House of Representatives

General Assembly

File No. 499

February Session, 2010

Substitute House Bill No. 5521

House of Representatives, April 13, 2010

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CHILD WELFARE AND THE JUVENILE JUSTICE SYSTEM AND ERASURE OF JUVENILE RECORDS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 46b-133 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Nothing in this part shall be construed as preventing the arrest of a child, with or without a warrant, as may be provided by law, or as preventing the issuance of warrants by judges in the manner provided by section 54-2a, except that no child shall be taken into custody on such process except on apprehension in the act, or on speedy information, or in other cases when the use of such process appears imperative. Whenever a child is arrested and charged with a crime, such child may be required to submit to the taking of his photograph, physical description and fingerprints. Notwithstanding the provisions of section 46b-124, the name, photograph and custody status of any child arrested for the commission of a capital felony or class A felony

may be disclosed to the public.

(b) Whenever a child is brought before a judge of the Superior Court, such judge shall immediately have the case proceeded upon as a juvenile matter. Such judge may admit the child to bail or release the child in the custody of the child's parent or parents, the child's guardian or some other suitable person to appear before the Superior Court when ordered. If detention becomes necessary, such detention shall be in the manner prescribed by this chapter, provided the child shall be placed in the least restrictive environment possible in a manner consistent with public safety.

(c) Upon the arrest of any child by an officer, such officer may (1) **[**may**]** release the child to the custody of the child's parent or parents, guardian or some other suitable person or agency, (2) at the discretion of the officer, release the child to the child's own custody, or (3) **[**immediately**]** seek a court order for the authority to turn the child over to a juvenile detention center. When a child is arrested for the commission of a delinquent act and the child is not placed in detention or referred to a diversionary program, an officer shall serve a written complaint and summons on the child and the child's parent, guardian or some other suitable person or agency. If such child is released to the child's own custody, the officer shall make reasonable efforts to notify, and to provide a copy of a written complaint and summons to, the parent or guardian or some other suitable person or agency prior to the court date on the summons. If any person so summoned wilfully fails to appear in court at the time and place so specified, the court may issue a warrant for the child's arrest or a capias to assure the appearance in court of such parent, guardian or other person. If a child wilfully fails to appear in response to such a summons, the court may order such child taken into custody and such child may be charged with the delinquent act of wilful failure to appear under section 46b-120. The court may punish for contempt, as provided in section 46b-121, any parent, guardian or other person so summoned who wilfully fails to appear in court at the time and place so specified.

(d) The court or detention supervisor may turn such child over to a youth service program created for such purpose, if such course is practicable, or such child may be detained pending a hearing which shall be held on the business day next following the child's arrest. No child shall be detained after such hearing or held in detention pursuant to a court order unless it appears from the available facts that there is probable cause to believe that the child has committed the acts alleged, there is no less restrictive alternative available and **[**that**]** there is (1) a strong probability that the child will run away prior to the court hearing or disposition, (2) a strong probability that the child will commit or attempt to commit other offenses injurious to the child or to the community prior to the court disposition, (3) probable cause to believe that the child's continued residence in the child's home pending disposition poses a risk to the child or the community because of the serious and dangerous nature of the act or acts the child is alleged to have committed, (4) a need to hold the child for another jurisdiction, (5) a need to hold the child to assure the child's appearance before the court, in view of the child's previous failure to respond to the court process, or (6) the child has violated one or more of the conditions of a suspended detention order. Such probable cause may be shown by sworn affidavit in lieu of testimony. No child shall be released from detention who is alleged to have committed a serious juvenile offense except by order of a judge of the Superior Court. Any child confined in a community correctional center or lockup shall be held in an area separate and apart from any adult detainee, except in the case of a nursing infant, and no child shall at any time be held in solitary confinement. When a female child is held in custody, she shall, as far as possible, be in the charge of a woman attendant.

(e) The police officer who brings a child into detention shall have first notified, or made a reasonable effort to notify, the parents or guardian of the child in question of the intended action and shall file at the detention center a signed statement setting forth the alleged delinquent conduct of the child. Unless the arrest was for a serious juvenile offense or unless an order not to release is noted on the take into custody order, arrest warrant or order to detain, the child may be

released by a detention supervisor to the custody of the child's parent or parents, guardian or some other suitable person or agency.

(f) In conjunction with any order of release from detention, the court may, when it has reason to believe a child is alcohol-dependent or drug-dependent as defined in section 46b-120, and where necessary, reasonable and appropriate, order the child to participate in a program of periodic alcohol or drug testing and treatment as a condition of such release. The results of any such alcohol or drug test shall be admissible only for the purposes of enforcing the conditions of release from detention.

(g) **[**Whenever the population of a juvenile detention center equals or exceeds the maximum capacity for such center, as determined by the Judicial Branch, the**]** The detention supervisor of a juvenile detention center in charge of intake shall admit only a child who: (1) Is **[**charged with the commission of a serious juvenile offense, (2) is**]** the subject of an order to detain or an outstanding court order to take such child into custody, **[**(3)**]** (2) is ordered by a court to be held in detention, or **[**(4)**]** (3) is being transferred to such center to await a court appearance.

Sec. 2. Section 46b-146 of the 2010 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Whenever any child has been convicted as delinquent **[**, has been adjudicated a member of a family with service needs**]** for the commission of a serious juvenile offense or has signed a statement of responsibility admitting to having committed a delinquent act that constitutes a serious juvenile offense, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to whom the child has been committed by the court, such child, or the child's parent or guardian, may file a petition with the Superior Court. If such court finds (1) that at least **[**two years or, in the case of a child convicted as delinquent for

the commission of a serious juvenile offense,] four years have elapsed from the date of such discharge, (2) that no subsequent juvenile proceeding or adult criminal proceeding is pending against such child, (3) that such child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during such [two-year or] four-year period, (4) that such child has not been convicted as an adult of a felony or misdemeanor during such [two-year or] four-year period, and (5) that such child has reached seventeen years of age, the court shall order all police and court records pertaining to such child to be erased. Upon the entry of such an erasure order, all references, including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency [or that the child was a member of a family with service needs] shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it is in the best interests of such child to do so. No child who has been the subject of such an erasure order shall be deemed to have been arrested ab initio, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency [or family with service needs] proceedings affecting such child.

(b) Whenever any child has been convicted as delinquent, has been adjudicated a member of a family with service needs or has signed a statement of responsibility admitting to having committed a delinquent act, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to whom the child has been committed by the court, and (1) at least two years have elapsed from the date of such discharge, (2) no subsequent juvenile proceeding or adult criminal proceeding is pending against such child, (3) such child has not been convicted of a delinquent act that would constitute a felony or

151 misdemeanor if committed by an adult during such two-year period,
152 (4) such child has not been convicted as an adult of a felony or
153 misdemeanor during such two-year period, (5) such child has not been
154 convicted of a delinquent act for the commission of a serious juvenile
155 offense, and (6) such child has reached seventeen years of age, the
156 clerk of the superior court for juvenile matters shall, on the second day
157 of January each year or on a date designated by the court, erase the
158 files, papers and other records, including electronic records, pertaining
159 to any proceeding concerning such child. Upon such erasure, all
160 references, including arrest, complaint, referrals, petitions, reports and
161 orders, shall be removed from all agency, official and institutional files,
162 and a finding of delinquency or that the child was a member of a
163 family with service needs shall be deemed never to have occurred. The
164 persons in charge of such records shall not disclose to any person
165 information pertaining to the record so erased, except that the fact of
166 such erasure may be substantiated where, in the opinion of the court, it
167 is in the best interests of such child to do so. No child who has been the
168 subject of such an erasure shall be deemed to have been arrested ab
169 initio, within the meaning of the general statutes, with respect to
170 proceedings so erased. Copies of the erasure shall be sent to all
171 persons, agencies, officials or institutions known to have information
172 pertaining to the delinquency or family with service needs proceedings
173 affecting such child.

174 (c) Whenever a child is dismissed as not delinquent or as not being a
175 member of a family with service needs, all police and court records
176 pertaining to such charge shall be ordered erased immediately,
177 without the filing of a petition.

178 (d) Nothing in this section shall prohibit the court from granting a
179 petition to erase a child's records on a showing of good cause, after a
180 hearing, before the time when such records could be erased or would
181 be erased pursuant to this section.

182 Sec. 3. Section 46b-146 of the 2010 supplement to the general
183 statutes, as amended by section 88 of public act 09-7, is repealed and

the following is substituted in lieu thereof (*Effective July 1, 2012*):

(a) Whenever any child has been convicted as delinquent **[**, has been adjudicated a member of a family with service needs**]** for the commission of a serious juvenile offense or has signed a statement of responsibility admitting to having committed a delinquent act that constitutes a serious juvenile offense, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to whom the child has been committed by the court, such child, or the child's parent or guardian, may file a petition with the Superior Court. If such court finds (1) that at least **[**two years or, in the case of a child convicted as delinquent for the commission of a serious juvenile offense,**]** four years have elapsed from the date of such discharge, (2) that no subsequent juvenile proceeding or adult criminal proceeding is pending against such child, (3) that such child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during such **[**two-year or**]** four-year period, (4) that such child has not been convicted as an adult of a felony or misdemeanor during such **[**two-year or**]** four-year period, and (5) that such child has reached eighteen years of age, the court shall order all police and court records pertaining to such child to be erased. Upon the entry of such an erasure order, all references, including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency **[**or that the child was a member of a family with service needs**]** shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it is in the best interests of such child to do so. No child who has been the subject of such an erasure order shall be deemed to have been arrested ab initio, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency

[or family with service needs] proceedings affecting such child.

(b) Whenever any child has been convicted as delinquent, has been adjudicated a member of a family with service needs or has signed a statement of responsibility admitting to having committed a delinquent act, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to whom the child has been committed by the court, and (1) at least two years have elapsed from the date of such discharge, (2) no subsequent juvenile proceeding or adult criminal proceeding is pending against such child, (3) such child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during such two-year period, (4) such child has not been convicted as an adult of a felony or misdemeanor during such two-year period, (5) such child has not been convicted of a delinquent act for the commission of a serious juvenile offense, and (6) such child has reached eighteen years of age, the clerk of the superior court for juvenile matters shall, on the second day of January each year or on a date designated by the court, erase the files, papers and other records, including electronic records, pertaining to any proceeding concerning such child. Upon such erasure, all references, including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency or that the child was a member of a family with service needs shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it is in the best interests of such child to do so. No child who has been the subject of such an erasure shall be deemed to have been arrested ab initio, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency or family with service needs proceedings affecting such child.

254 (c) Whenever a child is dismissed as not delinquent or as not being a
255 member of a family with service needs, all police and court records
256 pertaining to such charge shall be ordered erased immediately,
257 without the filing of a petition.

258 (d) Nothing in this section shall prohibit the court from granting a
259 petition to erase a child's records on a showing of good cause, after a
260 hearing, before the time when such records could be erased or would
261 be erased pursuant to this section.

262 Sec. 4. (NEW) (*Effective from passage*) Not later than September 30,
263 2010, and annually thereafter, the Commissioner of Children and
264 Families, the Commissioner of Public Safety, the Chief State's Attorney,
265 the Chief Public Defender, the Chief Court Administrator and the
266 Police Officer Standards and Training Council shall submit a report, on
267 behalf of the respective department, division, office or council, to the
268 Secretary of the Office of Policy and Management on the plans
269 established by the department, division, office or council to address
270 disproportionate minority contact in the juvenile justice system and
271 the steps taken to implement those plans during the previous fiscal
272 year. Any reports submitted by the Commissioner of Children and
273 Families and the Chief Court Administrator, or on behalf of any other
274 such department, division, office or council that has responsibility for
275 providing child welfare services, including services in abuse and
276 neglect cases, shall (1) indicate efforts undertaken in the prior fiscal
277 year to address disproportionate minority contact in the child welfare
278 system, and (2) include an evaluation of the relationship between the
279 child welfare system and disproportionate minority contact in the
280 juvenile justice system. The Secretary of the Office of Policy and
281 Management shall compile the submissions and shall submit a report
282 on such submissions, in accordance with section 11-4a of the general
283 statutes, to the Governor and the General Assembly not later than
284 December thirty-first annually. For the purposes of this section,
285 "disproportionate minority contact" means that a disproportionate
286 number of juvenile members of minority groups come into contact
287 with the juvenile justice system.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2010*	46b-133
Sec. 2	*October 1, 2010*	46b-146
Sec. 3	*July 1, 2012*	46b-146
Sec. 4	*from passage*	New section

Statement of Legislative Commissioners:

In sections 2(b) and 3(b), "destroy" was changed to "erase" for consistency with the general statutes; and in section 4, "agency" was deleted to avoid repetition and "plan" was changed to "reports" for accuracy.

JUD *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 $	FY 12 $
Judicial Dept.	GF - Cost	135,333	186,814
Judicial Dept.	GF - Savings	Potential	Potential
Children & Families, Dept.	GF - Cost	up to 10,000	up to 10,000
Children & Families, Dept. & Judicial Dept.	GF - Potential Cost	up to $200,000	up to $200,000
Comptroller Misc. Accounts (Fringe Benefits)[1]	GF - Cost	32,838	118,333

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes various changes that have fiscal impacts as follows:

Section 1, which would require an arresting officer to obtain a court order prior to placing a child in a juvenile detention center, would not result in a cost to law enforcement agencies. The number of children requiring a court order for detention placement is estimated to be one to two a day on average statewide. It is anticipated that court orders will be received in a timely manner. Given that relatively few juveniles would be affected by the bill and in anticipation that court orders will be timely, there is no fiscal impact to law enforcement agencies.

Should enactment of **Section 1** result in a reduction in the number of admissions to detention, the Court Support Services Division of the

[1] The estimated non-pension fringe benefit rate as a percentage of payroll is 26.66% which includes health insurance, social security, Medicare, life insurance, and unemployment compensation. Fringe benefit costs for new positions do not include pension costs as new positions will not impact the state's pension contribution until FY 12 after the next scheduled actuarial valuation.

Judicial Department may incur savings related to the operation of the state's three detention centers.

Sections 2-3 require the Judicial Department to monitor delinquency convictions and family with service needs (FWSN) adjudications for possible erasure of juvenile records. Costs will be incurred for additional staff to track approximately 6,400 cases on an ongoing basis, complete the erasure process and send copies to all pertinent parties. No funding for this purpose has been included within sHB 5018, the FY 11 Revised Budget as favorably reported by the Appropriations Committee. Cost detail is as follows:

	FY 11	FY 12
3 Deputy Clerks	$ 123,174	$ 177,918
Other Expenses	6,159	8,896
Equipment	6,000	-
Total – Judicial Dept.	$ 135,333	$ 186,814
Fringe Benefits	32,838	118,333
Total	$ 168,171	$ 305,147

It should be noted that the DCF would incur minimal costs (anticipated to be less than $10,000 annually) associated with staff time to redact juvenile records, upon notification by the court.

The Department of Children and Families and the Judicial Department may incur costs to comply with a provision of **Section 4** requiring an annual evaluation of the relationship of the child welfare system and disproportionate minority contact in the juvenile justice system. A formal evaluation would be anticipated to cost at least $200,000. As no funding for this purpose has been included under either agency's budget within sHB 5018, it is anticipated that the scope of the evaluation efforts will be limited.

No fiscal impact will be incurred by the Department of Public

Safety, the Chief State's Attorney, the Chief Public Defender, or the Police Officer Standards and Training Council in the course of reporting on their plans concerning disproportionate minority contact in the juvenile justice system, and steps taken to implement the same. There is no fiscal impact for the Office of Policy and Management to compile and submit the required final report each year.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Judicial Department Juvenile Detention Intake Statistics, 2008

OLR Bill Analysis
sHB 5521

AN ACT CONCERNING CHILD WELFARE AND THE JUVENILE JUSTICE SYSTEM AND ERASURE OF JUVENILE RECORDS.

SUMMARY:

This bill

1. limits the juvenile population that can be placed in secure detention facilities,

2. creates a procedure for automatically erasing juvenile court records, and

3. requires various state agencies and entities to file reports about their plans to reduce the disproportionate contact of minority children with the juvenile justice system.

EFFECTIVE DATE: October 1, 2010 except the automatic erasure provision for serious juveniles is effective July 1, 2012 and the disproportionate minority contact analysis is effective upon passage.

DETENTION LIMITS

This bill prohibits police officers from taking a child they have arrested directly to a detention center, which is an option they can currently exercise. Instead, the officer must first get a court order from a judge.

It also limits the reasons why children can be held in a juvenile detention center. Current law imposes no restrictions, except when the center is at or above capacity, in which case the supervisor can only admit children (1) charged with a serious juvenile offense, (2) subject to detention or take into custody orders, and (3) admitted to the center to await a court hearing. Under the bill, the supervisor can only admit

a child for reasons 2 and 3 above, regardless of whether the center is at capacity.

DELINQUENCY RECORD ERASURE

Current juvenile erasure statutes require that the person seeking erasure file a court petition. He or she must be at least age 17, released from supervision for at least two years (four years if convicted of a serious juvenile offense (SJO), and not convicted of, or awaiting trial on another criminal charge. If granted, the court orders all police and court records to be erased and the requestor is deemed never to have been arrested.

Under the bill, beginning October 1, 2010 until July 1, 2012, there will be two different procedures for handling erasures. For those with SJO convictions, the procedures will be those described above. For non-SJOs and status offenders, erasure will occur automatically. On January 2 of the year the child turns age 17, if he or she has been out of custody for at least two years and kept a clean record, the court clerk must erase the files, papers, and other records, including those that are stored electronically. (The court may select a different date on which to erase the records.) The individual is deemed never to have been arrested.

Beginning July 1, 2012, erasure will become automatic in both groups of cases but will be delayed until the subjects are at least age 18. Existing law, unchanged by the bill, allows juveniles to petition the court for erasure based on good cause earlier than he or she would have to wait to become statutorily entitled to erasure.

DISPROPORTIONATE MINORITY CONTACT

Under the bill, disproportionate minority contact (DMC) means that a disproportionate number of juvenile members of minority groups come into contact with the juvenile justice system. Annually, beginning September 30, 2010, the bill requires the Department of Children and Families and Public Safety commissioners, and people acting on behalf of the chief state's attorney, chief public defender,

chief court administrator, and Police Officer Standards Training Council to each submit a report to the Office of Policy and Management (OPM) detailing its plans to address DMC in the juvenile justice system and steps it took to implement the plan in the last fiscal year.

Each reporting entity that also provides child welfare services must (1) indicate efforts undertaken in the last fiscal year to address DMC in the child welfare system and (2) include an evaluation of the relationship between the child welfare system and DMC in the juvenile justice system.

The OPM secretary must compile the submissions and submit a report on them to the legislature and governor every December 31.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable
Yea 40 Nay 0 (03/26/2010)