



**STATE OF CONNECTICUT  
JUDICIAL BRANCH**

**Testimony of the Honorable Christine E. Keller  
Chief Administrative Judge for Juvenile Matters  
Judiciary Committee Public Hearing  
March 19, 2010**

**House Bill 5522, An Act Concerning Juvenile Matters**

Good Morning, Rep. Lawlor, Senator McDonald, Senator Kissel, Rep. O'Neill and other distinguished members of the Judiciary Committee. My name is Christine Keller and I am the Judicial Branch's Chief Administrative Judge for Juvenile Matters.

I am here today to testify, on behalf of the Judicial Branch, on **Raised Bill 5522, *An Act Concerning Juvenile Matters***. We support of sections 7 – 14 of the bill, but have some concerns with sections 2, 3, 4, 5 and 6.

I would like to start out by requesting that the effective dates of sections 8 – 14 be changed to July 1, 2010. Having a date certain will greatly facilitate implementation of these provisions. The effective date for section 7, which is the definitional section, should remain upon passage, as it is important to address the current inconsistencies in that statute as soon as possible.

Turning to more substantive matters, Sections 7 through 14 are revisions proposed by a workgroup of the Juvenile Justice Policy and Operations Coordinating Council (JJPOCC). We have been meeting since January to address issues in the implementation of the Raise the Age law that became apparent as various agencies sought to conform to the requirements of Public Act 09-07 of the September Special Session. The working group, consisting of representatives of the Judicial Branch, the Department of Children and Families, the Office of the Chief State's Attorney, the Office of the Chief Public Defender, the Office of the Attorney General, the Police Chiefs' Association, the Juvenile Justice Alliance and members of the legislature, reached consensus on these proposed revisions.

**Proposed Changes to C.G.S. section 46b-120 -- Definitions**

Section 7 of this raised bill, General Statutes Section 46b-120, the general definitions section, is revised to clarify what constitutes a delinquent act. The definition of "child" should commence with defining a child as "any person under eighteen years of age who has not been legally emancipated," not "any person under sixteen." Currently, defining "child" only as a person under sixteen includes emancipated minors, who are excluded in all other parts of the current law, and eliminates the applicability of certain child protection provisions contained in General Statutes Section 46b-129 et seq.

The definition of a person 17 or older as a delinquent child in subdivision (1)(A)(ii) is problematic, and conflicts with the last sentence of General Statutes Section 46b-121(a)(2), which states, "Juvenile matters in the criminal session include all proceedings concerning delinquent children within this state and persons eighteen years of age and older who are under the supervision of a juvenile probation officer while on probation or a suspended commitment to the Department of Children and Families, for purposes of enforcing any court order entered as part of such probation or suspended commitment."

The proposed revision here makes clear that a person age 17 or older who commits a delinquent act prior to attaining age 17 can be charged as a delinquent child, *without* also having to be charged with a violation of a court order, violation of probation or failure to appear in court. The word OR should replace the word AND in this section to conform to current practice. Otherwise, anyone 17 or older cannot be charged with a delinquent act unless s/he is already under the court's jurisdiction due to a prior delinquent act, and also has violated a court or probation order, or failed to appear. The undesirable result is that someone age 17 or older who is only being charged with a delinquent act committed while under 17 must be charged in adult court, which is not what is intended by the Raise the Age law.

The end result with the proposed revision is that a delinquent child is anyone over 17 who commits a delinquent act while under age 17, OR who, after turning 17, violates a court order, violates conditions of probation or fails to appear in response to a juvenile summons or court order.

A revision to subdivision (1)(A)(ii)(II) in the definitions section expands the definition of the delinquent act of failure to appear to include not only the failure to appear at the first hearing in response to a summons, but the failure to appear at any subsequent court hearing of which the child has notice. A similar revision is proposed to subdivisions 5(A)(ii) and 5(B)(ii). This change would make these two sections consistent with the definition of "delinquent act" found in subdivision (10).

In subdivision (5)(A)(i), a revision is proposed to correct the unintended situation where a child under age 16, with a case or cases transferred from the juvenile court to the adult court, must to be prosecuted in juvenile court for failure to appear in his or her adult case. Excluding sections 53a-172 and 53a-173 from the violation of state law that constitutes a delinquent act solves the problem. There is now a distinct juvenile delinquent act of failure to appear in a delinquency proceeding, defined in subdivision (1)(A)(II).

Also, the phrase "while under sixteen" has been moved before the text of subdivision (i) in Subsection 1(A) to make it clear that all of the acts enumerated in subdivisions 5(A)(i) through (iii) are delinquent acts if committed by a person under age 16.

In subdivision (5)(B)(ii), another revision is proposed to correct the unintended situation where a person age 16 or older who has a case pending in criminal court or on the adult motor vehicle docket, must, again, be prosecuted in juvenile court for a failure to appear in his or her criminal or adult motor vehicle case, or a failure to pay or plead in response to a motor vehicle offense. Excluding sections 53a-172, 53a-173 and 51-164r from the violations of state law that constitute delinquent acts solves the problem. There is now a distinct juvenile delinquent act of failure to appear, defined in subdivision (1)(A)(ii)(II).

Proposed revisions to subdivisions (5)(A)(ii), (iii) and (iv) and (5)(B)(ii),(iii) and (iv) will clarify that only failure to appear, violation of a court order of violation of condition of probation in a DELINQUENCY proceeding are delinquent acts. Some have questioned whether, under the current law, a violation of conditions of an adult probation by a person age 16 or younger constitutes a delinquent act. The proposed revisions would resolve any such question.

The JJPOCC workgroup also noted how confusing the division of motor vehicle offenses between the delinquency and adult courts remains under the recently enacted law. In the final report of the Juvenile Jurisdiction Planning and Implementation Committee in 2007, that committee noted that “. . . attention be directed to this issue to determine whether the definition of delinquent act should be changed to exclude motor vehicle infractions, which might be handled more efficiently in motor vehicle courts.” Unfortunately, the current law only directs about half of all the motor infractions and violations to the adult court. Police officers all over the state now carry two extremely lengthy lists in order to determine which cases go to juvenile court and which go to adult court. This is because the original intent of the revisions proposed last year by the JJPOCC was that all motor vehicle cases go to the adult court, but it was not accomplished when the reference to “Chapter 248” was put into the 2009 Public Act. In discussing how to revise this, the subcommittee unanimously agreed that cases for all motor vehicle offenses in Title 14, which encompasses much more than just Chapter 248, should originate in the adult court.

Subsection (7) of 46b-120 is also modified to clarify that the FWSN laws apply to children under 17, not just to sixteen-year-olds. Under the current law, the words “age sixteen” could be deemed to modify both the word “child” and the word “youth.”

Subsection (10), the definition of “delinquent act,” is amended to conform to all of the proposed revisions to the definitions of offenses for which a child may be convicted as a delinquent in subsections (5)(A) and (5)(B), as set forth above in paragraph 4 through 6 above.

Subsection 46b-120(11), the definition of “serious juvenile offense” has been amended to delete subdivision (1) of the risk of injury statute, Section 53-21, because of its overly broad application to offenses of minor consequence that don’t constitute behavior deserving of an “SJO” designation. Subdivisions (2) (involving wrongful sexual contact with a child) and (3) (involving the sale of a child) remain serious juvenile offenses.

Assault in the 2<sup>nd</sup> degree with a motor vehicle, section 53a-56b, and misconduct with a motor vehicle, section 53a-57, both felonies, are being returned to the list of serious juvenile offenses. They were previously serious juvenile offenses and for some reason, were deleted by P.A. 09-7, probably because of confusion of just what motor vehicle-related offenses would not be delinquent acts for children age 16 or 17.

Also excluded from the list of serious juvenile offenses is Hindering Prosecution in the 2<sup>nd</sup> degree. Since Hindering Prosecution in the 1<sup>st</sup> degree has never been deemed a serious juvenile offense, it didn’t make sense to have the lesser crime be one.

**Proposed Amendment to General Statutes Section 46b-124 as amended by P.A. 09-7 of the September Special Session; Confidentiality of Records**

In section 8 of the raised bill, a new subsection (k) to General Statutes Section 46b-124, the confidentiality of delinquency records section, is proposed which will require the clerk of the juvenile court to notify the Department of Motor Vehicles of certain delinquency convictions involving motor vehicles, the unlawful procurement of liquor by a minor (Sections 30-88a, 30-89(b)) or certain identity card offenses (Sec. 1-1h(e)) for administrative sanctions. The proposed language is patterned after similar language contained in the youthful offender law at General Statutes Section 54-76(h).

#### **Proposed Amendment to General Statutes Sections 46b-127 and 46b-137 – New Transfer Provision**

Section 9 amends General Statutes Section 46b-127, the juvenile transfer law, by adding a new subsection (f) to allow a judge in the criminal court to transfer the case of a 16-year-old to juvenile court if it is a matter for which the 16-year-old may be incarcerated and the court finds it is in the child's best interests. This transfer provision would apply only to offenses committed by 16-year-olds after January 1, 2010. In 2012, this provision would be expanded to include 17-year-olds who have committed offenses on or after July 1, 2012. To preclude arguments as to the admissibility of statements made prior to the transfer, which might prevent even a very beneficial transfer, we propose amending General Statutes Section 46b-137 to have any statements made by a child who is 16 or 17 while still receiving adult treatment continue to be admissible in the juvenile court. The subcommittee feels that this change best accomplishes the philosophy behind Raise the Age: not subjecting 16-, and soon, 17-year-olds to harsh adult treatment. It also preserves, for augmentation of the general fund, the ability of the adult court to collect fine money for most minor motor vehicle infractions and violations committed by 16- and 17-year-old drivers. The offenses of operating under the influence, sections 14-227a and 14-227g, are excluded from the transfer back provision because the longstanding alcohol education programs offered to most first time-offenders are now funded by the department of mental health and addiction services (DMHAS), not the Judicial Branch, and it didn't make sense, at this time, to spend limited funds on developing a similar program for juveniles ages 16 and 17. It should be noted that the JJPOCC supported a similar provision which was introduced in 2009 but was subsequently removed before P.A. 09-7 of the September Special Session passed. We do not think this transfer back provision would be widely used, so we do not anticipate significant costs due to its utilization. We anticipate it might be used for motor vehicle offenses where the driver is facing serious consequences and the adult court believes the driver and/or the community could benefit from treatment as a juvenile. In a few minor cases that originate in adult court, the adult court might determine that the minor offense is just the tip of the iceberg, and ascertain that the child has serious issues that could better be served by the juvenile court programs.

#### **Proposed Amendment to General Statutes Section 46b-133 as amended by P.A. 09-7 of the September Special Session - Authority of Police to Confine Child**

In section 10 of the raised bill, General Statutes Section 46b-133(d) is amended to conform to the federal requirement that delinquents be confined with sight and sound separation from adult detainees. See 42 U.S.C. Section 223(a)(12). The current use of "separate and apart" does not quite match the federal requirement, which prohibits any "physical or sustained sight or sound contact." (Guidance Manual for Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 2002, January 2007, pp. 14-15.)

#### **Proposed Amendments to Definitions and Transfer Sections, effective 7/1/2012**

In sections 13 and 14 of this bill, the proposed revisions to the juvenile statutes that raised the jurisdictional age to age 17 in 2012 are also modified where necessary in accordance with the above proposals. These would be effective on 7/1/12.

**Proposed Amendment to Section 46b-124 as amended by P.A. 09-7 of the September Special Session, Section 2**

Although we support the philosophy that attorneys appointed for children should have more access to their clients' records, as proposed in Section 2, we believe this section conflicts with federal prohibitions on the release of such records absent a release from the parent or a court order. We also believe that guardians ad litem appointed to represent a child's best interests should have an equivalent ability to access such records where necessary.

Section 2 conflicts with the Health Insurance Portability and Accountability Act ("HIPAA") and the issuance of a qualified protective order by the court, upon request, should be considered as an alternative. Health care providers are not allowed to release protected health information without a release from the parent or guardian or a court order. Under federal regulation 45 C.F.R.512 (e) of HIPAA, covered entities (i.e. hospitals, physicians) may disclose protected health information in any judicial or administrative proceedings without authorization in two instances: (1) in response to an order of a court or administrative tribunal or (2) in response to a subpoena, discovery request or other lawful process not accompanied by an order of a court or administrative tribunal provided the health care provider receives satisfactory assurances of reasonable efforts to (A) provide a HIPAA appropriate notice to the person who is the subject of the record request, or (B) secure a HIPAA Qualified Protective Order.

Section 2 also conflicts with the federal Family Education Rights and Privacy Act ("FERPA"). School and educational records may be disclosed without prior written parental consent only under the FERPA exceptions. Such an exception does not exist for abused, neglected or uncared for children unless the need for disclosure arises in a health or safety emergency. Under FERPA regulations, a child's educational record can be disclosed without prior written parental consent only if the disclosure is to comply with a judicial order or a lawfully issued subpoena, and when responding to a court order, a school must notify the parent in advance of compliance so the parent can seek a protective order. It would be preferable if counsel were to apply for and be provided with a court order, which would allow for inspection of records without parental authorization and would allow interviews with school staff that includes records disclosures without the school citing FERPA as barring such disclosure. Also, the "right" to interview seems unchecked. There should be recognition that such interviews, with a court order, would take place in a manner that is not disruptive of the educational process and adhere to local Board of Education procedures and policies.

We also support controlling the disclosure of psychological and psychiatric examinations performed in child protection cases, as contemplated in sections 3, 4 and 5, but we would suggest that the language be clarified. For example, there is no such employee in the juvenile division known as a "court officer" except two attorneys at the Child Protection Session. We have court service officers, but we feel they are not the appropriate employees to be required to retain confidential records. That responsibility lies with the clerk's office, which serves as the official records keeper of the court. Certainly, we could arrange to have these particular kinds of records maintained in a more protective fashion. We could mandate that the clerk is not permitted to

release copies, even to counsel, without a written court order. In addition, Section 3, which amends subsection (b) of section 46b-124, lists the requirement that evaluation reports be deposited with a court officer as an *exception* to the confidentiality rule. I don't think this is appropriately inserted here, as it is not an exception to non-disclosure.

The Branch would be willing to work with the proponents of sections 2, 3, 4 and 5 to ensure we don't run afoul of federal laws, which are preemptive of state laws on such disclosures, and to control the release of sensitive psychological or psychiatric information.

### **Proposed Amendment to General Statutes Section 53a-171, Escape from Custody**

We oppose the modification to the offense of "escape from custody" in Section 6. Every convicted delinquent child who is committed to the care and custody of the Department of Children and Families is committed for either an 18-month- or four-year-period. Very few of these convicted delinquents end up at the Connecticut Juvenile Training School. Girls, convicted and committed as delinquent, by law, cannot ever be placed there.

This revision would allow committed delinquents, even those who have been convicted for serious crimes, to leave, without authorization, any one of the numerous state or private residential placements the Department of Children and Families utilizes during the period of their delinquency commitment, such as Mt. St. John, or Touchstone, with impunity. This sends the wrong message with respect to accountability for delinquent behavior. Convicted delinquents should not be treated as if they were only Family with Service Needs runaways. They are committed because of delinquent acts which would constitute criminal behavior if committed by someone 17 or older. In addition, the law doesn't modify an escape from custody as a result of failing to return from an approved leave from any DCF approved public or private facility. This creates an inequitable result. If you jump the fence and run away, you can't be prosecuted for escape. If you are allowed to go home for the weekend and don't come back, you can be prosecuted for escape. In addition, the delinquent act of running away without just cause from any secure placement other than home while referred as a delinquent child to CSSD or committed as a delinquent child to DCF for a serious juvenile offense, defined in General Statutes 46b-120(11)(B), is not being changed, and in certain cases, this will create a conflict of law.

I would suggest that if the intent here is to prevent non-delinquents who run from their placements after being committed only as a result of neglect or abuse, this is not the way to address that problem, if, in fact, there is such a problem, because I have not heard that there is. The law is already clear that we cannot arrest non-delinquent children for status offenses, which would include cases where children committed as neglected or abused run from residential placements.

In conclusion, I would urge you to act favorably on this bill with the exception of Section 6. I also would urge you to consider revising Section 2 so there is no conflict with federal HIPAA or FERPA requirements, and make the minor revisions suggested to Sections 3, 4 and 5 so that the clerk of the court is the proprietor of the psychological and psychiatric records sought to be protected.

Thank you for your time and consideration.