

Judiciary Committee JOINT FAVORABLE REPORT

Bill No.: HB-7389

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

Title: THE JUVENILE JUSTICE POLICY AND OVERSIGHT COMMITTEE.

Vote Date: 4/10/2019

Vote Action: Joint Favorable Substitute

PH Date: 3/25/2019

File No.: 849

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SPONSORS OF BILL:

Judiciary Committee

REASONS FOR BILL:

To preserve confidentiality in a juvenile's case transferred under the discretion of the court to the regular criminal docket in the event a that such case may be transferred back to the docket for juvenile matters and to implement the recommendations of the Juvenile Justice Police and Oversight Committee.

JOINT SUBSTITUTE LANGUAGE:

1. Changes effective date from July 1, 2020 to July 1, 2021 in that no person under 18 may be detained or incarcerated in a correctional facility.
2. Committee shall report implementation plan including cost options to the Judiciary Committee.
3. Develops best practices to provide developmentally healthy and appropriate activities and recreational opportunities.

RESPONSE FROM ADMINISTRATION/AGENCY:

State of Connecticut Department of Children and Families, Vanessa Dorantes; writes they are ***not in support of the bill as written;*** they suggest consideration of substitute language to remove DCF from section 6. The bill requires DCF, the Department of Corrections and the Court Support Services Division of the Judicial Branch to implement best practices for juvenile detention centers and correctional facilities. The legislature transferred juvenile justice jurisdiction from the Department to the Judicial Branch in 2018. Given the Department's previous experience with serving this population of juveniles, we would offer to consult with

DOC and CSSD on these issues, but the Department cannot be responsible for implementation of practices in facilities that we do not control.

State of Connecticut Division of Criminal Justice is *not in support as written*. The Division of Criminal Justice respectfully recommends the Committee's JOINT FAVORABLE SUBSTITUTE REPORT for comprehensive legislation concerning the important issues raised in these bills and addressing the serious problem posed by the small number of juvenile offenders involved in very serious and dangerous crimes. The Division would reiterate the testimony presented to the Joint Committee on Public Safety and the Welfare of Repeat Juvenile Offenders and their Victims. At the heart of the matter is the very real threat posed to public safety by repeat juvenile offenders.

State of Connecticut Division of Public Defender Services, Chief Public Defender Christine Perra Rapillo testifies *in support* of the goals included in HB 7389. OCPD is an active member of the JJPOC and values the collaborative accomplishments JJPOC has made to promote the goals of the juvenile justice system, which include increasing diversion and reducing incarceration and recidivism. The proposal represents a continued effort to further these outcomes by prohibiting children from being incarcerated in adult DOC facilities after January 1, 2020.

State of Connecticut Judicial Branch, External Affairs Division; writes: Should the Committee decide to act favorably on this bill, as proposed, the Judicial Branch would like to make you aware of some of the technical issues and implementation difficulties we will face. Section 1 will require the Judicial Branch to make changes so that all transfers from juvenile court are confidential until conviction. All cases will have to be docketed on a "confidential" docket that cannot be posted in courthouses, nor can the cases be displayed on the website, which will involve changes in our computer system and web look up system in order to restrict access.

Additionally, it is not clear how much confidentiality can be maintained once jury selection starts, as prospective jurors would have to be informed of the case prior to the jury being impaneled. Currently, all cases transferred from juvenile court become youthful offender (YO) cases once accepted in adult court, except certain cases such as Class A felonies and some sexual assaults.

Section 2 creates a significant problem for the Judicial Branch, as it is not clear where any defendant under the age of 18, whose case was transferred from juvenile court to adult court, would be held both pretrial or after sentencing. The Prison Rape Elimination Act requires persons under the age of 18 to be held separately from adult detainees. We currently do not have the capacity in our detention centers to house and transport this population. Given all of the issues that need to be addressed, the January 1, 2020 implementation date is not possible to meet.

State of Connecticut Office of the Child Advocate, Child Advocate, Sara Healy Eagan writes: The obligations of the OCA are to review, investigate where necessary, and make recommendations regarding how our state-funded systems meet the needs of vulnerable children. This legislature granted the OCA broad authority regarding access to information about children and state-funded facilities and programs, which provides this Office with unique insight into the needs of at-risk, abused, neglected and special needs children and the agencies that serve those children. The **OCA supports** House Bill 7389, which seeks to address

conditions and outcomes for incarcerated youth, thereby strengthening the state's criminal justice reforms and efforts to promote public safety.

State of Connecticut Office of the Victim Advocate, State Victim Advocate, Natasha M. Pierre, Esq testifies; I must *strongly oppose* Section 1 or Raised House Bill No. 7389. Section 1 of Raised Bill No. 7389 would require that any juvenile matter transferred to the regular criminal docket be private and confidential from other proceedings pertaining to adults charged with crimes. Juvenile matters transferred to the regular criminal docket are considered, for all intents and purposes, adult criminal proceedings, unless the matter has been designated to the youthful offender docket. Currently, the crime victims have the right to attend youthful offender proceedings, the right to access records in youthful offender matters, and the right to appear before the court and make a statement to the court regarding any plea agreement or sentence. As proposed, Section 1 would violate crime victims' constitutional and statutory rights and exclude crime victims from all matters transferred from the juvenile court to the regular criminal docket, unless the matter is designated to the youthful offender docket. Additionally, we should be mindful that as a general rule, and consistent without state constitution, courts should operate in openness and transparency.

NATURE AND SOURCES OF SUPPORT:

Connecticut Juvenile Justice Alliance, Executive Director Abby Anderson states her organization is *in favor* of this bill. The bill as a whole includes several important reform elements. We support the technical changes required in this bill and discussed at length by my colleagues from other organizations and the Two Youth Justice Institute. I will focus my remarks on removing children under 18 from adult jail and prison, and addressing grave concerns about conditions of their incarceration until they can be held in juvenile facilities. This is important because having children incarcerated in adult facilities has been called counterproductive crime control strategy by the Center for Disease Control and harms the well-being of youth.

American Civil Liberties Union Connecticut (ACLU-CT) Director David McGuire submitted testimony *in support* of this bill. During the past several legislative sessions, Connecticut has led the nation in passing criminal justice reform laws, particularly in the area of protecting juveniles who enter our criminal justice system. As an organization that advocates for the fair treatment of everyone in our criminal justice system and the reduction of incarceration in our state, the ACLU-CT supports measures to prevent the detention of juveniles, and prevent the transfer of juveniles to the regular criminal docket, and ensure the rights of detained juvenile cases transferred to the regular criminal docket and implement recommendations of the Juvenile Justice Policy and Oversight Committee (JJPOC). The bill's provisions would improve outcomes for juveniles in our criminal justice system.

Center for Children's Advocacy Director TeamChild Juvenile Justice Project, Marisa Halm, J.D. testifies CCA wholly endorses HB 7389 as it will 1) make several significant improvements to the status and treatment of youth those cases are currently handled in adult court and 2) it will ensure that the reasoned recommendations of the Juvenile Justice Policy Oversight and Planning Committee are enacted into law.

Connecticut Voices for Children Advocate Director Lauren Ruth, PhD testifies on the research-based child advocacy organization working to ensure that all Connecticut children have an equitable opportunity to achieve their full potential. Section 2 would remove 16 and 17

year old youth from the jurisdiction of the Department of Corrections, and Section 6 would implement the recommendations of the Office of the Child Advocate pertaining to suicide, solitary confinement, behavioral health programming, family engagement and use of force against youth in conditions of confinement.

Connecticut Youth Serves Association Juvenile Justice Liaison Erica Bromley CGS section 10-19m establishes a YSB as a multi-purpose youth service bureau for the purposes of evaluation, planning, coordination and implementation of services, including prevention and intervention programs for delinquent, pre-delinquent, pregnant, parenting and troubled youths referred to such bureau by schools, police, juvenile courts, adult courts, local youth service agencies, parents and self-referrals. The Community Based Diversion System was created and adopted in order to accommodate this population, however it was never funded. I have requested the funding for this critical system for the population, however it was never funded. YSBs as the Community Hub in the Diversion System, will no longer be able to serve the populations that are so critical to this work if they are not resourced to do so. In addition, I must also mention the lack of Juvenile Review Board funding. The partial funding of the JRB system will cease to exist after June 30 of this year. This funding supported 35 out of the current 88 JRBs, which serve a total of 135 towns system wide. Funding is needed for the entire JRB System, as much of the JJ reform has focused on an increase in diversion. As we continue to move away from incarceration and towards community-based services, the investment in that change must also follow. We need to continue to reduce the amount of kids entering the system by providing them with adequate and appropriate community services.

Juvenile Sentencing Project Legal Clinic Quinnipiac University School of Law Senior Clinical Fellow and Staff Attorney Tessa Bialek; Writes *in support* of the bill which prohibit children under 18 from being held in any facility operated by the Department of Correction. Many children in adult facilities are placed in isolation, resulting in further harm. Moreover, children in adult facilities are less likely than their counterparts in juvenile facilities to receive the training and education they need to succeed upon release. Finally: As the Juvenile Justice Policy and Oversight Committee continues to study age-appropriate conditions of confinement for Connecticut juveniles, we urge it to heed recent recommendations of the State of Connecticut Office of the Child Advocate to (1) severely limit the time youth can be confined in their cells as a behavioral intervention, and (2) to ban the use of chemical restraints on children.

National Alliance on Mental Illness (NAMI) Director of Advocacy and Policy Susan Kelley: Testifies *in support* of this bill. Adult criminal court is not appropriate for youth under 18, the majority of whom have histories of trauma and unmet behavior health needs. We fully support the JJPOC's recommendation that all youth be out of adult facilities by January 1, 2021. Youth need access to mental health services and youth focused interventions which adult facilities are not set up for. In addition, the use of de-facto solitary confinement for youth in adult facilities may deepen existing mental health problems of incarcerated youth, creating further barriers for youth to return to their communities and thrive.

National Juvenile Justice Network (NJJN) Executive Director Sarah Bryer: Writes *in support* of this bill: As a national network of advocates in 43 states and DC working to ensure youth in trouble with the law are held accountable in fair, effective and developmentally appropriate ways, we believe HB 7389 is a critical step to protecting youth in state custody and are particularly needed after the recent events at Manson Youth Institution. HB 7389 seeks to implement an array of best practices to create safe conditions for youth including those currently held adult facilities. I'd like to speak today in strong support of the recommendations to study

and plan for a removal of youth from adult correctional supervision, to prohibit the use of chemical agents and limiting the use of restraints as well as the creation of an ombudsman. We firmly believe these provisions alongside others outlined in this bill are necessary to rectify the issues at Manson Youth Institution and keep youth in custody safe. We urge the commit to pass HB 7389.

Marianne Fichtel, New Canaan, CT: Writes *in support*. Prosecutors are by far the most powerful stakeholders in the entire system and must be accountable to the public for their decisions around whom to charge and how severely; however, prosecutors also stand to benefit from the collection of more in-depth data on the discretion they employ and the policies by which they operate. A paper from the institute for Innovation in Prosecution at John Jay College states: "The community will trust your office more readily if you make it easy for the public to hold you accountable." Sensationalism tells us that there is an "epidemic" of juvenile auto theft. Data tell us that overall car thefts are down 17% over 10 years, 43% over 20 years, and juvenile participation in these thefts has remained relatively constant. Sensationalism makes it seem like Connecticut is dealing with a particularly virulent strain of this "epidemic". Data tells us that a recent uptick over the last few years is in line with national trends. Thankfully, data abounds; multiple studies have provided us with a number of models to follow. The road ahead may not be easy, but it can at least be well-informed.

Romelo Goss, Bridgeport, CT: I am *in favor* of HB 7389 because I feel we need to remove youth from prison and jail. I feel we are hurting them more than helping them. Sitting at the police station till the next morning to get my bond set was already traumatizing. Being in Manson, I felt like I was fighting for simple rights as a human being, the right to eat, sleep, and have recreation peacefully. I was incarcerated at Manson at the age of 17. My first week there I was in segregation while being investigated for potentially being a gang member. Being locked in the cell not much bigger than the size of a desk I'm sitting at not with one window that's about 5 inches wide and 9 inches long and the window in the back of the cell that's blocked off so I can't see outside. Without a fully developed brain, within an hour the only thing on my mind was suicide. I thought it was the only way out of the nightmare I was now living. When I was finally let go into general population, entering into my cottage, I felt I was walking into a dog pound, all of the youth banging on the doors to get my attention to send threats. While I was passing every door I would look at the kind behind it. All I could see were kids; black like me, that had been turned out due to the system. The environment was like a war zone. In all honesty, do you think I would be re-entering the streets, leaving an environment like that changed in a positive way?

Tiana Krause, Bridgeport, CT: I am here in support. I am in favor of 7389 because Manson Youth Institute (MYI) is no place for children. I have read the OCA report on MYI including the conditions of confinement. It has been reported that practices at MYI are furthering the severity of the children's mental health. It has been problems time and time again that it's pretty much a guarantee that they will have additional interaction with prison, meaning the services we're providing, or lack thereof, are not working. We need more facilities that promote growth and rehabilitation in every facet. The one hour of productivity they are allotted a day in which you are expected to shower and make phone calls sends the message that there's nothing better our children could be doing to better themselves and the scope of their communities and that's simply untrue.

Erica Nowakowski, Tow Youth Justice Institute Director of Justice Initiatives: I am here today to urge your support for raised bill # 7389. The bill does contain some technical errors in the effective dates and some working omissions. I have attached a fact sheet, which identifies in each section both what the JJPOC intended by making this recommendation and the technical changes needed. Members of the Judiciary Committee can feel free to contact the Tow Youth Justice Institute with any questions regarding the JJPOC's work.

Karen Ravenelle-Bloom, Willington, CT 06279: I am *in favor* of HB 7389. Transferring youth to adult court does not reduce violence or enhance public safety as published by the findings of the Task Force of the Centers of Disease Control and Prevention. Adult Court is not appropriate for youth under 18. The facilities, services and staff are not created for or trained to be effective for youth. Without access to rehabilitative services and after exposure to solitary confinement, youth held in adult facilities re-enter their communities with significant barriers to emotional, educational, or vocational success. As someone who has worked in the field of youth services for over 30 years, in the area of prevention, I feel that this bill will better serve the youth and ultimately their families and communities by having them be separated from adults involved in the correction system.

Vaughn Thomas, Bridgeport, CT: I am *in favor* of HB 7389 because youth under 18 do not deserve to be subject to adult-like confinement when their brains aren't even fully developed enough to understand the crime they have committed. At 17 or younger you are still a child, prison is no place for children. Incarcerating them in adult prison can not only mentally hurt the children but there's a likely possibility it can make the problem worse. When I was 17 I was charged for a crime, I was in juvenile court but before I knew it, the prosecutor asked for my case to be moved to adult court and I was sitting in a cell at Manson Youth Institution. When I woke up there was a slot in the middle of my steel door. When the C.O. unlocked the slot and opened it he handed me two hard boiled eggs, grits, and a piece of toast. It was at that moment I knew I would never be a "kid" again. That's a lot for a 17 year old child to mentally handle. You go from being a kid to being treated, charged and confined like an adult. This can actually cause an even bigger problem before it causes a solution. Prison is no place for children.

NATURE AND SOURCES OF OPPOSITION:

American Federation of State, County and Municipal Employees (AFSCME) President Rudy Demiraj testifies they are *not in support of this legislation as written*, they urge the Judiciary Committee to recognize the unnecessary nature of the requirement to make all correction employees at MYI and York mandated reporters. Under this bill, inmates younger than 18 years of age will be removed from DOC jurisdiction as of January 1, 2020. Therefore, it seems that there will be a requirement geared towards juveniles; when juveniles will no longer be under DOC jurisdiction. The DOC employees we represent are trained as custodial staff. They are not trained as therapeutic staff. Such requirement for mandated reporting by custodial staff for those 18 years of age and older doesn't seem in line with where state policy is going. Using the juvenile reporting system for facilities that will soon hold only adults seems unnecessary.

Reported by: rJo Winch

Date: May 6, 2019