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Written Testimony Supporting Governor's S.B. 18, An Act Concerning a Second Chance Society

Senator Coleman, Representative Tong, and members of the Judiciary Committee. My name is David McGuire, and I am the Legislative and Policy Director for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in support of S.B. 18 with an important caveat to ensure the protection of civil liberties.

During the past two sessions, Connecticut has passed criminal justice reforms that have served as a model nationwide. S.B. 18 presents another chance for our state to lead the way in creating a twenty-first century justice system. By eliminating cash bail where unnecessary to protect against real risk of flight or being a danger to others, SB 18 will eliminate a penalty for simply being poor. By raising the age of juvenile jurisdiction from 17 to 20 years old, this bill will help to ensure that our justice system does not permanently penalize young adults for actions they take before true maturity. We call upon the legislature, however, to amend S.B. 18 before passage to ensure the appropriate rights of the public and press to access proceedings and important information under the First Amendment. With the inclusion of this language, S.B. 18 can help Connecticut to become a more just and equal place for all.

As a defender of equal justice under the law, the ACLU of Connecticut fervently endorses S.B. 18's proposal to eliminate cash bail requirements for people charged with misdemeanors. Our current bail system penalizes people for being poor, and it has no place in a modern society. As this bill rightfully proposes, bail should be based on a person's flight risk or danger to society, not on the money in his or her pocket. Recent estimates have shown that more than 1,000 people are being held in Connecticut jails, at an average cost of \$120 per person per day, or \$43,000 per person per year, only because they cannot pay less than \$5,000 in bail. Many of these people are accused of minor, non-violent crimes, including drug possession; they have not been convicted of a crime, they are supposed to be treated as innocent until proven guilty, and yet they remain in jail because they lack the resources to pay their way free. This flies in the face of our Constitution's promises of equal protection, due process, and freedom from excessive bail. In reality, any bail amount is excessive to someone without the means to pay it, and a bail system that penalizes people for being poor is the modern equivalent of a debtor's prison.

Connecticut's current, broken cash bail system also exacerbates unconscionable racial inequities. Nationally, Black Americans are jailed at four times the rate of white Americans, and court systems issue higher bail amounts for Black and Latino Americans ages 18 through 29

than for people from other ethnic or racial groups. Although eliminating cash bail will not solve the disturbing disparities in our justice system, it would offer one important step toward their remediation. Spending even one day in jail can endanger someone's job, housing, and family connections, even if that person is innocent. The current bail system compounds the challenges and hardships many Connecticut residents face every day when they are already economically disadvantaged.

The ACLU of Connecticut also thinks that young people who make mistakes deserve a second chance to succeed. Under Connecticut's current law, however, a senior in high school could find himself trapped in the adult criminal justice system and shut out of society's opportunities, while his classmate could find a pathway toward rehabilitation through the juvenile justice system, simply because of a difference in their birthdates. Drawing this arbitrary line is unjust, unwise, and unequal. As the U.S. Supreme Court recently recognized in *Graham v. Florida* and reiterated in *Miller v. Alabama*: "developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds ... [particularly in] parts of the brain involved in behavior control." The Court ruled in both cases that sentencing juveniles to life without parole failed to take into account the fact that young people are not simply miniature adults. The judgment and decision-making skills of people who are under 21 years of age are less well developed, and the consequences of their decisions should be mitigated accordingly. As experts have determined, brain development continues through one's mid-twenties. Raising the age of juvenile jurisdiction therefore reflects modern scientific and legal understandings of culpability and appropriate corrective action. The ACLU of Connecticut therefore supports the Governor's proposal to raise the age of juvenile jurisdiction through age twenty.

We also seek to ensure that there is open access to the courts, consistent with public and press rights under the U.S. and Connecticut Constitutions. At least since the Supreme Court's 1980 decision in *Richmond Newspapers v. Virginia*, open access of court proceedings to the public and press is an important right under the First Amendment, not only to ensure the integrity of the judicial system but to ensure public access to information that may be important as part of our democracy.

There is room for both ideals – second chances and the public's right to information – to exist in harmony. We should not sacrifice one for the other, nor do we need to. The ACLU of Connecticut calls upon the legislature to find a solution in this legislation that will protect young adults who make mistakes from bearing the burden of a scarlet letter for the rest of their lives, while also protecting Connecticut from the specter of secret courts and ensuring that information important to democratic decision-making is available. We support protecting youthful offenders from stigma, but we also value transparency, which can prevent potentially biased or unjust proceedings against youthful defendants. Both issues are too important to ignore, and how Connecticut responds to these equally critical subjects will offer a valuable commentary about how our state chooses to honor justice, equality, open access to its judicial system, and transparency.

As the first state to attempt to raise the age to 20, Connecticut has the chance to set the standard for the rest of the country, and it is important that we get it right the first time. Why

jeopardize the life-changing benefits of giving more young adults a second chance by leaving an eventual law unnecessarily susceptible to a constitutional challenge? The legislature has the opportunity to ensure that Connecticut remains a leader on juvenile justice reform without sacrificing judicial accountability or the right of the public and press to access and critical information. We encourage you to seize this opportunity by pursuing a comprehensive piece of legislation addressing all of these issues during this session.

We urge you to support S.B. 18 with the inclusion of constitutionally protected open access provisions, so that equal justice can be served and our civil liberties can be simultaneously protected.