To: Honorable Andrew McDonald, Chair
Rules Committee of the Superior Court
Supreme Court Building
231 Capitol Avenue
Hartford, CT 06106

Item 04-03L
(121619)

From: Honorable Bernadette Conway
Chief Administrative Judge for Juvenile Matters
239 Whalley Avenue
New Haven, CT 06511

Date: November 18, 2019

Re: **OVA's Proposed Rule Changes to the Rules of Professional Conduct and the CT Practice Book**

Thank you for the opportunity to comment on the OVA's proposals. Obviously, delinquency proceedings are different than criminal proceedings and although some similarities may exist, CT has unique and statutorily set goals for our juvenile justice system.[1] My comments

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[1]**CGS §46b-121h. Goals of the juvenile justice system.** It is the intent of the General Assembly that the juvenile justice system provide individualized supervision, care, accountability and treatment in a manner consistent with public safety to those juveniles who violate the law. The juvenile justice system shall alsp promote prevention efforts, through the support of programs and services designed to prevent re-offending. The goals of the juvenile justice system shall be to:
(1) Hold juveniles accountable to their unlawful behavior;
(2) Provide secure and therapeutic confinement to those juveniles who present a danger to the community;
(3) Adequately protect the community and juveniles;
(4) Provide programs and services that are community-based and in close proximity to the juvenile's community;
(5) Maintain and support juveniles within their homes whenever possible and appropriate;
(6) Base probation case planning upon individual risks and needs;
(7) Include the juvenile's family in case planning;
(8) Provide supervision and service coordination where appropriate and implement and monitor the case plan in order to discourage reoffending;
(9) Provide follow-up and community based services to juveniles who are returned to their families or communities;
(10) Promote the development and implementation of community-based programs designed to prevent reoffending and to effectively minimize the depth and duration of the juvenile's invovlement in the juvenile justice system, and;
(11) Create and maintain programs for juveniles that (A) are developmentally appropriate,

are meant to address OVA's proposals as they relate only to delinquency proceedings.

OVA Proposal #1: Rule 3.8 of the Rules of Professional Conduct: Special Responsibilities of a Prosecutor

The proposed amendment to Rule 3.8 would explicitly obligate prosecutors to make reasonable efforts to ensure a victim is aware of his/her constitutional rights as set forth in **CGS Sec. 54-85g**. As part of the judiciary, I respectfully decline to opine on this proposal at this time.

OVA Proposal #2: Sec. 30a-1(a) Initial Plea Hearing (In Delinquency Cases)

Substantive and procedural context may prove helpful in discussing this proposal:

P.B. Sec. 30a-1 (a) sets forth the scope of an initial delinquency plea hearing, (sometimes referred to as 'the arraignment hearing'). The arraigning judge, on the record, requests the parties, the lawyers and others present in the courtroom to identified themselves and to state their relation or connection to the child, thereby ensuring only necessary parties are present in the closed proceedings.[2] A victim's courtroom presence is explicitly governed by **CGS 46b-122 (b)**: a victim's presence shall only be prohibited if: "*. . .after hearing from the parties and the victim and for good cause shown, which shall be clearly and specifically stated on the record, the judge orders otherwise.*"[3]

In terms of victim notification, the Judicial Branch has in place statewide procedures and policies regarding victim notification in delinquency proceedings. At the inception of a delinquency case, the case is entered into the **Court Management Information System**, CMIS. At the time of intake, the Judicial Branch's CSSD probation staff is tasked with ensuring that a standardized victim notification letter/packet is mailed to the victim(s). Victims' mailing addresses are obtained from the police reports or warrants supplied by law enforcement. If there is no victim response within ten days, a second CMIS generated victim notification letter/packet is mailed within three business days.

In some instances, (e.g. domestic violence cases or if a judge orders a child detained pending arraignment on a delinquency charge), the child may be arraigned in court on a charge(s) as soon as the next day or the next day court is in session. Arresting (referring) authorities are required to timely transmit or submit their supporting police reports and other accompanying paper work to

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trauma informed and gender responsive, and (B) incorporate restorative principles and practices.

[2]CGS§46b-122 (a) "All matters which are juvenile matters,. . .shall be kept separate from all other business of the Superior Court as far as is practicable. . ."

[3]At the initial plea hearing the judge on the record also advises the child of his/her constitutional rights and the alleged offense(s) the prosecutor is pursuing.

the court to accommodate a next day arraignment. In these next day arraignment cases, probation staff intakes the case on the same day the child is arraigned and therefore the initial victim notification process described above commences on the initial plea date and therefore any in-court inquiry regarding victim notification is premature.

In other instances, **P.B Sec. 29-2 (b)** requires: *"Petitions alleging delinquency or family with service needs misconduct shall be served or delivered not less than seven days before the date of the hearing which shall be held not more than thirty days from the date of filing of the petition."* The arresting agency specifies on the arresting document (often called a summons) the date and time the child is ordered to appear in court. The child and/or parent/guardian, in writing, acknowledges being informed of the future court date.[4] CSSD's commencement of the victim notification process described above is dictated by the police-ascribed plea date AND how quickly law enforcement transmits the arresting paperwork to the court. Depending on the timing by law enforcement, CSSD may or may not have commenced/completed victim notification by the initial plea date.

If OVA's proposal #2 contemplates that for initial plea hearings, victims be 'served' or accorded the same notice as the accused child, such notification would require statutory language to that effect. From a logistical standpoint, the arresting or referring agency, usually the police would have to assume responsibility for effectuating proper victim service or notice. Imposing such a requirement on law enforcement needs to be carefully considered. I do not support any legislative or procedural changes that delay or postpone initial plea hearings. Once a child has been referred to the juvenile justice system, it is in the best interests of the child and the community that the existing time line be adhered to.

OVA's Proposal #3: Sec. 30a-5 Dispositional Hearing[5]

Existing juvenile rules and practices may assist in analyzing this proposal.

PB 30a-6-- Statement on Behalf of Victim: *"Whenever a victim of a delinquent act, the parent or guardian of such victim or such victim's counsel exercises the right to appear before the judicial authority for the purpose of making a statement to the judicial authority concerning the disposition of the case, no statement shall be received unless the delinquent has signed a statement of responsibility, confirmed a plea agreement or been convicted as a delinquent."*

Rule 30a-6 speaks to the timing of when a victim may be heard regarding the ultimate disposition of the case. Under our state's statutory scheme, children charged with delinquency offenses are not entitled to be tried by a jury. Therefore, from an evidentiary standpoint, the trial judge ultimately determines whether the state has proven its case by proof beyond a reasonable

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[4]Absent proper notice, a child's failure to appear for court may not be deemed willful.

[5]PB 30a-5 presently has subsections (a)-(g). It is unclear why OVA proposal #3 is identified as PB 30a-5 (c)

doubt. Presently the Judicial Branch operates eleven delinquency courts throughout the state and in seven judicial districts, juvenile courthouses are separate from the G.A. or J.D. courthouses.

Generally speaking, the number of judges assigned to hear juvenile cases in each of the eleven jurisdictions is small–in some jurisdictions only one judge, (sometimes with part time assistance from a JTR) routinely handles juvenile matters. **Rule 30a-6** insulates the potential trial judge from being unduly prejudiced as to the ultimate issues of the case, (i.e. guilt/innocence) thereby protecting the accused's pre-adjudicatory (pretrial) rights.

To be clear, **Rule 30a-6** accommodates the victim's constitutional right to be heard[6], as to other substantive issues (e.g. victim input/feedback as to potential conditions of pre-adjudication release, requests for restitution and no contact with the victim or victim's family orders) at any and all points in a delinquency proceeding. **Rule 30a-6** effectively affords constitutional protection to both the pre-adjudicated accused child and the victim. Any proposal that enhances or expands a victim's right to be heard on the ultimate issues, pre-adjudication, potentially jeopardizes an accused child's pre trial rights[7]

OVA Proposal #4: Sec 39-7 Notice of Plea Agreement

I defer to the Chief Administrative Judge for Criminal Matters as to this proposal.

OVA Proposal #5: New language for Sections 30a-1, 30a-5[8]

In so far as OVA proposal #5 pertains to initial plea hearings, victim input on the ultimate issues, preadjudication, has already been discussed. Similarly, effectuation of victim notification by the initial plea hearing presents challenges that would implicate policing practices and potentially require statutory changes.

In arriving at an appropriate resolution of a delinquency case, the court is required to consider a variety of factors. "[T]*he impact of the offense on the victim;"* [CGS §46b-140 (a) (3)] is one of the ten factors a judge shall consider when disposing of a delinquency case.[9]

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[6]See CGS §54-85g

[7]The victim's input regarding the ultimate issues is made known to the court at the time of sentencing in the predispositonal study and/or by representations by the prosecutor. In limited cases a judicially employed victim advocate may be involved. It is important to distinguish between a victim's right to be present at juvenile hearings (see CGS§46b-122(b)) and a victim's right to be heard. The latter right may be subject to some limitations in the pretrial or preadjudicative stage of a delinquency case.

[8]Again, I defer to the CAJ for Criminal Matters as to OVA's non-delinquency related proposals.

[9]CGS§46b-140 (a): "In determining the appropriate disposition of a child adjudicated as delinquent, the court shall consider: (1) The child's age and intellectual, cognitive and emotional

It's unclear but it may be that the OVA's #5 proposal in subsection (2) contemplates a final disposition of a delinquency case may be subject to a motion to open the judgement. Such a scenario raises concerns in that:

(1) Adjudicated children who have been identified as needing clinical or programming services, or a locked setting or residential placement need and deserve to know the 'finality' of the delinquency proceeding so they can move on and substantively engage in the court ordered proposed interventions.

(2) The final disposition (sentence) triggers the statutory prescribed time line to appeal.

(3) If proposal #5 is interpreted to mean that at each and every court hearing, regardless of the status of the case, the victim has a right to be heard on all matters, said interpretation may be problematic from a practical and a due process perspective. For instance, a decision to order (rule) that an accused child submit to a clinical evaluation should not necessarily be dependent on victim input or subject to reconsideration if victim input were to be forthcoming. Procedural rulings, such as consolidation of cases or rulings on pre-trial issues or pre-trial discovery rulings, although the victim is entitled to be kept informed of such rulings, it does not necessarily follow the victim has a right to be substantively heard as to all pre-dispositional rulings.

In conclusion, in my opinion existing juvenile statutes and practice book rules embrace and protect victims' constitutional rights in delinquency proceedings. Respectfully, I do not support OVA's changes as outlined in the March 20, 2019 proposal. Feel free to contact me if I can be of any further assistance.

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development; (2) the seriousness of the offense, including any aggravating or mitigating factors; (3) the impact of the offense on any victim; (4) the child's record of delinquency; (5) the child's willingness to participate in available programs; (6) the child's prior involvement with the Department of Children and Families as a committed delinquent; (7) the child's prior involvement with juvenile probation; (8) the child's history of participation in and engagement with programming and service interventions; (9) the identified services, programs and interventions that will best address the child's needs and risk of reoffending, as indicated by the risk and needs assessment administered by the Court Support Services Division and any other relevant evidence; and (10) the level of supervision indicated by the risk and needs assessment administered by the Court Support Services Division and any other relevant evidence.