



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN OPPOSITION TO:

H.B. NO. 6399: AN ACT CONCERNING CHILDREN IN THE JUVENILE JUSTICE SYSTEM

JOINT COMMITTEE ON CHILDREN
February 21, 2013

The Division of Criminal Justice respectfully requests that the Committee take NO ACTION on several sections of H.B. No. 6399, An Act Concerning Children in the Juvenile Justice System. While the provisions in question may sound good at first glance, they do not stand up to closer scrutiny and at the very least should be subject to further study and examination before being adopted as law. Specifically, the Division opposes the following sections of H.B. No. 6399 for the stated reasons:

Section 1 disregards current practices and procedures for protecting the safety of all individuals in the Juvenile courtroom, including the child in question. The decision on whether to utilize restraints should remain with those responsible for courtroom safety and security, i.e., the Judicial Marshals and the detention or parole staff. This is especially true now that the court's jurisdiction extends to those through age 17. The ability of these older individuals to disrupt the courtroom at risk to themselves or others is certainly present. It also should be noted that in the adult courts efforts are taken to prevent any prejudicial effect on a jury by seeing an adult defendant in restraints. This is not a consideration in the juvenile court as there are no juries. The current system in the juvenile court serves to protect all involved and should remain in place.

Section 2 would establish a system of providing "credit for time served" for a child who is committed to the Department of Children and Families (DCF) by the Juvenile court. This provision is contrary to the very nature and purpose of the Juvenile Court – to provide treatment for the child, not punishment. Also, unlike the adult system the time a child spends in pretrial detention is not the same as the time that will be spent in treatment pursuant to DCF commitment. There are also practical problems with this proposal in that juvenile commitments are indeterminate and can be extended by the court after a hearing if requested by DCF. If this provision is enacted, would the "credit for time served" be applied to the original commitment or to the possible extension? The goal should be to assure that the child is receiving the proper treatment for the proper length of time.

Section 3 would extend the restrictions on the admissibility of a juvenile's statement, now limited to juvenile court proceedings, to cases transferred to the adult criminal court for most serious felony charges. It would automatically render inadmissible any statement

made by a juvenile under 16 to a police officer or juvenile court official without a parent present. Automatically excluding such statements from an adult proceeding is unwise. No such statement is admissible unless the police properly advise the child of his or her *Miranda* rights, and, as in any case involving custodial questioning, the state has the burden of proving that the child understood those rights and waived them voluntarily, knowingly and intelligently. In determining the admissibility of such a statement in an adult proceeding a court must consider the totality of circumstances under which the statement was given which necessarily involves inquiry into the child's age, experience, education, background, and intelligence, and into whether he or she has the capacity to understand the warnings given him or her, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. Our Supreme Court has recognized that this standard adequately protects the rights of children because it "affords a court the necessary flexibility to take into account a [child's] limited experience ... education and ... immature judgment" *State v. Ledbetter*, 263 Conn. 1, 19 (2003). Further, the use of a different standard for the admissibility of statements made by a juvenile in adult court would be inconsistent with the requirement of the language of the transfer statute that provides "Upon the effectuation of the transfer, such child **shall stand trial** and be sentenced, if convicted, **as if such child were eighteen years of age.**"

Section 4 would provide for the automatic erasure of a juvenile's record, after the conditions were met, without the juvenile filing a petition for such erasure. It has been publicly stated that the Judicial Branch may not have the technical capability to determine when such orders should issue.

Sections 5 and 6 would establish what would essentially be a new *habeas* procedure for any juvenile convicted as delinquent and put on probation, suspended commitment or committed to DCF. These claims would be heard in the civil session of the juvenile court and would presumably be in addition to any currently available appeal rights. It is also not clear how Section 46b-121b would be amended to determine if such *habeas* claims would be handled by the Division of Criminal Justice or the Office of the Attorney General. Although rarely used, the right to file a *habeas* petition already exists if a child claims to be illegally incarcerated. This proposal would extend the right to file a *habeas* petition to a child who is not incarcerated. If the goal of the juvenile system is to provide treatment for the child, then finality to the court proceedings and the commencement of such treatment must be the overriding goal, not the creation of a never-ending cycle of appeals.

Section 8 would give a judge discretion to impose indeterminate commitments of less than the current 18 months. Under current law and Supreme Court decision, such discretion lies with DCF. This section would further establish new criteria for an extension of commitment, specifically eliminating the consideration of the "best interests of the community." This is contrary to one of the most fundamental purposes for which our criminal justice system exists – to protect the public safety. The court must retain the ability to take into account the best interests of the community in determining requests for extension of commitments, again keeping in mind that the purpose of such commitment is to provide continued treatment to the child. It would seem that a continuation of treatment – the purpose a child is taken into the system – would certainly be in the best interests of the child.

The Division would note that several of the issues raised in H.B. No. 6399 were considered in recent years by the Juvenile Jurisdiction Policy and Operations Coordinating Council (JJPOC) in the course of the development and subsequent implementation of the "raise the age" legislation. This committee brought together representatives of the various

government agencies and other interested parties to undertake a careful examination of the juvenile justice system and its policies and procedures. The Division has requested that this committee or a similar group be convened to continue the discussion of the several significant issues that remain unresolved. The sections of H.B. No. 6399 to which the Division objects are among those subjects that we believe require further examination through such a process. The Committee may wish to consider substitute language directing that such a process be undertaken.

In conclusion, the Division wishes to thank the Committee for providing this opportunity for us to share our input on H.B. No. 6399. The Division would be happy to provide any additional information or to answer any questions the Committee might have.