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**Testimony of Susan O. Storey, Chief Public Defender
Judiciary Committee**

March 30, 2015

***Raised Bill No. 1127, An Act Concerning Mandatory Minimum Sentences For
Children Tried as Adults***

The Office of the Chief Public Defender urges this committee to vote favorably on **SB 1127, An Act Concerning Mandatory Minimum Sentences For Children Tried as Adults**. Passage of this bill would reinforce Connecticut's commitment to treating juveniles who are accused of crimes as the children they are, taking into account nationally recognized research regarding juvenile brain development and the unique potential for juvenile rehabilitation.

The bill would:

- Permit a trial judge, in adult criminal court, to sentence a child between the ages of 14 and 17 to a period of incarceration that is less than the mandatory minimum for that crime, **if** the child demonstrates good cause for that treatment.

The bill would not:

- Eliminate mandatory-minimums. They will still be in place and in effect and applicable to every case.
- Change the range of periods of incarceration that can be imposed.
- Prohibit a judge from sentencing a child to the mandatory-minimum or greater.
- Eliminate the periods of probation, special parole or registration that attach to adult convictions.
- Affect defendants who are 18 or older in any way.

This bill, together with **HB 7050** would firmly state that we in Connecticut do not begin with the presumption that our children between 14 and 18 are incorrigible, dangerous and beyond redemption. It would declare that in fact we accept what scientific research tells us, that

our children are young, growing, impulsive, often traumatized and therefore worthy of being helped and saved from a life of revolving doors into prisons. Furthermore when children are punished in adult court, they should be sentenced on an individualized basis, with judges having full discretion to decide how much punishment is appropriate for each child.

If we are convinced of the undeveloped nature of a child's brain, his diminished culpability, and his immense potential for rehabilitation and success, it makes no sense to then require that those same children be treated like adults and subject to harsh mandatory-minimums. Courts increasingly accept that children are not, in fact, miniature adults.¹ They often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them² and they are more vulnerable or susceptible to outside pressures than adults.³

It is illegal in Connecticut for a child of 14 to drive, drink, smoke, vote, enter into contracts or work full-time. It is mandatory, however, for that same child to be sentenced to *at least* 5 to 10 years in prison, depending on the crime, regardless of any individual characteristics of that child, his background, his family history, his mental health or the circumstances of the case.

This bill affects a small but growing subset⁴ of children in Connecticut who are accused of committing crimes while they are as young as 14 years old and whose cases are transferred to adult court. It would provide experienced trial judges with the ability to make individual sentencing determinations in each case, based on the specific characteristics of the child before him or her and not be bound by mandatory-minimums that this legislature enacted and intended to apply to adult defendants.

An OLR report issued last week⁵ stated that there are 74 crimes in Connecticut that carry mandatory-minimum sentences of incarceration, ranging from 48 hours, up to 10 years. That means a child of 14 could be in adult court and **a judge would have no choice** but to sentence that child to *at least* 10 years of incarceration, which is very nearly the entire lifespan of that child up to that point.

Furthermore, mandatory-minimums also apply to **children who may not have committed the criminal act themselves**, but who were present, assisted an older sibling, or succumbed to peer pressure while with friends.

¹ *J. D. B. v. North Carolina*, 131 S. Ct. 2394 (2011).

² *Bellotti v. Baird*, 443 U.S. 622, 635 (1979).

³ *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

⁴ Statistics kept by the Office of the Chief Public Defender reveal that the number of children transferred to adult court has increased from a low of 67 in 2007-2008 to 157 in 2013-2014.

⁵ Crimes With Mandatory Minimum Prison Sentences-Updated And Revised, 2015-R-0055, accessed online at <http://www.cga.ct.gov/2015/rpt/pdf/2015-R-0055.pdf>.

In adult court, mandatory-minimum sentences are often used as **bargaining tools** by prosecutors to forcefully convince defendants to enter pleas of guilty. This potential for coercion of children should be eliminated. This is why our law currently requires that statements taken from children be inadmissible unless made in the presence of a parent or guardian.⁶ Allowing judges to go below those minimum sentences alleviates the threat that a child would be pressured into admitting guilt and pleading to a felony conviction, just to avoid spending significant periods of time in jail.

The immature, impressionable, impulsive and foolhardy nature of children is the primary reason why the courts and legislatures across the country are embracing the notion of individualized sentencing for juveniles. There are three general differences between juveniles under 18 and adults:

- **First**, as any parent knows and as the scientific and sociological studies confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.
- **Second**, juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.
- The **third** broad difference is that the character of a juvenile is not as well formed as that of an adult.⁷

These differences were discussed and approved in the **Roper/Graham/Miller** line of U.S. Supreme Court cases which our CT supreme court noted recently in **State v. Riley** and the implementation of which this Committee has already considered in **SB 796** and **HB 6926**. While the idea of this bill was recently rejected by our supreme court on Eighth Amendment grounds, two Justices: Justice Richard Palmer and Justice Dennis Eveleigh were of the opinion that juveniles should not be subject to the same mandatory-minimums that adults are. Justice Eveleigh, dissenting from the decision, quoted the powerful words of the trial judge, the Honorable David Gold, in lamenting his inability to sentence the child to what he considered an appropriate sentence in light of all the circumstances presented to him. (These comments by Judge Gold are reproduced and attached to this testimony).

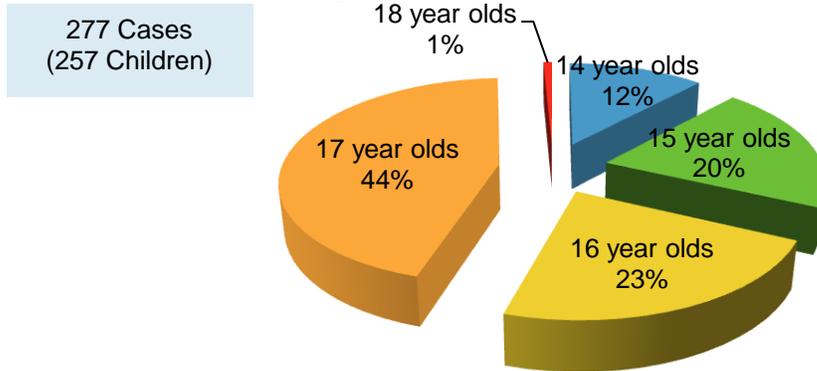
By passing this bill we would declare that in Connecticut we care about children as individuals and recognize the factors of youth even for those children accused of committing serious crimes. The Office of the Chief Public Defender urges this committee to vote favorably on **Senate Bill 1127**.

⁶ Conn. Gen. Stat. § 46b-137

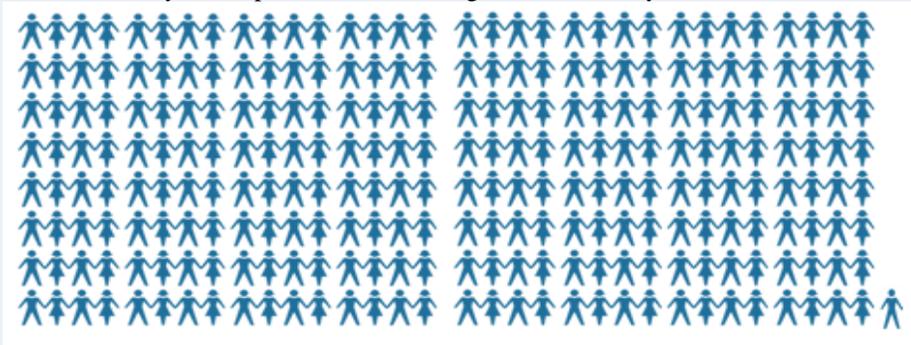
⁷ State v. Taylor G., 315 Conn. 734, 778 (2015) (Eveleigh, J., *dissenting*).

CHILDREN IN ADULT COURT AND THEIR EXPOSURE TO MANDATORY-MINIMUMS
OFFICE OF THE CHIEF PUBLIC DEFENDER – IN SUPPORT OF SBI 127
MARCH 30, 2015

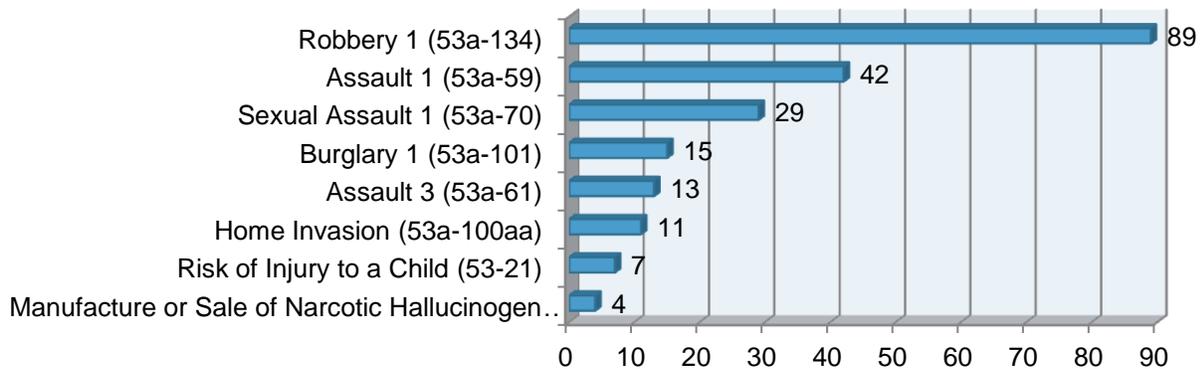
**Ages of Clients with Cases Transferred to Adult Court
 During Fiscal Years 2012/13 and 2013/14**



During the last two fiscal years, 257 children were at risk of spending between nine months and 10 years in prison on adult charges for mandatory minimum sentences.



**Most Frequently Used Statutes with Mandatory Minimums for
 Indigent Children Transferred to Adult Court
 during Fiscal Years 2012/13 and 2013/14**



REMARKS OF THE HON. DAVID GOLD
AT THE SENTENCING IN STATE V. TAYLOR G.
(FULL TRANSCRIPT AVAILABLE UPON REQUEST)

So, Mr. Bhatt, you've said it in your remarks that you don't particularly want to be here today. I don't think there would be any Judge that would want to be here. I, frankly, don't know whether many Judges have been previously in this state confronted with a situation where an offender as young as your client at the time of the offenses was in the position that I am now which is to be required to impose a sentence where there is a mandatory minimum like that which is at issue here. So a certain part of me shares your willingness to be -- your -- your -- your wish to be somewhere else, but this is what I have the duty to do.

Transcript 3/13/13, p. 46

But as I said in my brief or rather in my memorandum, I have frankly certain misgivings about the appropriateness of mandatory minimum sentences in the juvenile setting. I -- I said that in writing. I noted that those mandatories can often be unwelcome. So I'm not speaking out of school, so to speak, by saying that sitting up here now with a mandatory minimum in place doesn't make things easier. But there are -- there are rules that all of us have to follow and, under our system of law, the legislature enacts the laws and the Courts are duty bound to enforce them.

Transcript 3/13/13, p. 48

So, as I said, despite my own misgivings about the appropriateness of mandatory minimum sentences particularly within the context of the sentencing of juvenile offenders and of the belief, as I am, that when the legislature enacted this mandatory minimum they were not contemplating, frankly, a 14-year-old, but probably someone significantly older, I still feel duty bound under my role in our criminal justice system to follow the rules and the sentences the legislature has enacted.

Transcript 3/13/13, p. 51