



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF DIVISION OF CRIMINAL JUSTICE

JUVENILE JUSTICE BILLS

PRESENTED BY:
FRANCIS J. CARINO
SUPERVISORY JUVENILE PROSECUTOR FOR STATEWIDE MATTERS
OFFICE OF THE CHIEF STATE'S ATTORNEY

JOINT COMMITTEE ON JUDICIARY

MARCH 20, 2006

My name is Fran Carino. I am the Supervisory Juvenile Prosecutor for Statewide Matters in the Office of the Chief State's Attorney. I have been involved in the prosecution of juveniles for over 26 years. The following comments are offered regarding the Bills on the agenda for March 20, 2006:

RB 667 AAC Determinations of Competency In Juvenile Matters

While in favor of this Bill, the following specific comments are offered:

Section 1(a):

It is assumed that the term "prosecuted," as used in this section, includes referring a child to the juvenile court, filing a petition, having a court hearing, etc. If a child is presumed not competent under age nine, this language may be interpreted as prohibiting even the referral and filing of a petition in the case of a child under nine. It was not the intent of the multi-agency group that drafted this proposal to set a minimum age for referral to juvenile court at age nine, but this language could yield that result. There are situations where the state may need to "prosecute" a child under age nine, meaning referring the child to the court, filing a petition, having a court hearing, etc. in order to request things such as evaluations, home studies, appointments of guardians etc. Deleting the word "prosecuted" in this section would not have any significant impact on the effectiveness of the proposal and such children would still not be "tried or convicted" if not competent.

It should also be clear that this presumption applies only to a child's competency to stand trial in delinquency and Family With Service Needs cases and does not apply to a child's competency to be a witness or otherwise provide testimony.

Section 1(b):

This section results in a presumption of competency at age nine or older and a presumption of not competence below age nine. These presumptions are rebuttable presumptions. The Bill sets forth the burden of proof and the burden of going forward when a party seeks to prove a child presumed to be competent is in fact not competent. It does not however appear to address the situation where the state may seek to establish that a child under nine and presumed not competent is in fact competent.

Section 1(d)(2)(A):

This section authorizes the court to "appoint one or more physicians specializing in child and adolescent psychiatry to examine the child." In Section 1(d)(3)(B) however, it requires that the physicians conducting the examination of the child not only be physicians "specializing in child and adolescent psychiatry" but also that they have "experience in conducting forensic evaluations." The qualifications of such physicians should be consistent in both sections.

Section 1(k):

This section provides that a child found not competent, due to immaturity only, may not be placed in a psychiatric hospital. The question raised is this: if this law was in effect today what specific facility would be available and suitable for such a child who was also found to present a danger to himself or herself or others?

Section 1(o):

Similarly, when a child is found to be not competent and not restorable, Section 1(o) provides for the discharge of the child and the appointment of a guardian ad litem to determine if a child protection petition should be filed or the placement of the child in the custody of DCF, DMHAS or DMR. Again, if this law was in effect today what specific facility would be available and suitable for such a child who was also found to present a danger to himself or herself or others since the juvenile system does not have a secure mental health facility similar to the Whiting Forensic Division of CVH.

RB 674 AAC Confidentiality of and Access to Records Maintained by DCF

While not opposing this Bill, I would to bring to your attention the fact that Section 1(g)(7) authorizes the release of such records to the Chief State's Attorney or a designee, without the consent of the person named in the record, but only "for purposes of investigating or prosecuting an allegation of child abuse and neglect." While subsection (3) provides for the release to "any guardian ad litem or attorney representing the child or youth in any court litigation affecting the best interests of the child or youth."

Access to such records has become an issue in cases involving investigations and prosecutions of incidents occurring within DCF facilities such as the Connecticut Juvenile Training School or other residential facilities. Defense attorneys and guardians ad litem are provided easy access to records, video tapes, statements, etc., while the prosecutors are denied access unless and until a subpoena is issued. There should be equal access to this information when a case is pending in court. Since most

of these cases are in the juvenile court, the confidentiality of the information is protected by the overall confidentiality of juvenile matters. No useful purpose is served by restricting the prosecutor's access to such information and it should be available to the prosecutor "in any case where the records are deemed relevant by the Chief State's Attorney or designee in the prosecution or investigation of a case involving a person named or identified in the record."

RB 5213 AAC Juvenile Offenders

We agree with this Bill.

Section 1 adds the Department of Corrections to the list of agencies authorized to access juvenile records. This addition is appropriate for the seamless sharing of essential information.

Section 5 clarifies that cases that were handled non-judicially by the juvenile probation officer would also be subject to erasure if the erasure criteria set forth in the statute have been met. This is also an appropriate change.

In Section 5, the elimination of the phrase "within such period" would clarify that a child may request an erasure of their juvenile record if the erasure criteria set forth in the statute have been met provided they had also attained the age of sixteen. The current language appears to require that the child turn sixteen *during* the two or four year period after discharge required for erasure which, if applied literally, would mean that a young child could never get his/her record erased.

RB 5699 AAC Certain Requirements Protecting Children of Families With Service Needs

While in favor of the proposal, it is recommended that a supervisory juvenile prosecutor or a juvenile prosecutor be included on the board established in Section 1 because we prosecute all Family With Service Needs cases in the juvenile court and would be able to provide valuable input to the work of the board.

RB 5700 AAC Justice for all Children

Section 1:

While in favor of Section 1 of the proposal, it is recommended that the Division of Criminal Justice be included in the group established in subsection (b) because we prosecute all delinquency cases in the juvenile court and would be able to provide valuable input in the development and implementation of the criteria for detention.

Section 2:

Currently, a child may be convicted as delinquent on one file and adjudicated as a child from a Family With Service Needs on another. The child might then be put on probation on the delinquency file and committed to DCF and placed in a facility on the Family With Service Needs file. It is in the

child's best interest to do this because they will be committed and placed for treatment but they are not exposed to immediate placement at CJTS or some other locked facility for a violation such as an escape because they are not committed as a delinquent child. Under current law, if that child escapes from the facility, they can be charged with escape and placed in a juvenile detention facility, at least temporarily, only if a judge is convinced that no other reasonable alternative is available.

If the language proposed in Section 2(c) is adopted, the escape from custody charge would no longer apply to convicted delinquents who are committed to DCF as a child from a Family With Service Needs or following a child protection adjudication and then escape from a DCF placement. This would eliminate the ability of the police to place such a child in detention, even if only temporarily. The consequence will be fewer options available to DCF and the police when such a child exhibits habitual runaway behavior.

Such a change may also result in more children being committed as a delinquent child rather than as a Family With Service Needs child in order to preserve the ability to file the escape charge and detain the child when necessary. If that happens, a boy who has been committed as a delinquent and escapes, could be immediately placed at the Connecticut Juvenile Training School without any further court action or judicial review.

This proposal should not be adopted because it removes what may be the only reasonable alternative available when a committed child repeatedly escapes from a treatment facility and will likely result in more delinquency commitments.

RB 5731 AAC Detention and Leave in the Juvenile Justice System

Section 1:

This proposal would grant "credit for time served" in pretrial detention, CJTS, other facility or hospital or police or court house lockup or correctional facility against a committed child's period of commitment.

A similar Bill was proposed in March, 2005 and defeated. I testified in opposition then and do so again now.

Juvenile court commitments are now indeterminate up to eighteen months for non-serious juvenile offenses and up to four years for serious juvenile offenses. Commitments, according to CGS §46b-140(f), are the result of the court finding that "its probation services or other services available to the court are not adequate for such child" and, after consultation with DCF prior to the commitment, that the placement ordered "will be in the best interests of such child." The statute clearly establishes that the commitment in juvenile court is for treatment purposes and not for punishment. If a child spent a considerable amount of time in pretrial detention, perhaps because the child chose to contest the charges or because lengthy evaluations were necessary or because there was a long waiting list to get into the desired treatment facility, that time, during which the child probably did not receive any treatment, would be subtracted from the period of commitment and would result in an effective commitment of considerably less time than that which might be required for treatment.

In the adult context, time spent in pretrial lockup can be credited against time spent in post sentence incarceration because the purpose of incarceration is to punish and remove the adult offender from society. In that system "time locked up" is "time locked up" and it doesn't matter if it is before or after sentencing. In the juvenile system, time held in detention or wherever, prior to commitment, does not equate to time spent in treatment after commitment.

Let me offer an analogy to make my point. Suppose you injured your back in an accident and you were told that you would need physical therapy. You then call a doctor to set up the treatment. The doctor is busy so the earliest appointment you can get is in two months. When you finally see the doctor, he examines and evaluates you and determines that you need one year of treatment to rehabilitate your back. Are you going to say to the doctor that you should only undergo ten months of treatment because you waited two months to see the doctor? Of course not, the time spent waiting for the appointment has no bearing on the course of treatment that is needed to resolve the problem. If you need one year of treatment, it doesn't matter that you waited two months for the treatment to begin.

Children were given similar "credit" in 2004 if they were ultimately put on probation. This Bill would extend the credit to those children who are committed to DCF and placed in a facility. By requiring the application of such credit, the treatment aspect of juvenile sentences would be compromised.

To illustrate how the court is responding to the inappropriateness of the credit provided in probation cases, at a recent hearing, a juvenile was going to be placed on probation for six months because that was the amount of time the court determined that probation should be in effect. Because the juvenile had spent 27 days in pretrial detention, the period of probation eventually ordered was "six months plus 27 days" thereby rendering the "credit" meaningless.

Since commitments are indeterminate, this option will not be available to the court when ordering the commitment of a child.

Unless you are contemplating changing the policy and purpose of DCF commitments and abandoning the "treatment" aspects of such commitments, substituting "punishment" or "removal from society" as the objective, then this proposal should not be adopted unless you are also willing to allow the court to either impose a longer period of commitment than that currently authorized by CGS §46b-141 or to allow the court to impose fixed or determinate sentences.

By requiring a reduction in the treatment oriented commitment because of time spent in non-treatment oriented pretrial detention, you will effectively reduce the court's and DCF's ability to appropriately deal with the treatment needs of these children.