



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY

JOINT COMMITTEE ON JUDICIARY

April 1, 2011

The Division of Criminal Justice appreciates this opportunity to offer our commentary and recommendations with regard to several of the bills on the agenda for today's public hearing.

S.B. NO. 1095 (RAISED): AN ACT LIMITING THE USE OF RESTRAINTS ON A CHILD WHO IS SUBJECT TO DISCIPLINARY PROCEEDINGS

If this bill were to be enacted, a juvenile being transported to court from a secure facility would be free of restraints for the first time when he or she is brought into court. For any juvenile contemplating escape or assault on the judge, prosecutor, probation officer or victim that may be present, being brought into the court room unrestrained would present the first opportunity to take such action. This might result in injury to those present including the juvenile. The provision presumably would permit restraints if "the judge determines that the use of such restraints on the child is necessary to ensure public safety." Absent specific threats, the staff might not be aware of such danger unless and until the juvenile causes a problem in court. If there was any prior knowledge or concern, this provision would appear to require a hearing on the issue of using restraints before the juvenile could be brought into court thereby delaying the originally scheduled hearing and further delaying all other scheduled hearings.

S.B. NO. 1227 (RAISED): AN ACT CONCERNING THE PREVENTION OF URBAN YOUTH DELINQUENCY AND VIOLENCE AND THE CRIMINAL LIABILITY OF PARENTS OR GUARDIANS OF CHILDREN WHO ILLEGALLY POSSESS FIREARMS

The Division understands the intent of section 2 of this bill but does not believe it is needed. A parent who is aware that his or her child is in possession of a firearm the child cannot legally possess could already be subject to criminal liability under existing law, which incidentally provides for maximum penalties harsher than provided in this legislation.

S.B. NO. 1228 (RAISED): AN ACT CONCERNING THE ERASURE OF CRIMINAL CHARGES THAT HAVE BEEN NOLLED OR DISMISSED OR FOR WHICH THE DEFENDANT HAS BEEN FOUND NOT GUILTY

The Division of Criminal Justice opposes this bill, which is unworkable. The Division would ask how the criminal justice system is to erase criminal records pertaining to a nolleed or dismissed

charge if the record also relates to a charge of which the individual has been convicted? For example, how do you "erase" a police report of a nolle prosequi charge if the defendant pled to a robbery in the same file/transaction? If the intent of this bill is to reduce the number of charges that appear on an individual's criminal record, its passage would likely have a very different result. The likely result would be that individuals would be required to plead to every charge in order to preserve the record.

H.B. NO. 1229 (RAISED): AN ACT CONCERNING EVIDENCE AND DETENTION IN JUVENILE MATTERS

The Division opposes section 1 of the bill. "Credit" for time spent in detention should not be given because juvenile commitments are for treatment and rehabilitation purposes, not punishment. Unlike adult sentences, where time spent in pretrial lockup is essentially the same as time spent incarcerated after being sentenced, a juvenile is held in pretrial detention for one of the six reasons set forth in CGS §46b-133(d) and the reason a juvenile is committed to DCF is set forth in CGS §46b-140(f). Since the purpose and reasons for each are different, a juvenile's time in pretrial detention is not equivalent, or even similar, to the time spent in a DCF facility. Therefore, credit should not be given.

Section 2 of the bill would eliminate the provision that makes statements made to a police officer by a 16-year-old charged with an adult motor vehicle charge subject to the restrictions on admissibility applicable to juvenile statements if that case is subsequently transferred to the juvenile court. If this language is deleted, the police will take a statement from a 16-year-old in a case that is an adult case at the time of the investigation and arrest and that statement would be admissible in the adult prosecution. If the judge decides to send the case to the juvenile court, that same statement would be inadmissible. The officer initially would have no reason to apply the juvenile rules because at that point it is an adult case and he or she would have no way of knowing that somewhere down the case would be sent to juvenile court. If this provision is enacted, then the provision passed last year to permit a transfer from the adult court to the juvenile court should be repealed.

H.B. NO. 6634 (RAISED): AN ACT CONCERNING CHILD WELFARE AND DETENTION IN THE JUVENILE JUSTICE SYSTEM AND ERASURE OF JUVENILE RECORDS

Section 1 (c) of the bill would require a court order to place any arrested juvenile, regardless of the charge, in a detention center. Such an order is now only required when the charge is not a Serious Juvenile Offense (SJO). This proposal would make for an unnecessarily cumbersome and inefficient procedure to place a juvenile charged with a Serious Juvenile Offense in a juvenile detention center.

- This would place an added burden on police and judges, particularly during those times when court is not in session, such as evenings and weekends, in an effort to discourage the use of the juvenile detention facilities when juveniles are arrested for serious crimes.
- The bill does not state that such orders could be obtained ex parte. As written, a claim could be made that a juvenile would be entitled to notice, right to a hearing, right to

counsel, opportunity to be heard, etc. before the juvenile could be placed in a detention center.

- The required findings for such initial orders are the same as those required for the detention of a juvenile following a court hearing that must be held the business day next following arrest. This would require at least one and possibly two judges to make the same findings on two different occasions, possibly within 24 hours of each other.

The claim that requiring such an order would reduce "disproportionate minority contact" (DMC) at the point of admission to detention is pure speculation. While a study has shown an improvement in DMC at the point of admission to detention *during the same time* that such an order was required for juveniles charged with non-SJO charges, that doesn't mean that the same will occur if an order is required for SJO charges as well. The improvement in DMC, as shown by the difference between a baseline study and a subsequent study, could very well have been the result of other factors and not necessarily the requirement that an order be obtained. During the time between the two studies, the requirement of an order to detain a juvenile for a non-SJO was only one change that occurred. At least as important was the fact that the studies provided awareness to system professionals that DMC existed. In addition to this awareness there were numerous articles, forums, conferences, training programs, etc., on the results of the studies and the means to reduce DMC at various points in the system. To conclude that DMC at the point of intake into detention was remedied by requiring a court order to admit a juvenile charged with a non-SJO would be to ignore all of the other events and efforts of various juvenile justice system participants that occurred during the same time.

At this point, there is no proof that requiring a court order to admit juveniles charged with an SJO would have any impact on DMC and would only make the process of placing such juveniles in detention more difficult and may therefore pose a public safety concern if a juvenile charged with an SJO is not placed in detention because the process is too cumbersome or if such a procedure takes law enforcement officers out of service for a longer period of time than necessary while they make an effort to locate a judge and obtain the necessary court order.

Section 1(h) of the bill would remove the requirement that the statutory restrictions on admission to detention, as amended by this proposal, would apply to all admissions to detention, not only when the detention facility is overcrowded. Overcrowding hasn't been an issue since the newer facilities opened. Such a provision would bring the statute into compliance with current Judicial Branch policy regarding intake into detention. The deletion of the language "charged with the commission of a serious juvenile offense" would accomplish the same thing attempted in section 1(c) above and should be opposed for the reasons stated above.

Section 2(b) of the bill provides for the automatic erasure of a juvenile's non-SJO and FWSN record after the specified conditions are met rather than requiring that a petition for erasure be filed requesting the erasure. The Judicial Branch has previously indicated the technical inability to identify those records that would need to be erased pursuant to such a mandate. The enactment of such a mandate would no doubt be costly, if it could be done at all, and would expose the state to civil liability if someone's record wasn't erased as mandated.

Section 6 of the bill requires agencies, including the Division of Criminal Justice, to submit annual reports on "plans established ... to address disproportionate minority contact in the

juvenile justice system and steps taken to implement those plans during the previous fiscal year." Such a requirement could provide a basis for a lawsuit if someone thinks that the Division or another agency did not accomplish their "plans."

H.B. NO. 6637 (RAISED): AN ACT CONCERNING DETERMINATIONS OF COMPETENCY IN JUVENILE AND YOUTH IN CRISIS MATTERS

This bill would establish a specific procedure governing juvenile competency matters rather than applying the same statutes that apply to adults. The Division would respectfully recommend a technical amendment that the term "juvenile prosecutor" be replaced with "prosecutor" or "prosecutorial official" to delete the reference to juvenile prosecutor, an obsolete job title.

H.B. NO. 6638 (RASIED): AN ACT CONCERNING JUVENILE JUSTICE

The Division of Criminal Justice respectfully recommends the Committee's Joint Favorable Substitute report for H.B. No. 6638. We would like to express our appreciation to all who have contributed so much time and effort to drafting this consensus proposal for the JPOCC subcommittee. The Division would respectfully recommend that the bill be amended to add section 53a-60d of the general statutes to the list of convictions that the juvenile court must disclose to the Department of Motor Vehicles (DMV) pursuant to CGS section 46b-124(k). The need for this change was brought to light by a recent serious motor vehicle accident involving a 16-year-old intoxicated driver. Since H.B. No. 6638 would add subsection (a) of section 14-224 to the list, it seems appropriate that section 53a-60d be added at the same time.