BISHOP, J., dissenting. Although I agree with the majority that this appeal is moot, I disagree with the majority's conclusion that the issues raised by the respondent, Earl B., on appeal are not likely to evade future review. Contrary to the majority, I believe that the issues are likely to evade review. I also believe that the issues are capable of repetition, that the respondent is an appropriate surrogate for similarly situated serious juvenile offenders and that the issue before us involves a matter of significant public importance. Therefore, in spite of the mootness of the appeal, I would reach the underlying substantive issue of whether the court improperly denied the respondent's motion to correct an illegal sentence. In light of the statutory scheme for serious juvenile offenders, I would reject the respondent's claim regarding the length of residential treatment ordered by the court. Based on my review of the statutory scheme pertaining to serious juvenile offenders, however, I do not believe that the court had the authority to issue a freestanding banishment order, excluding the respondent from New Haven County. Accordingly, I would reverse the court's decision denying the respondent's motion to correct an illegal sentence as to its banishment order and remand this matter with direction to grant the motion vacating the unauthorized banishment order.

The record in this matter reveals that the date of birth of the respondent is July 21, 1990, that the offense underlying his guilty plea took place on September 26, 2003, and that, pursuant to a plea agreement, the respondent was committed on September 23, 2005, to the custody of the department of children and families (department) for a period not to exceed four years. At the dispositional hearing, the court also issued an order excluding the respondent from New Haven County for a period of forty-two months. This record shows, therefore, that the respondent was approximately thirteen years and two months of age on the date of the offense and approximately fifteen years and two months of age on the date of disposition. As a consequence of the respondent's being under the age of fourteen on the date of the offense, and in spite of its extraordinary seriousness, he was not eligible for transfer to the regular criminal docket pursuant to General Statutes § 46b-127.

The statutory scheme applicable to juvenile matters is set forth in chapter 815t of the General Statutes. The respondent fit the definition of a serious juvenile offender as set forth in General Statutes § 46b-120 because the underlying offense resulting in his plea, conspiracy to commit robbery in the first degree, is a class B felony. The sentencing parameters for delin-

quents, including serious juvenile offenders, is set forth in General Statutes §§ 46b-140 and 46b-141. Section 46b-140 provides in relevant part: "(f) If the court further finds that its probation services or other services available to the court are not adequate for such child, the court shall commit such child to the Department of Children and Families in accordance with the provisions of section 46b-141. . . ." This statute continues: "(i) If the delinquent act for which the child is committed to the Department of Children and Families is a serious juvenile offense, the court may set a minimum period of twelve months during which the child shall be placed in a residential facility operated by or under contract with said department, as determined by the Commissioner of Children and Families. The setting of such minimum period shall be in the form of an order of the court included in the mittimus. . . ." General Statutes § 46b-140 (i). Section 46b-140 (j) (2) also includes a provision regarding the placement of juvenile offenders determined by the department to be the highest risk at the Connecticut Juvenile Training School, a secure facility.[1]

In the case of a child committed to the department, as in this instance, there are additional statutory requirements regarding the length of commitment and the requirement for periodic reviews by the court. Section 46b-141 (a) provides, in relevant part, that commitment of a serious juvenile offender to the department may be for a period "up to a maximum of four years at the discretion of the court, unless extended as hereinafter provided." This statute further provides in relevant part: "The court shall hold a permanency hearing in accordance with subsection (d) of this section for each child convicted as delinquent for a serious juvenile offense . . . within twelve months of commitment to the Department of Children and Families and every twelve months thereafter if the child remains committed to the Department of Children and Families. Such hearing may include the submission of a motion to the court by the commissioner to either (1) modify such commitment, or (2) extend the commitment beyond such four-year period on the grounds that such extension is for the best interest of the child or the community. . . ." General Statutes § 46b-141 (c).

With the exception of the banishment order, the court and the department appear to have followed this statutory scheme in sentencing the respondent and in his subsequent course while committed to the department. Rather than placing the respondent on probation, the court committed the respondent to the department. The record reveals, as well, that the department initially placed the respondent at the Connecticut Juvenile Training Center, and, thereafter, he was transferred to a residential juvenile facility in Pennsylvania. At a permanency plan hearing on May 7, 2008, when the respondent was approximately seventeen years and ten

months of age and pursuant to § 46b-141, the department recommended that the respondent be permitted to visit his uncle's home in Meriden, which is located within New Haven County. Incident to this hearing, the court granted the respondent's motion to modify the banishment order. Thereafter, however, the state's attorney's office filed a motion for reconsideration in which it argued that the court could not modify the original disposition without providing the state and the victim notice and an opportunity to be heard. Within the same time period, the respondent filed a motion to dismiss the state's motion on the basis of standing, and the respondent moved to correct an illegal sentence in which he alleged that the court's original banishment order exceeded the court's statutory authority. In response, the court by memorandum of decision filed November 6, 2008, granted the respondent's motion to dismiss on the ground that the state had no standing during a permanency plan hearing, but the court also denied the respondent's motion to correct an illegal sentence.[2]

Recognizing that the appeal has become moot because the respondent is no longer burdened by the banishment order, my colleagues dismiss this appeal on the ground that the issue of the authority of a juvenile sentencing court to issue a banishment order is not likely to evade review. As the majority has stated, in order for a moot question to survive dismissal, the challenged action or its effect must, by its nature, "be of a limited duration so that there is a strong likelihood that the substantial majority of cases raising a question about its validity will become moot before appellate litigation can be concluded." *Loisel* v. *Rowe*, 233 Conn. 370, 382, 660 A.2d 323 (1995). Additionally, there must be a "reasonable likelihood" that the issue will arise again in the future and that it will either affect the same appellant or a reasonably identifiable group for whom the complainant can be said to act as a surrogate. Id. Finally, the question must be of some public importance. Id.

Taking the *Loisel* requirements in reverse order, the last is the easiest to resolve, as our Supreme Court has stated that issues that implicate the rights of juveniles adjudicated as delinquent are of public importance. *Earl B.* v. *Commissioner of Children & Families*, 288 Conn. 163, 172, 952 A.2d 32 (2008).[3] That the respondent may serve as a surrogate for all similarly situated serious juvenile offenders does not appear to be a subject of debate. I believe that the next prong is also satisfied; that is, there is a reasonable likelihood that the authority of the court to issue a freestanding banishment order in a delinquency matter is likely to reoccur. I base that conclusion not by reference to any anecdotal evidence of a raft of cases in which banishment orders have been issued but, rather, on the apparent maintenance by the judicial branch of an outdated form which appears to

contemplate the issuance of such an order.[4] A review of the record reveals that the form utilized by the court on the date of sentencing, September 23, 2005, contains a series of boxes to be checked in order to reflect the disposition of the case. One of the boxes is followed by the following form-typed language: "Placed out of said child's/youth's town of residence for ___ months effective on (date) ___ and shall expire no later than (date): ___." In this instance, the box was checked and the blank spaces were filled out to reflect that the respondent was "[p]laced out of said child's/youth's town of residence [New Haven County] for 42 months effective on . . . 9/23/05 and shall expire no later than . . . 3/23/09." The manner in which this portion of the form was completed comports precisely with the court's express order of banishment as reflected in the transcript of the sentencing procedure. The judicial branch's continuing use of this outdated form provides an adequate basis for me to conclude that there is a reasonable likelihood that the legal efficacy of banishment orders in juvenile delinquency matters will likely arise in the future.

Whether the issue is likely to evade review is, I recognize, a closer question. It is on this basis that the majority dismisses the appeal. Our Supreme Court has suggested, but not explicitly stated, that appeals from delinquency placement determinations are likely to evade review because they are inherently time limited. *Earl B.* v. *Commissioner of Children & Families*, supra, 288 Conn. 171. In *Earl B.*, which involved an appeal from a decision to require the plaintiff, who is the respondent in the present case, to remain at the training school for an additional period of two years, subject to periodic (six month) reviews, the court stated: "The issue raised in the present appeal is necessarily limited in its duration because there is a strong likelihood that the department will change the juvenile's placement during the pendency of the appeal. In fact, § 17a-15 (b) requires the department to review the treatment plan of each child committed to its custody every six months. Accordingly, the juvenile's placement will be reviewed and likely changed more quickly than the time in which all appeals can be resolved. Moreover, pursuant to General Statutes § 46b-141, commitment of children convicted as delinquent to the department shall be for a maximum of eighteen months, or when convicted for a serious juvenile offense, up to a maximum of four years. The effect of the placement as prescribed in the treatment plan is thus limited by its very nature, and therefore is of such a limited duration that a substantial majority of the cases in which such an order is entered will evade review." Id.

In the present case, the provision of the statute regarding the placement of serious juvenile offenders requires a permanency review within twelve months and every twelve months thereafter. See General Stat-

utes § 46b-141 (c). Thus, even though the order at hand purported to be for a period of forty-two months, it was subject to judicial review at a permanency placement hearing within twelve months of commitment, a shorter time interval than that found by the court in *Earl B.* to likely evade review.[5]

Having reached the conclusion that the court's order under scrutiny is capable of repetition, likely to evade review, involves significant issues of public policy and that the respondent is an apt surrogate for similarly situated individuals, I would assess the substance of the respondent's claims. There are two. The respondent claims that, at sentencing, the court improperly committed him to the Connecticut Juvenile Training Center for a period not to exceed four years, a term greater than allowed by statute. I do not agree. The pertinent statute provides in relevant part: "If the delinquent act for which the child is committed to the Department of Children and Families is a serious juvenile offense, the court may set a minimum period of twelve months during which the child shall be placed in a residential facility operated by or under contract with said department, as determined by the Commissioner of Children and Families. The setting of such minimum period shall be in the form of an order of the court included in the mittimus. . . ." General Statutes § 46b-140 (i).

The respondent argues that this statutory language limits the period of time a child may be committed to a residential facility to twelve months. His argument is supported neither by the language of the statute nor the statute's legislative history. As to the language, if the authorized time period is limited to twelve months, there would be no need for the term "minimum period" to be employed in the statute. Rather, the statute could simply give the court authority to commit a child to a period of twelve months. This view is bolstered by the legislative history, which reveals that, as part of revamping our juvenile justice system and creating a new residential facility in 1999, the General Assembly enacted this change in order to give the court the authority to set a minimum time of required residential treatment for serious juvenile offenders. Speaking in favor of the bill, one of its proponents, Representative Michael P. Lawlor, judiciary committee co-chairperson, commented: "And the point of the juvenile justice system in the first place is that these [kids'] lives are still salvageable. And if we're going to spend the extraordinary amount of money which we spend per kid per year in a facility like Long Lane [School in Middletown],[6] we should at least require them to be there long enough . . . to benefit from the treatment. And no one thought that the average stay—even currently which is like five months—is enough. So the bill, and this amendment requires the new Long Lane [School] to keep kids there for *at least* [twelve] months when the court that has sent them there has required it. Serious juvenile offend-

ers for whom the court says you've got to keep this kid at least a year in Long Lane [School], they'll have to do that." (Emphasis added.) 42 H.R. Proc., Pt. 6, 1999 Sess., pp. 1854–55. Given this legislative history and the language of the statute in question, I do not believe that the court's order that the respondent be placed in a residential facility for a period of time substantially in excess of twelve months violates the statutory prescription that any such placement be for a time period of *at least* twelve months.

The respondent also claims that the court's order of banishment from New Haven County was beyond the court's authority. I agree. Analysis of this claim requires a brief discussion of the antecedents to § 46b-140. Prior to October 1, 1995, § 46b-140 (e) (1), the predecessor to subsection (i), provided: "If the delinquent act for which the child is committed to the department of children and families is a serious juvenile offense, the court may set a period of time up to six months during which the department of children and families shall place such child out of his town of residence at the commencement of such child's commitment." General Statutes § 46b-140 (e) (1). Thus, the statute in effect prior to October 1, 1995, contemplated that a child could be excluded from his or her town of residence for a period up to six months following his or her commitment to the department. In 1995, the statute was amended; see Public Acts 1995, No. 95-225, § 22, effective October 1, 1995; to delete reference to six months with the result that, as of October 1, 1995, the statute gave to the court the authority to order that a child committed to the department be excluded from his or her community for an indefinite period of time, presumably up to the full term of the child's commitment.[7] In 1999, however, § 46b-140 was repealed and reenacted by Public Acts 1999, No. 99-26, § 12. Since 1999, the court no longer has the authority to set a period of time for a child to be placed out of his town of residence by the department.[8] Rather, the statute, as applicable at the time of the underlying offense and sentencing, provides that the court may order that a serious juvenile offender committed to the department be placed in a residential facility for a minimum period of time of twelve months without regard to the offender's place of residence. In sum, by the enactment of Public Act 99-26, the General Assembly eliminated the court's authority to banish an offender from his or her hometown and substituted, instead, a provision granting the court the authority to require residential placement for a minimum period of twelve months. In entering an order for placement as well as for banishment, the court, in this instance, exceeded its statutory authority. For that reason, I would reverse the judgment of the court denying the respondent's motion to correct an illegal sentence and remand this matter to the trial court with direction to grant the motion to vacate the banishment provision.

Accordingly, I respectfully dissent.

[1] Nowhere in § 46b-140 do I find authorization for the court to enter a freestanding order of banishment. Therefore, even if such an order was part of a plea agreement, it would constitute an illegal sentence if the court had no authority to issue that order just the same as if a court had sentenced a person to a period of time beyond the maximum prescribed by statute.

Although the court has the authority, pursuant to § 46b-140 (b) to place the child on probation and to establish conditions of probation, the respondent, in this instance, was committed to the department as an alternative to probation. Thus, we are not confronted in this instance with the question of whether banishment can be imposed as a reasonable condition of probation.

[2] The respondent became eighteen years of age on July 21, 2008. As a consequence, he was no longer in the custody of the department on the date of the court's November 6, 2008 orders. Additionally, the forty-two month banishment order expired, by its own terms, on March 23, 2009, while this appeal was pending.

[3] I note that *Earl B.* v. *Commissioner of Children & Families*, supra, 288 Conn. 163, involves the same juvenile offender as the case at hand, but raises different claims on appeal.

[4] While this appeal was pending, the state filed a motion to dismiss on the basis of mootness. In return, the respondent furnished this court with the docket from one case in which a trial judge issued a banishment order. Additionally, there is an unpublished opinion, dated August 25, 1999, in which the trial court was confronted with a banishment order. Although the efficacy of the banishment order was not an issue for adjudication in that matter, the court noted that such orders elsewhere had generally been found to be unconstitutional. *Burke* v. *Wezner*, Superior Court, judicial district of New Haven, Docket No. CV-98-0413665S, CV-98-0414260 (August 25, 1999) (25 Conn. L. Rptr. 313).

[5] In this instance, the fact that the trial court came to the conclusion that it did not have the authority to modify the banishment order is not an aid to determining whether such an order, made at sentencing, is likely to evade review. Such an order, if of any legal vitality, would by necessity have to be part of the court's order of commitment because the court is limited by statute to either ordering certain services for a delinquent or committing the child to the department. See General Statutes § 46b-140 (f). The purpose of a permanency hearing is to determine whether the terms of a commitment to the department should be modified in the best interest of the child and the community. See General Statutes § 46b-141 (c). Our Supreme Court has opined that "the purpose of the comprehensive statutory treatment of 'juvenile delinquents' is clinical and rehabilitative, rather than retributive or punitive" and that "[t]he objective of juvenile court proceedings is to determin[e] the needs of the child and society rather than adjudicat[e] criminal conduct." (Internal quotation marks omitted.). *In re Tyvonne M.*, 211 Conn. 151, 160, 558 A.2d 661 (1989). Although the heinous behavior giving rise to this respondent's commitment stretches taut the notion of rehabilitation and concerns for a child's interest, that is precisely the mandate that governs juvenile proceedings. It stands to reason, therefore, that at a permanency hearing for a child committed to the department, the court be in a position to modify all of the terms of a child's disposition so as to fairly meet the needs of society and the juvenile offender.

[6] Long Lane School, which was closed in 2003, was a juvenile facility that was maintained by the department. See *In re Steven M.*, 68 Conn. App. 427, 429 n.4, 789 A.2d 1169 (2002), rev'd in part on other grounds, 264 Conn. 747, 826 A.2d 156 (2003).

[7] That is not to suggest, however, that if a child is placed on probation, the court is powerless to make an order of exclusion as a condition of probation. In doing so, however, a court should be mindful that banishment has historically been viewed as a form of punishment. "Banishment was a weapon in the English legal arsenal for centuries . . . but it was always adjudged a harsh punishment even by men who were accustomed to brutality in the administration of criminal justice." (Citation omitted; internal quotation marks omitted.) *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168 n.23, 83 S. Ct. 554, 9 L. Ed. 2d 644 (1963). In reviewing such an order, one court has observed: "Conditions of banishment affect the probationer's basic constitutional rights of freedom of travel, association and assembly. . . . Thus, in order to survive constitutional scrutiny, such conditions not only must be reasonably related to present or future criminality, but also must be narrowly drawn and specifically tailored to the individual probationer." (Citations omitted.) *In re Babak S.*, 18 Cal. App. 4th, 1077, 1084, 22 Cal.

Rptr. 2d 893 (1993), review denied, 1993 Cal. LEXIS 6522 (December 15, 1993). In this instance, because the respondent was not placed on probation, it is beyond the scope of this dissent to discuss what narrowly drawn and specifically tailored conditions of banishment would have been reasonable under these circumstances.

[8] Although the form utilized by the judicial branch purports to be current through 2002, it appears to me that the branch has not accommodated the form to the 1999 repeal and reenactment of § 46b-140.