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March 15, 2018

Senator Paul Doyle, Co-Chair  
Senator John Kissel, Co-Chair  
Representative William Tong, Co-Chair  
Judiciary Committee  
Capitol Building,  
Hartford, CT 06106

**TESTIMONY IN SUPPORT OF *GOVERNOR'S BILLS 5040 and 5042 -  
AN ACT CONCERNING JUVENILE AND YOUNG ADULT JUSTICE and PROSECUTION OF  
LOW-RISK YOUNG OFFENDERS IN ADULT COURT*  
(with opposition to Section 4 of 5040)**

Dear Senators Doyle and Kissel, Representative Tong and Committee Members:

The Connecticut Criminal Defense Lawyers' Association<sup>1</sup> strongly **supports** *Governor's Bill No. 5040 - AN ACT CONCERNING JUVENILE AND YOUNG ADULT JUSTICE and Governor's Bill No. 5042 - AN ACT CONCERNING PROSECUTION OF LOW-RISK YOUNG OFFENDERS IN ADULT COURT*. However, the CCDLA **strongly opposes** subsections (a) and (b) of Section 4 of Bill No. 5040 as those provisions are in stark contrast to the overall tenor of the Bill and the progress made by Connecticut in recent years to make its juvenile justice system more fair and equitable. In this written testimony, CCDLA suggests changes to Section 4 to make it conform to the stated intent of this proposal.

This proposal aims to bring 18 to 21 year olds within the ambit of the juvenile justice system by creating a new category called "young adults" to cover those within that age range who have committed offenses. As this committee is well aware, studies have demonstrated beyond debate that the adolescent and young adult brain is not fully developed until the age of 25. Until they achieve that development:

1. Juveniles and young adults have a lack of maturity and an underdeveloped sense of responsibility, which leads to recklessness, impulsivity, and heedless risk-taking.
2. They are more vulnerable to negative influences and outside pressures, including from their family and peers; they have limited control over their own environment and lack the ability to extricate themselves from horrific, crime-producing settings.

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<sup>1</sup>The CCDLA is a not-for-profit organization of approximately three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, the CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, the 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.

3. Their character is not as well formed as an adult's; their traits are less fixed and actions less likely to be evidence of irretrievable depravity.<sup>2</sup>

Both the United States Supreme Court and our supreme court have noted the need to treat juveniles differently than fully matured adults because there are fundamental differences between juvenile and adult minds. These differences both lessen a child's moral culpability and enhance the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed and the risk of reoffending will drop.

Thus, this proposal's goal to protect 18 to 21 year olds in the same way that we currently protect those under 18 is a small but commendable step toward ensuring that those who make foolish mistakes and bad choices are not punished in ways from which they can never recover. This proposal provides our justice system with the tools to protect those 18 to 21 year olds, in the appropriate cases, from having to suffer the consequences of their rash, immature actions for the rest of their lives.

**Section 4 Must be Amended.** To that end, however, **Section 4(a) and (b)** of this proposal fall short and are counterproductive. Section 4(a) and (b) of this proposal:

1. Repeal portions of P.A. 15-183, enacted by this legislature just two years ago, once again making most B felonies "automatic transfers" to adult court.
2. Changes the standard for those felonies which are still "discretionary transfers" by focusing only on public safety rather than the interest of the child.

Pursuant to P.A. 15-183, certain B felonies were no longer automatically transferred to adult court. Rather, they remained in juvenile court until a prosecutor made a showing that the transfer to adult court was in the best interest of the child and public safety. Before a juvenile would have his or her case transferred to adult court, the juvenile was entitled to a hearing in juvenile court, with the assistance of a lawyer.

Section 4 eliminates this provision for no discernable reason. It may be understandable if this proposal were also to provide that juveniles transferred to adult court would still have protected status as "young adults" and be given the same protections as if they were in juvenile court – sealed records, limited prison exposure, erasure of records upon reaching age 25 – but this is not present in the bill.

If passed as written, this proposal would make the statement that juveniles until age 21 are redeemable, have diminished culpability and must be helped and protected – unless they have committed B felonies. This seems incongruent and contrary to science, research and the wisdom that prompted this legislature to enact P.A. 15-183.

**Best Interests of the Child.** In addition, Section 4 eliminates the requirement that judges take into account the best interests of the child before deciding whether to transfer C or D felonies to adult court. This entirely shifts the focus from the benefit to the juvenile to a simple analysis of public safety.

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<sup>2</sup>Miller v. Alabama, —U.S.—, 132 S.Ct. 2455 (2012); State v. Taylor G., 315 Conn. 734, 774 (2015).

While public safety is a critical component of any transfer analysis, it must not be the only factor to be considered. The statute as it currently exists performs its function of balancing the interest of the child *and* the community ably and the CCDLA can discern no reason why there needs to be a shift in the balance.

**Departing from Mandatory-Minimums.** The CCDLA strongly **supports** subsection (c)(2) of Section 4, which allows a judge in adult court to go below mandatory-minimum requirements when imposing a sentence on a juvenile. This is a proposal that this committee has considered in years past and the CCDLA urges this committee to adopt the proposal in (c)(2). Two of our supreme court justices endorsed the view that mandatory-minimum sentences should not apply to juveniles in adult court in State v. Taylor G., 315 Conn. 734.

Other states have also begun to realize the unfairness of imposing mandatory-minimum sentences on juveniles for adult crimes: both the Iowa and Washington Supreme Courts have held that these types of sentencing schemes violate the Constitution.

**Suggestions.** While generally supportive of this proposal, the CCDLA has serious concerns about Section 4. The CCDLA recommends that this committee retain P.A. 15-183 in its current form, keeping the transfers of B felonies to adult court at the discretion of the juvenile court judge. If, however, this committee feels that it is necessary to repeal that portion of P.A. 15-183, the CCDLA strongly recommends two things:

1. This committee also amend subdivision (a)(2) of Section 4 (and thus, of Conn. Gen. Stat. 46b-127) to provide that *any* party may make a motion for return of the case to juvenile court, not just the State's Attorney.
2. If the matter of a young adult is to remain in adult court, that it do so in a protected status – i.e., akin to a youthful offender – so that the proceedings and any conviction may remain sealed, with the opportunity for erasure upon successful completion of any probationary period.
3. If the matter of a young adult is to be removed from any protected status, it should only occur after a motion by the state's attorney and a hearing before a judge, where a showing must be made that it is in the public interest that the proceedings involving a young adult be public and that the conviction and sentence be similarly public like that of any adult above the age of 21.

The CCDLA is willing to talk with this committee and any other interested party in order to come to mutually agreeable changes to Section 4 in order to make it conform to the stated intent of this proposal.

Respectfully submitted,  
Tejas Bhatt, Esq.,  
Executive Board Member