



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 2 , 2009

- H.B. No. 6575 An Act Concerning Revisions to Provisions Raising the Age of Juvenile Jurisdiction
- H.B. No. 6386 An Act Delaying Implementation of Legislation Raising the Age of Juvenile Jurisdiction
- H.B. No. 6574 An Act Concerning the Connecticut Juvenile Training School and Other Juvenile Detention Facilities
- H.B. No. 6580 An Act Concerning Juvenile Justice
- S.B. No. 674 An Act Concerning Local Expenditures Related to the Change in the Age of Juvenile Court Jurisdiction
- S.B. No. 1057 An Act Concerning Appointment of Counsel and Guardian Ad Litem in Certain Juvenile Matters

The Division of Criminal Justice would respectfully offer the following testimony on these bills dealing with juvenile matters:

H.B. No. 6575

This bill is the result of many weeks of meetings of subcommittees consisting of representatives of the various agencies involved in the juvenile justice system. The originally stated purpose of these meetings was to consider "technical revisions" necessary to facilitate the "raise the age" law. The Division of Criminal Justice supports this legislation, with one exception, that being the revision of those crimes designated as "serious juvenile offenses."

The Division objects to the proposed elimination of Connecticut General Statutes section 53-21(a)(1), the charge of risk of injury to a minor, from the list of serious juvenile offenses. No statistical information or data was presented to support the anecdotal claim that police are misusing this charge in order to place a child in a juvenile detention center without first obtaining a court order. The Division further believes that if such a situation did in fact exist it could be remedied without legislation and simply by revising the Judicial Branch's admissions policy to require a judge's order for admission unless the child is charged with a serious juvenile offense other than risk of injury.

The Division also would call the Committee's attention to Section 15 of the bill, which the Division strongly supports. This section represents a significant compromise that was crucial to the general consensus achieved by those who worked so diligently on this bill. We would respectfully and in the strongest of terms urge the Committee to reject any effort to remove or revise this compromise provision.

The provision does not in any way affect children under the age of 16. The law would continue to require that a parent be physically present with the child in order for anything the child says to be admissible in court against the child. What the provision does provide is the option for a 16- or 17-year-old to talk to a police officer without a parent being

physically present as long as the officer (1) has made reasonable efforts to contact the parent and (2) the youth has been advised that (A) he or she has the right to contact a parent or guardian and have them present during the interview, (B) he or she has the right to retain counsel or have counsel appointed on their behalf, (C) he or she has the right to refuse to make any statement and (D) any statement that he or she does make may be used against them in court. These rights are more extensive than the rights afforded to 16- and 17-year-olds in Connecticut under the existing law.

If, after being advised of these rights, the youth elects to waive those rights and chooses to speak to the officer, the court would then determine if that waiver was knowingly and intelligently made by looking at what is referred to as the "totality of the circumstances" surrounding the advisement and waiver of rights. As stated right in the law, such a determination would take into consideration at minimum: (1) the age, experience, education, background and intelligence of the youth, (2) the capacity of the youth to understand the advice concerning the rights and warnings required to be given, the nature of the privilege against self-incrimination and the consequences of waiving those rights and privilege, (3) the opportunity the youth had to speak with a parent or some other suitable individual prior to or during the interview, (4) the circumstances surrounding the interview including (A) where and when it took place, (B) the reasonableness of proceeding or the need to proceed without a parent present, (C) the reasonableness of the officer's efforts to attempt to contact a parent.

The use of the "totality of the circumstances" test to determine the appropriateness of the youth's waiver has been used for any person over the age of 16 in Connecticut for many years without any significant problems. Our Supreme Court has found that the test is also sufficient to protect the Constitutional rights of a child under the age of 16 transferred to adult criminal court on very serious charges. Also, based on a survey conducted for the subcommittee, it is also the test used in just about every other state in the country.

If the purpose of the "raise the age" law is to bring Connecticut into line with other states by raising the age of juvenile court jurisdiction, then this provision must be enacted. Otherwise our state would be taking one giant step away from the rest of the country in this one key area.

Also, the failure to adopt this provision would put an unreasonable burden on the police handling these cases. Since 16- and 17-year-olds are more mobile and less dependent on their parents than children under the age of 16, they are more likely be involved with the police farther from home. For the police to track down an out-of-town parent and to convince that parent to come to the police station so they can interview the youth could be very difficult and very time consuming. For example, a 17-year-old from New Haven is arrested for a fight at a concert in Hartford. The Hartford police would then be required to locate the parent in New Haven and convince the parent to come to Hartford so the youth could be interviewed. If they did agree to come to Hartford, that officer will be out of service for a considerable period of time while waiting for the parent. If they refused to come to Hartford, the interview could not take place and the officer would be less likely to release the youth on a promise to appear without hearing the youth's side of the story. This could result in the youth being charged and possibly even placed in a juvenile detention center when the matter may have been resolved with a warning if the officer was able to interview the youth about what happened. The additional time required of the police that would result if this provision is not adopted would ultimately add considerably to the cost to municipalities asked to enforce this law.

The Division of Criminal Justice recommends the Committee support the compromise bill with the exception of the elimination of the crime of risk of injury to a minor from the list of crimes designated as serious juvenile offenses.

H.B. No. 6386

This bill would delay the implementation of the change of the age of juvenile jurisdiction from January 1, 2010, to January 1, 2012. The Division of Criminal Justice would respectfully reiterate the same concern that has been foremost in our consideration of the "raise the age" issue – this initiative cannot succeed without adequate resources for all agencies and programs involved. Given the state's current fiscal situation, the delay proposed in this bill and others would appear to be unavoidable. The Division would stress to the Committee our willingness to work with all interested parties on the "raise the age" issue. We would further note that the Division is available to present to the Committee alternative proposals that we believe would strengthen the juvenile justice system and achieve many of the goals stated by "raise the age" proponents without the attendant substantial fiscal impact.

H.B. No. 6580

This bill would raise the juvenile age to include 16-year-olds on January 1, 2010, and 17-year-olds on January 1, 2011. Again, the Division of Criminal Justice believes the implementation of any change in the age of juvenile court jurisdiction must be accompanied by adequate resources. Unless additional funding is made available to increase the capacity of the programs and services now available to children in the juvenile court, even a staggered "raise the age" plan will benefit 16- and 17- year-olds only at the expense of children under 16.

S.B. No. 1057

Section 2 of this bill appears to involve the appointment of counsel in juvenile cases where a child's custody is in question. The way it is worded, it would appear to allow the court to appoint counsel but then the Chief Child Protection Attorney would actually assign an attorney to represent a party. The concern for juvenile prosecutors is that if a family appears in court without a lawyer in response to a summons and the prosecutor asks the court to place the child in the detention center, an attorney needs to appear to represent the child at that point for purposes of that hearing. Currently, if the child is not already represented, even if the family does not qualify for the services of the public defender, the court will often appoint the public defender to represent the child for the purposes of that hearing only. That seems to satisfy the current statute. Under S.B. No. 1057, it would appear that the court would appoint counsel but it would be the Chief Child Protection Attorney who would actually assign an attorney to the case. If that means that there would be a time delay while notice is given to the Chief Child Protection Attorney and then an attorney is selected and notified, that would be unacceptable because that would mean that the state's request for detention could not be heard that day. The result would be that a child that the prosecutor thinks should be placed in a detention center immediately would be allowed to leave until the next hearing date. That may present issues involving public safety or the safety of the child. The Division of Criminal Justice would respectfully

recommend that this bill be amended to provide for the immediate appointment of a public defender for the limited purpose of the state's request for detention.

H.B. No. 6574

This bill would require local government approval before the Department of Children and Families could establish a new detention facility or increase the number of residents at the Connecticut Juvenile Training School or any other juvenile detention facility under the jurisdiction of the commissioner. The bill has several problems, the least of which it apparently directs its concerns to the wrong agency. DCF does not establish or operate the juvenile detention centers. They are operated by the Judicial Branch. Additionally, while the bill is an apparent an effort to prohibit adding 16- and 17-year-olds to the CJTS population upon implementation of the "raise the age" legislation, such a prohibition would pose serious problems since there is no other secure facility for that population available at this time.