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## OLR Bill Analysis

sHB 7389 (as amended by House "A")\*

***AN ACT CONCERNING CONFIDENTIALITY IN THE CASE OF A DISCRETIONARY TRANSFER OF A JUVENILE'S CASE TO THE REGULAR CRIMINAL DOCKET AND IMPLEMENTING THE RECOMMENDATIONS OF THE JUVENILE JUSTICE POLICY AND OVERSIGHT COMMITTEE.***

### SUMMARY

This bill makes various changes in the juvenile justice laws. Principally, it does the following:

1. allows the adult court to return an automatically transferred juvenile case back to juvenile court if the charges are reduced (§ 1);
2. generally makes the proceedings and records of cases transferred from juvenile to adult court confidential (§ 1);
3. requires the Department of Correction (DOC) commissioner and Court Support Services Division (CSSD) executive director to ensure that independent ombudsperson services are available at their juvenile detention centers or correctional facilities where individuals younger than age 18 are detained and makes these ombudspersons and certain other facility employees mandated reporters of child abuse and neglect (§§ 6 & 7);
4. requires the Juvenile Justice Policy and Oversight Council (JJPOC) to (a) review methods other states use to detain and transfer children ages 15 to 17 from juvenile to adult court and (b) devise a plan to implement changes in Connecticut by July 1, 2021 (§ 2);
5. requires the DOC commissioner and CSSD executive director to develop best practices in juvenile detention centers and

correctional facilities where individuals age 17 and younger are detained and provide monthly reports to JJPOC on each instance when chemical agents or prone restraints were used on detained children (§§ 3 & 4);

6. requires an official from state agencies and municipalities that detain juvenile offenders to certify that they comply with federal Prison Rape Elimination Act (PREA) standards to the Office of Policy and Management's (OPM) Criminal Justice Policy and Planning Division (§ 5); and
7. postpones by one year, from June 30, 2019, to June 30, 2020, the deadline by which a party (e.g., a parent or police officer) may file a family with service needs (FWSN) petition (§§ 8-10).

\*House Amendment "A" (1) removes provisions in the original bill that prohibited the detention or incarceration of minors in a DOC correctional facility, (2) allows victims to obtain records of juveniles who are transferred to the adult criminal docket in certain circumstances, (3) specifies that the original bill's designation of juvenile detention facility employees as mandated reporters applies only to those employees who have direct contact with children as part of their employment, and (4) makes other minor and technical changes.

EFFECTIVE DATE: Various, see below

## **§ 1 — TRANSFERRED CASES**

### ***Return to Juvenile Court***

Under existing law, the juvenile court must automatically transfer a delinquency case to the adult criminal court docket if the child is at least age 15 and charged with murder with special circumstances, a class A felony, or certain class B felonies. Otherwise, transferring a case where a juvenile is charged with a felony is at the court's discretion and may occur only if the prosecutor makes a motion and the court makes certain findings at the transfer hearing.

The bill allows the adult court to return an automatically transferred juvenile case back to juvenile court if the charges are reduced to a charge that would have allowed the transfer to be discretionary. It subjects such returns to existing law's requirements for returns of discretionary transfers (i.e., the return must be for good cause shown and done before the court or jury renders a verdict or the defendant pleads guilty).

**Confidentiality**

Under the bill, when a case is transferred from the juvenile delinquency court to the adult criminal docket, the transferred proceeding must be private and conducted separately and apart from the other parts of the court that are being used for proceedings involving adult defendants. The records generally must remain confidential, as required for juvenile records under existing law, unless and until a guilty plea or verdict is entered in the case on the regular criminal docket.

The bill makes an exception to these confidentiality requirements for victims of such crimes. It allows victims to access the records or any part of them to the same extent that a victim may access the records of an adult defendant in a criminal proceeding. In such circumstances, the court must designate an official from whom the victim may request the records. Any such records disclosed under the bill to a victim may not be further disclosed.

EFFECTIVE DATE: October 1, 2019

**§§ 6 & 7 — INDEPENDENT OMBUDSPERSON AND MANDATED REPORTERS**

The bill requires the DOC commissioner and CSSD executive director to ensure that independent ombudsperson services are provided and available at any juvenile detention center or correctional facility they operate or oversee where individuals age 17 and younger are detained.

Under the bill, "independent ombudsperson services" include:

1. receiving complaints from individuals detained in such centers or facilities, and their parents or guardians, regarding the center's or facility's decisions, actions and omissions, policies, procedures, rules, and regulations;
2. touring each such center or facility;
3. investigating each of the above complaints, rendering a decision on the complaint's merits, and communicating the decision to the complainant;
4. recommending to the agency head who oversees or operates the center or facility a resolution of any complaint with merit; and
5. recommending policy revisions to the head of the center or facility.

### ***Mandated Reporters***

The bill adds to the list of professionals who are mandated reporters of child abuse and neglect the above ombudspersons and any person who (1) is employed or contracted at juvenile detention facilities or other facilities where children younger than age 18 are detained and (2) has direct contact with children as part of such employment.

As mandated reporters, they must report when, in the ordinary course of their employment or profession, they have reasonable cause to believe or suspect that a child younger than age 18 has been abused, neglected, or placed in imminent risk of serious harm (CGS § 17a-101a). A mandated reporter who fails to report may be subject to criminal penalties.

EFFECTIVE DATE: July 1, 2020

### **§ 2 — JJPOC REQUIREMENTS**

The bill requires JJPOC to review methods other states use to transfer juvenile cases to the adult criminal docket and detain children ages 15 through 17 whose cases are transferred to that docket. The review must consider:

1. transfers of juvenile cases to the adult docket and outcomes associated with these transfers, including the impact on public safety and the effectiveness in changing juveniles' behavior, and
2. pre-and post-adjudication detention, including an examination of organizational and programmatic alternatives.

By January 1, 2020, JJPOC must submit the review to the Judiciary Committee and include a plan for implementing any recommended changes, with cost options where appropriate, by July 1, 2021.

EFFECTIVE DATE: October 1, 2019

### **§§ 3 & 4 — DOC AND CSSD REQUIREMENTS**

#### ***Best Practices Policy***

The bill requires the DOC commissioner and the CSSD executive director, by July 1, 2020, and in consultation with the Department of Children and Families (DCF) commissioner, to develop a best practices policy in juvenile detention centers and correctional facilities where individuals age 17 and under are detained. The practices must address:

1. suicidal and self-harming behaviors, including developing a screening tool to determine which detained individuals are at risk for those behaviors;
2. negative impacts of solitary confinement;
3. harmful effects of using chemical agents and prone restraints on detained individuals, including limiting and documenting the use of such agents and limiting the use of prone restraints; and
4. programming and services for detained individuals, including (a) implementing behavior intervention plans for those whose behavior interferes with other detained individuals' safety or rehabilitation and (b) providing trauma-responsive rehabilitative, pro-social, and clinical services in their schedule.

The policy must additionally provide developmentally healthy and

appropriate activities and recreational opportunities for the detained individuals and their families during visitation periods that are designed to strengthen family bonds and minimize separation trauma. The visitations must include contact visits, unless such a visit creates a risk of harm to anyone.

The DOC commissioner and CSSD executive director must implement the above policy by July 1, 2021, in juvenile detention centers and correctional facilities they oversee or operate where individuals age 17 and under are detained.

***Reporting Requirement***

The bill also requires the DOC commissioner and CSSD executive director to annually report to JJPOC, no later than January 15 for the previous calendar year, on the following information regarding facilities they oversee or operate where individuals age 17 and younger are detained:

1. suicidal and self-harming behaviors that detainees exhibit;
2. uses of force against, and imposing physical isolation on, detainees; and
3. any educational or mental health concerns for detainees.

The bill also requires the DOC commissioner and CSSD executive director to report monthly to JJPOC, starting by August 1, 2020, on each instance in which chemical agents or prone restraints were used on anyone age 17 or younger who is detained in such a facility.

EFFECTIVE DATE: Upon passage, except that the chemical agent or prone restraint reporting provision is effective July 1, 2020.

**§ 5 — PREA COMPLIANCE**

By law, state agencies and municipalities that incarcerate or detain adult or juvenile offenders must, within available appropriations, adopt and comply with the applicable standards recommended by the National Prison Rape Elimination Commission (i.e., PREA standards)

for preventing, detecting, monitoring, and responding to sexual abuse in prisons, jails, correctional facilities, juvenile facilities, and lock-ups.

The bill requires any state agency head or the chief elected official or governing legislative body of any municipality that detains juvenile offenders to annually certify, by January 15, that it complies with the PREA standards to OPM's Criminal Justice Policy and Planning Division.

EFFECTIVE DATE: July 1, 2020

**§§ 8-10 — FAMILY WITH SERVICE NEEDS (FWSN) PETITIONS**

The bill postpones by one year, from June 30, 2019, to June 30, 2020, the deadline by which a party (e.g., a parent or police officer) may file a FWSN petition with the juvenile court for a child who (1) commits certain status offenses, such as running away from home, or (2) is out of the control of his or her parent or guardian. It also makes related conforming changes.

By law, a court that adjudicates a child as being from a FWSN can take various actions, such as referring the child to DCF for voluntary services or placing the child on probation.

EFFECTIVE DATE: July 1, 2019

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 24 Nay 15 (04/10/2019)

Appropriations Committee

Joint Favorable  
Yea 36 Nay 8 (05/13/2019)