

**Attorney Barbara Kaban, YAD Director of Juvenile Appeals, Testifies before Joint Committee on the
Judiciary on Several Juvenile-Related Bills**

Atty. Barbara Kaban, YAD Director of Juvenile Appeals, testified on behalf of CPCS at the September 17, 2015 hearing of the Joint Committee on the Judiciary in support of several provisions of S.905 and H.1436, two identical omnibus juvenile bills entitled, An Act to Promote Transparency, Best Practices and Better Outcomes for Children and Communities.

The provisions on which Atty. Kaban testified were sections relative to changing certain criminal offenses to civil infractions for juveniles and sections relative to establishing a Romeo & Juliet exception to certain sexual offenses.

Atty. Kaban outlined for the Committee why certain offenses should be downgraded to civil infractions for juveniles citing changes enacted by the Legislature in 2009 that downgraded offenses, mostly motor vehicle related, from criminal to civil for adults. She also pointed out that adults only face a civil infraction if they violate a city and town ordinance or by-law, but that infractions of anyone under the age of 18 result in criminal offenses. She urged the committee to act stating, "It is time the laws for juveniles caught up with those for adults."

Her appeal to modify current statutes governing the actions of teens engaged in consensual sexual activities was aided by examples of children she has had as clients. One was of a nine year old charged with indecent assault and battery on a minor because he had touched a girl on the clothed upper half of her chest. Atty. Kaban explained to the committee that if convicted for this action he would have been required to register as a sex offender.

Both bills carve out exceptions for indecent assault and battery on a minor under the age of 14 and sexual intercourse or unnatural sexual intercourse with a minor who is under 16 years of age.

In the case of indecent assault and battery, if the defendant is no more than three years older than the minor, or if the minor is under 12 years of age and the defendant is no more than two years older, the minor would be deemed capable of consenting. In the case of sexual intercourse or unnatural sexual intercourse, the defendant could only be punished if he or she is more than four years older than the minor, the minor is under 15 years of age, and the defendant is more than three years older than the minor, or the minor is under 12 years of age and the defendant is more than two years older than the minor.

The bills also provide for such complaints against a defendant who is younger than 18 years of age to be brought in juvenile court or in a juvenile session of a district court.

At this same hearing, Atty. Kaban testified in support of H.1185 – An Act Relative to Competency for Juveniles. The bill establishes a rebuttable presumption that any child 12 years of age or younger is incompetent to stand trial. For children between 12 and 18 years old, if the court finds that a reasonable basis exists for doubt about a juvenile's competence, it may order an evaluation of the

juvenile by a qualified examiner from the court clinic. The bill also deals with juveniles charged with murder.