual child's immaturity, and propensity to change and develop must be considered before

a court can impose a sentence of death, or life without parole, or a lengthy sentence that results in an effective life sentence .¹ These rulings take into account the fact that a child, even a child who is charged with a serious crime, is an unformed being, capable of change and rehabilitation. Moving Class B felonies to the discretionary transfer section and allowing hearings for those juveniles would not lead to a backlog of cases in the juvenile matters courts. In Fiscal 2014, the Office of Public Defender represented 157 children in cases where the state moved to transfer them from juvenile matters to adult court. Some of those children were charged with Class A felonies that would remain mandatory transfers under this proposal. Even if all 157 now required hearings in the juvenile court, there would be no significant impact on court business. Juvenile arrests have decreased by 23% between 2006 and 2013 and continue to fall.² There have been no significant reductions in staff and the courts easily have the capacity to manage these relatively brief hearings.

This proposal also raises the minimum age for transfer from 14 to 15. This is an appropriate and intermediate suggestion in light of the fact that the original transfer law was written when the age of juvenile jurisdiction was 16. The younger the child , the more likely he or she is to exercise poor decision making and would also be more likely amenable to the treatment and services available in the juvenile court.

Section Two would amend Conn. Gen. Stat. Sec. 46b-137, **Admissibility of confession or other statement in juvenile proceedings** to eliminate the disparate rules for admissibility of statements for juveniles and apply the current protections to cases that have been transferred to the adult court from the juvenile docket. Currently, Conn. Gen. Stat. Sec. 46b-137 has two different standards for admissibility of statements of juveniles. For children under age 16, statements taken outside the presence of a parent are inadmissible in a later delinquency prosecution. Juveniles who are 16 and 17 years old can ask to have their parents present but the police are not required to stop questioning them and are only obligated to make reasonable efforts to locate a parent or guardian.

¹ Roper v. Simmons, 543 U.S. 1 (2005); Graham v. Florida, 130 S. Ct. 2011, (2010); Miller v. Alabama 132 S. Ct. 2455, 2464 (2012); State v. Riley, (SC 19109) (2015)

² Juvenile Justice Policy Oversight Committee, Progress Report to the Connecticut General Assembly, January 2015.

There is no reason to treat 16 and 17 year olds differently than younger children. When Connecticut raised the age of juvenile court jurisdiction in 2010, we recognized that young people should be held accountable differently from adults. In the recent line of cases dealing with how the death penalty and life without parole are applied to juveniles, the United States Supreme Court recognized that children have been scientifically proven to be less able to understand the consequences of their actions than adults³. The United States and the Connecticut Constitutions require that any confession be knowing and voluntary⁴. Multiple studies and plain common sense tell us that children and youth are more susceptible to be intimidated or coerced by an adult authority figure. Children will often tell an adult what they want to hear, without regard for the consequences.

As a result, there is always a question of whether a truly knowing and voluntary waiver can be taken from a juvenile without the assistance of counsel or at least a concerned adult. Extending the protections given to children under 16 to all juveniles who come into contact with law enforcement is appropriate and consistent with how the law relating to young people is evolving nationally. In line with the cases adopting a different standard of accountability for children, the United States Supreme Court has indicated that all statements must be reviewed using the “reasonable child standard” to determine if a child waived their right to remain silent in a knowing and voluntary manner⁵. According to the Center on Wrongful Conviction of Youth at Northwestern University Law School, only 15 of the fifty states do not require that a parent be present for interrogations. It simply makes sense that any minor would need the assistance of their parent to make such an important decision.

This proposal would ensure that the protections provided to children by Conn. Gen. Stat. Sec. 46b-137 continue if the case is transferred to adult court. Under current Connecticut case law, this same statement that was made without the presence of a juvenile’s parents becomes admissible against the child once the case is transferred to adult court. In State v. Robin Ledbetter, 263 Conn. 1 (2003) the Connecticut Supreme Court held that Conn. Gen. Stat. Sec. 46b-137 does not apply to a child whose case is transferred to adult court. The Ledbetter case predates all the Supreme Court rulings mandating that youth and development be taken into account when a child is prosecuted as an adult. Whether a statement made by a juvenile is admissible should not be dictated by the venue of the criminal prosecution. Nor should it provide motivation for the prosecution to transfer the matter from the juvenile court to the adult court, if they fear the statement does not comport with Conn. Gen. Stat. Sec. 46b-137. Conn. Gen. Stat. Sec.46b-137 was originally passed to ensure that a minor, who is not legally able to waive his rights or make legal decisions, has the counsel of a parent or guardian before choosing to speak to the police. The fact that a child is charged with a crime that can be transferred should not result in fewer protections.

Section 3 would establish the Juvenile Justice Policy Advisory Committee as a permanent, legislatively appointed body and would expand the Committee’s areas of review. This is an important step to ensure that stakeholders in the juvenile justice system continue to have a venue to discuss reform and policy initiatives. It also mandates that important data points are collected, analyzed and reported to the legislature and the public. This creates a transparent system that is accountable to both lawmakers and the public.

³ Roper v. Simmons, 543 U.S. 1 (2005); Graham v. Florida, 130 S. Ct. 2011, 2010; Miller v. Alabama 132 S. Ct. 2455, 2464 (2012)

⁴ US Constitution, Amendment 5, Connecticut Constitution, Article 1 Section 8

⁵ J.D.B. v. North Carolina, 131 S. Ct. 2394, 2404 (2011)

Section 4 would prohibit the shackling of a child charged with a delinquency offense during a court proceeding unless a judge determined that the child presented a danger to public safety. The Office of Chief Public Defender has consistently proposed legislation to prevent the unnecessary shackling of juveniles since 2007. Shackles would be allowed in some circumstances but this proposal creates the presumption that children will not be shackled in court. In most of the juvenile courts across the state, children charged with delinquency offenses are routinely shackled for court appearances. They are almost always required to wear ankle chains and in some cases are subjected to belly chain restraints that require them to wear both ankle shackles and handcuffs that are attached to a belly chain. These circumstances include children as young as age 9, often charged with misdemeanors or violations of probation. This is humiliating to the child, undermines the presumption of innocence, and is entirely counterproductive to the rehabilitative purpose of the juvenile court. Unnecessarily placing a child in chains drives home to the child that he or she is “bad” or “dangerous”. Studies have shown that the shackles are distracting and interfere with the child’s ability to understand the court proceedings. It is important to note that American Bar Association recently passed a resolution urging jurisdictions to limit juvenile shackling to cases where a true risk is posed by the youth. Ending indiscriminate shackling will clarify that the courts must recognize that children should be treated in a manner that enhances their ability to reform and rehabilitate.

Since this bill was proposed, the Judicial Branch has issued a new policy that creates a presumption that children will not be shackled. The new policy is promising, as current practice allowed detention staff or the judicial marshal to override the child’s risk score and require restraints. The new policy eliminates this discretion and will lead to more children appearing in court free of restraints. However, policy is not law and it can be changed as administrations change. Legislative passage of this proposal would codify the concept that a child should come to court unrestrained and would require that a judge make an individualized determination of danger each time a child was allowed to be shackled.