

33 Whitney Ave
New Haven, CT 06510

Voice: 203-498-4240
Fax: 203-498-4242
www.ctkidslink.org

**Testimony Supporting:
H.B. 6285, An Act Concerning the Age of a Child with Respect to
Juvenile Court Jurisdiction**

Testimony of Theresa Sgobba,¹ Shelley Geballe, Mary Glassman
To the Judiciary Committee
April 4, 2007

Senator McDonald, Representative Lawlor, and distinguished Members of the Committee on Judiciary:

We testify on behalf of Advocates for Connecticut's Children and Youth (ACCY), a statewide, independent, citizen-based organization dedicated to speaking up for children and youth in the policy-making process that has such a great impact on their lives. ACCY is the sister lobbying organization of Connecticut Voices for Children, on whose behalf we also testify.

ACCY strongly and enthusiastically supports H.B. 6285, An Act Concerning the Age of a Child with Respect to Juvenile Court Jurisdiction. As you know, Connecticut remains one of only three states that automatically treats sixteen- and seventeen-year-old children accused of crimes as adults in criminal court, rather than as juvenile delinquents. While other states are responding to a national decline in juvenile crime by reducing the number of youth under age 18 they incarcerate in adult jails, **Connecticut continues to lock up more children in adult prisons than any other state.**² State judicial officials have suggested that Connecticut's numbers are highest because we continue to automatically treat 16- and 17-year-olds as adults.³ To make matters worse, the vast majority of youth enter the adult criminal justice system for nonviolent offenses.⁴

As the General Assembly is by now well familiar, advances in scientific research on brain development have confirmed our common sense understanding that children who are 16 and 17 years old are by definition different from adults. Brain imaging studies comparing the brain activity of adults and adolescents confronted with difficult decisions illustrate that it takes adolescents, whose

¹ Theresa Sgobba is a Yale Law student participating in the Yale Legislative Services program and has prepared this testimony under the supervision of Attorney Shelley Geballe (President, CT Voices for Children), Attorney Mary Glassman (Director of Legislative Affairs, CT Voices for Children) and Professor J. L. Pottenger, Jr. (Legislative Advocacy Clinic, Yale Law School).

² See Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform, Executive Summary*, March 2007, p. 2. Connecticut led the nation in the number of youths under 18 incarcerated in adult prisons with 383 in 2005, the last year for which comparative statistics were available. New York – which also treats its 16- and 17-year-olds universally as adults – came in second with 223. According to the federal Office of Justice Programs, Bureau of Justice Statistics, the number of children incarcerated with adults in Connecticut went up 19 percent between June 2004 and June 2005, while these numbers declined in most states.

³ Colin Poitras, "Teens in Adult Jails a State Specialty," *Hartford Courant*, March 22, 2007.

⁴ See Campaign for Youth Justice, March 2007, p. 5. The national study found that most children pushed into the adult criminal justice system wind up there for nonviolent offenses. In Connecticut, 96 percent of the approximately 13,000 youths entering the adult criminal justice system each year come there for nonviolent offenses, the study showed.

brains are not yet fully developed, a longer time to figure out what is a bad idea than it does adults.⁵ Sixteen- and seventeen-year-olds take longer to make responsible decisions, and it may be more difficult for them to identify dangerous situations and appropriate behaviors.⁶ Adults show more activity in the parts of the brain that create mental imagery and in the parts of the brain that often signal internal distress, suggesting that adults, when confronted with a potentially dangerous scenario, are more likely to create a mental image of possible outcomes, and to have an adverse response to that image.⁷

In many ways, Connecticut law already recognizes that 16- and 17-year-olds are not as capable of making good decisions as are adults. A 16- or 17-year-old Connecticut youth cannot vote, serve on a jury, get a marriage license on his or her own, or enter a casino. By automatically treating 16- and 17-year-olds as adults in criminal court, our state is not only out of step with most other states, but is also logically inconsistent with its own laws.

Because the differences between youth and adults confirmed by brain imaging directly implicate the decision-making capabilities and relative culpability of children under 18, **a just system must consider these differences when deciding how to punish juveniles who commit crimes.** So acknowledged the United States Supreme Court recently when it struck down the death penalty as a punishment for children under age 18 in the case *Roper v. Simmons*.⁸ The Court stated:

Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First . . . [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 In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent. The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure . . . ([Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and psychological damage) The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. . .

These differences render suspect any conclusion that a juvenile falls among the worst offenders. . . From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed . . . (emphases added)

⁵ See A.A. Baird, J.A. Fugelsang, and C.M. Bennett, "What were you thinking?" available at <http://www.theteenbrain.com/research/projects/goodidea2.php>.

⁶ *Ibid.*

⁷ *Ibid.* For example, when asked if "jumping off a roof" is a good idea, the typical adult immediately generates visual imagery of potential injury and experiences a physical aversion to that image, evoking a rapid "bad idea" response. Teenagers in the study, who took longer to respond to dangerous scenarios, seemed to be trying to decide whether or not the scenarios were actually dangerous. Perhaps because they lack the mental image and subsequent visceral response, teenagers need to reason out the question, and therefore have a more difficult time generating the correct response.

⁸ 543 U.S. 551 (2005).

At the end of its opinion, the Supreme Court pointed to the many state statutes that divest youth under 18 of adult responsibilities, explaining, “For the reasons we have discussed . . . a line must be drawn . . . **The age of 18 is the point where society draws the line for many purposes between childhood and adulthood.**” (emphasis added) Connecticut statutes that treat 16- and 17-year-olds as if they are different from adults are consistent with the Supreme Court’s explanation. Statutes that thrust 16- and 17-year-olds into the adult criminal justice system are not.

Bringing youth under 18 into the juvenile system is a much smarter way to spend Connecticut’s money right now; it should save the state money in the long term. Treating youth in the juvenile justice system is an investment in our future. Research strongly supports the conclusion that raising the age of juvenile jurisdiction should yield significant long-term savings and benefits to society at large by reducing the number of youth who commit crimes subsequent to their first conviction. Youth treated in the juvenile justice system are provided with more and better mental health and counseling services than those in the criminal justice system,⁹ are offered more varied diversion and re-habilitation alternatives, and as a result, are more likely to be rehabilitated and less likely to engage in further criminal activity.¹⁰ The broader social benefits of successful rehabilitation and treatment, though not easily quantifiable, are easy to imagine and appreciate. It would be of great benefit to families and workforce productivity if one could eliminate the debilitating burden¹¹ that a prior adult conviction presents to the vast numbers of young 16- and 17-year-olds released from the adult criminal justice system.

Treating youth in the juvenile justice system may actually cost less than processing them as adult criminals. During the 2006 legislative session, researchers from the Urban Institute testified to the Connecticut General Assembly that moving 16- and 17-year-old youth out of the adult system and into the juvenile system, while maintaining all other services for youth as they are, would return approximately \$3 in benefit for every \$1 in cost, assuming (as does the JJPIC plan) that no new juvenile detention construction is required.¹²

⁹ See “Mental Health Treatment for youth in the Juvenile Justice System.” National Mental Health Association, 2004.

¹⁰ Most studies comparing the adult and juvenile justice systems have corroborated this claim. See J.A. Fagan, “The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders.” *Law and Policy* 18 (1 and 2): 77-113 (1996); D.M. Bishop, C.E. Frazier, L. Lanza-Kaduce, and L. Winner, “The transfer of juveniles to criminal court: Does it make a difference?” *Crime and Delinquency*, 42: 171-191 (1996); L. Winner, L. Lanza-Kaduce, D.M. Bishop, and C.E. Frazier, “The transfer of juveniles to criminal court: Reexamining recidivism over the long term.” *Crime and Delinquency* 43(4): 548-563 (1997). Very little data exists on recidivism rates in CT. One study has estimated adult recidivism at 70% within three years, http://www.cga.ct.gov/2002/pridata/RptsAnnual/2002_Annual_Recidivism_Compliance.htm, whereas recidivism from the juvenile system has been calculated at 47% within 18 months. “State of Connecticut Juvenile Justice Programs: Recidivism Outcome Evaluation.” Connecticut Policy and Economic Council, July 2002.

¹¹ Many youth who are incarcerated never complete high school, which imposes a significant cost to our economy in terms of lost productivity, wages and taxes. A recent study estimated that the lifetime difference in income between a high school graduate and a dropout is about \$260,000. The study estimated that with 9,297 Connecticut youth who started high school in 2001 and did not graduate in 2004, our state lost \$2,417,220,000 in terms of their lost wages. “High School Dropouts Cost the U.S. Billions in Lost Wages and Taxes, According to Alliance for Excellent Education,” (press release, March 1, 2006) available at http://all4ed.org/press/pr_022806.html.

¹² John Roman, *The Economic Impact of Raising the Age of Juvenile Jurisdiction in Connecticut: Remarks before the Judiciary and Appropriations Committee, Connecticut General Assembly, February 21, 2006*, Urban Institute, 2006; see also Aos, Steve, Robert Barnoski, Roxanne Lieb, and Polly Phipps, *The Comparative Costs and Benefits of Programs to Reduce Crime, v 4.0*. Olympia, WA: Washington State Institute for Public Policy, 2001. If new construction was required, the transition of juveniles would result in slightly less than a \$1 in benefit for every \$1 in cost in the year the construction occurs, and \$3 in benefit for every \$1 in cost in subsequent years.

H.B. 6285 takes the next logical and important step in a process the General Assembly itself set in motion last year when it passed legislation establishing and funding a “Juvenile Jurisdiction Planning and Implementation Committee,” charged with the mandate to “plan for the implementation of any changes in the juvenile justice system that would be required in order to extend jurisdiction in delinquency matters and proceedings to include sixteen-year-old and seventeen-year-old children within the Superior Court for Juvenile Matters.” After months of thoughtful consideration of the practical challenges to raising the age and the alternatives available to overcome these challenges, that Committee developed consensus around a workable and cost-effective plan for increasing the jurisdictional age of the juvenile court. That plan is reflected in the language of proposed **H.B. 6285**.

Rather than assume an otherwise static system, the plan for raising the age of juvenile jurisdiction developed by the Juvenile Jurisdiction Planning and Implementation Committee (JJPIC) and incorporated into H.B. 6285 has built in reforms to reduce the costs of implementing the change and to generate future cost savings. The JJPIC did not take current detention practices, court structures, or dispositions as given or unchangeable. The Committee recognized the need for additional changes concomitant to raising the age of juvenile jurisdiction that will make the juvenile justice system function more smoothly and cost-effectively:

- **The Bill establishes regional courts, eliminating the cost of building new courthouses.** As recommended by the Committee, H.B. 6285 dictates that the Chief Court Administrator shall establish regional juvenile courts within the state for the hearing of juvenile matters and, in doing so, shall maximize the use of existing court facilities that may otherwise be unused or substantially underutilized. Utilizing existing space for regional courts – rather than constructing new courthouses – by itself significantly reduces the prohibitive price tag attached to raising the age in previous years. Indeed, the JJPIC plan identifies eight locations around the state where juvenile proceedings can commence upon the effective date of the bill as well as two additional locations where juvenile proceedings can take place beginning in 2010 and 2011 as scheduled court renovations and constructions are completed.¹³
- **The Bill introduces an assessment and classification system that will divert low-risk youth from detention to more appropriate, and less expensive, settings.** Drawing from the finding of the JJPIC that “some youth detained under the current system might be better served in the community,” H.B. 6285 instructs the Judicial Department to develop and implement a risk assessment instrument that will use objective factors to classify juveniles as those appropriate for detention, those who may be released into the community with structured supervision, and those who may be released without supervision. This assessment and classification system should better ensure that youth who need to be in detention to protect public safety end up there, while those who do not need detention – for example, those accused of less serious offenses, those not likely to offend again, and those likely to show up in court – are diverted from unnecessary confinement.
- **The Bill creates a continuum of services that will treat the needs of juvenile offenders who do not require secure placement in the least restrictive environment possible and at a lower cost to the state.** Placing youth in more restrictive settings when restrictive conditions

¹³ See Connecticut Juvenile Jurisdiction Planning and Implementation Committee, Final Report (submitted February 8, 2007), p. 11, available at http://www.cga.ct.gov/hdo/jjpic/070210_JJPIC_report_revised.pdf.

are not needed results in severe, negative consequences for youth, families, and communities,¹⁴ and unnecessary expenses for the state. In the course of its work, the JJPIC uncovered significant challenges facing the state in meeting the needs of older youth in the juvenile justice system. An investigation of available services and service needs, as well as testimony presented before the Committee by state agency officials, pointed to a troubling lack of appropriate programming for 16- and 17-year-olds and underscored the need for developing such services to promote the well-being of system-involved youth.¹⁵ The expansion of services in this bill is essential for accommodating the new population of older juveniles, addressing their unique needs, and enabling the system to function smoothly through the transition and beyond.

Incorporating community-based services where appropriate will help the juvenile justice system accommodate its increasing numbers at lower costs. Community-based care not only creates more positive outcomes for youth, but can be far less expensive than residential care for this population. Evidence-based programs that have demonstrated positive pro-social outcomes among youth participants—such as Functional Family Therapy, Multidimensional Treatment Foster Care, and Multi-Systemic Therapy—yield dramatic cost savings immediately and, over the long term, each dollar spent on such programs can result in cost savings in the range of \$11,988, \$27,202, and \$38,047 per youth respectively, based on significant reductions in recidivism and in averted incarceration and hospitalization costs.¹⁶

Expanding the non-secure service options available to 16- and 17-year-old juveniles under the proposed change in jurisdictional age should help Connecticut capture valuable – and currently unutilized – federal reimbursements that will offset the costs of raising the age of jurisdiction.

Due to its reliance on secure settings, the state is currently unable to take advantage of available federal money. Federal law bars federal reimbursement for the costs of health care provided to an otherwise Medicaid-eligible youth if that youth is in a secure correctional setting. As a result, the health care costs of youth incarcerated in secure settings in Connecticut is wholly state-funded.

A report prepared for the JJPIC by Hornby Zeller Associates states, “For every 10 percent of clinical services that could be reimbursed under Medicaid, the state stands to recover about one-half million

¹⁴ Research suggests that restrictive prison like settings do not reduce the occurrence of crime and lower recidivism rates. A study by the Center on Juvenile and Criminal Justice found that as the California youth commitment rate fell to its lowest point in history, youth crime rates also declined to thirty year lows. (M. Doyle Corcoran, D. Macallair, M. Males, *Testing Incapacitation Theory: Youth Crime and Incarceration in California* (Center for Juvenile and Criminal Justice, July 2006) available at: http://www.cjcj.org/pdf/testing_incapacitation.pdf). Also, the State of Missouri has maintained some of the lowest youth recidivism rates in the country after having switched most of its juvenile justice programming to less restrictive settings and adopting small facilities accessible to families and communities (Data available at: <http://www.aecf.org/publications/advocasey/spring2003/small/small.htm>).

¹⁵ For example, Peter Rockholz Deputy Commissioner of the Department of Mental Health and Addiction Services submitted testimony on September 21, 2006 stating that, “[Connecticut’s system of providing services] lacks the substantial infrastructure and clinical expertise necessary to meet the very distinct, elaborate and developmentally appropriate needs of children and adolescents – including 16- and 17-year-olds.” The Final Report of the Juvenile Jurisdiction Planning and Implementation Committee describes “the dearth of substance abuse and mental health services—that currently exist in the juvenile justice system” in advancing recommendations for service expansion. Connecticut Juvenile Jurisdiction Planning and Implementation Committee, Final Report (Submitted February 8, 2007), p. 14, available at http://www.cga.ct.gov/hdo/jpic/070212_JJPIC_report_revised.pdf.

¹⁶ See Hornby Zeller Associates, “Connecticut service needs study: 16 and 17-year-old court-involved youth: preliminary findings,” Presentation to the Juvenile Jurisdiction Planning and Implementation Committee, January 4, 2007.

dollars [through federal reimbursements].”¹⁷ Connecticut may be able to claim federal reimbursement through Medicaid for 50% of the cost of health and mental health services provided to youth if they are in non-secure facilities. Further, as indicated in the H.B. 6285, the implementation of a wider array of services for youth in the juvenile justice system may enable the state to access additional federal funding sources to offset the cost of expanding services, including Title IV-E funding for youth dually committed to the juvenile justice and child welfare systems.

Based on the recommendations of the JJPIC and to promote just practice and the well-being of youth, we recommend the following slight revision to the Bill’s language:

We recommend that the Committee insert the following language into Section 3 of H.B. 6285 to ensure that *all* children who serve time in a juvenile facility before trial receive credit for that time served against any sentence imposed, just as the Bill provides that children transferred to adult court will receive credit against adult sentences imposed for time they served in a juvenile facility prior to transfer to adult court:

Upon the effectuation of the transfer, such child shall stand trial and be sentenced, if convicted, as if [he were sixteen] such child were eighteen years of age. Such child or any child who serves time in juvenile detention before trial in juvenile court shall receive credit against any sentence imposed for time served in a juvenile facility prior to the effectuation of the transfer.

We urge the Committee to raise the age of juvenile court jurisdiction this session by passing H.B. 6285. This Bill represents the culmination of years of hard work by the General Assembly, state juvenile justice practitioners, and the advocacy community to overcome the short-term, practical obstacles to change, and to at last bring Connecticut into line with the majority of other states. The carefully-considered plan and timeline for implementation set out by the JJPIC at the instruction of the legislature ensure that we go about implementing this important change deliberately and incrementally, with costs phased in over several years and minimal costs in this biennial budget. **The time has come for Connecticut to recognize in law what it knows to be morally right: to bring all youth under age eighteen accused of crimes within the jurisdiction of the state’s juvenile court.**

Thank you for the opportunity to testify today.

¹⁷ The report prepared for the JJPIC by Hornby Zeller Associates notes “State agencies will need to ensure that all youth are tested for Medicaid eligibility and that service providers’ eligibility to provide Medicaid services is a factor in granting contracts.” Hornby Zeller Associates, *Connecticut Service Needs Study: 16 and 17-Year-Old Court-Involved Youth*, p. 65.