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OFFICE OF THE CHILD ADVOCATE
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TESTIMONY OF THE OFFICE OF THE CHILD ADVOCATE FOR THE STATE OF CONNECTICUT

JUDICIARY COMMITTEE
PUBLIC HEARING
MARCH 25, 2019

IN SUPPORT TO THE FOLLOWING BILL:

H.B. NO. 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 THE JUVENILE JUSTICE POLICY AND OVERSIGHT COMMITTEE

S.B. NO. 504: AN ACT CONCERNING THE SUSPENSION OF DELINQUENCY PROCEEDINGS FOR TREATMENT OR OTHER SERVICES IN MOTOR VEHICLE THEFT OR MISUSE CASES AND DETENTION OF JUVENILES.

Senator Winfield and Representative Stafstrom and all other distinguished members of the Judiciary Committee:

This testimony is being submitted on behalf of the Office of the Child Advocate ("OCA") in support of H.B. No. 7389.

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 a unique insight into the needs of at-risk, abused, neglected and special needs children and the agencies that serve those children.

H.B. NO. 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 THE JUVENILE JUSTICE POLICY AND OVERSIGHT COMMITTEE

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. The Bill requires the state to remove youth under 18 from adult facilities by July 1, 2021, and immediately address urgent concerns regarding conditions of confinement for incarcerated youth, including continued use of solitary confinement and chemical agent (on youth in adult facilities) and delivery of urgently needed services to help youth rehabilitate and discharge safely to their communities. Many provisions of the Bill arise out of findings and recommendations published by the OCA in January 2019 regarding concerning conditions of confinement for incarcerated youth. OCA respectfully offers suggested amendments to the bill at the close of this testimony.

OCA Investigative Findings Regarding Conditions of Confinement for Incarcerated Youth

In January 2019, the OCA published investigative findings regarding conditions of confinement for youth across state agencies (Judicial Branch, DCF[1], and DOC facilities). OCA's investigations included site visits to correctional and detention facilities, meetings with youth and staff, review of agency and youth facility, mental health, medical and educational records, daily schedules maintained by facility staff and administrators, examination of educational and rehabilitative programming schedules and participation and attendance records for incarcerated youth.

OCA's investigations led to several global findings regarding the state's incarcerated youth, and multiple concerning findings specifically regarding the treatment of youth in Connecticut's adult criminal justice system.

Finding: Connecticut lacks uniform standards for treatment of incarcerated youth-

- The state lacks standards regarding a) the provision of mental health services; b) the use of physical isolation and force; c) strategies to prevent or respond to youth suicidal and self-harming behavior; d) provision of education; e) family engagement and f) prevention and reporting of child abuse and neglect.

- The lack of standards for the treatment of incarcerated youth is a deficiency that creates serious impediments to meeting the state's twin goals for youth incarceration: promoting rehabilitation and improving publish safety.

- The lack of standards places youth and facility staff at risk of harm and results in practices that may be deemed violations of state and federal law, particularly for minors in the adult prison system.[2]

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[1] With the closure of CJTS in April 2018, and the transfer of all juvenile justice functions from DCF to the Judicial Branch, DCF no longer confines juveniles, though DCF may be the guardian or payer of services for a justice-involved youth

[2] OCA's full report on conditions of confinement for youth in the Connecticut justice system can be found on the OCA's state website:
https://www.ct.gov/oca/lib/oca/v4/Conditions_of_Confinement_final_January_2019.pdf. OCA found significant concerns regarding the adult prison system's reliance on prolonged isolation of youth as a behavior

Finding: State agencies need resources and strategies to serve high risk/high need youth—

While all state agencies working with incarcerated youth need greater resources to treat and rehabilitate more serious or chronic juvenile offenders, the adult criminal justice system in Connecticut has not been able to provide even minimally adequate services or resources to meet youth's education, clinical and rehabilitative needs while incarcerated.

OCA's specific findings regarding youth incarcerated in the state's adult prison system[3]

- **Connecticut disproportionately incarcerates youth of color in the adult system, and most incarcerated boys are Black youth.** A point in time review during OCA's investigation—53 boys at MYI: 6 white, 6 Hispanic, and 41 African American/Black. At York there were 6 girls admitted during OCA's investigation: 2 African American/Black youth, 4 Hispanic youth.

  A 2017 report on Connecticut data found that black youth were more likely to be transferred to adult court than white youth. The study looked at multiple factors, including age, previous record, charge, socioeconomic status, but determined that race was the deciding factor.[4]

- **Youth are not receiving needed services while incarcerated.** OCA found that approximately half of boys confined during a 24 month period completed 1 or 0 programs while incarcerated.[5]

- **Youth lose critical services, including education and visits.** Youth, particularly boys with the most complex needs, are the most likely to lose access to critical supports and services as the result of challenging behaviors or gang affiliation. Services lost include:

  a. Education services, including special education supports;
  b. Rehabilitative services, including anger management and substance abuse treatment;
  c. Visits with family;
  d. The ability to purchase hygiene products or extra food.

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management tool and the impact that such isolation had on youth's access to critically needed mental health, rehabilitative and educational programming.

[3] Youth 15, 16 and 17 are transferred to the adult correctional system for charges related to all A felonies and certain B felonies. The census at MYI hovers around 50 minor boys (there are approximately 500 youth under age 21 at MYI). The number of girls at York is very small, rarely going above 3 at any given time.

[4] Spectrum Associates Market Research. (October 30, 2017). An Assessment of Disproportionate Minority Contact in Connecticut's Juvenile Justice System: An Abbreviated Report. Connecticut Office of Policy and Management.

[5] OCA made similar findings in its report regarding lack of intensive supports for youth incarcerated at CJTS during the OCA period of review, including that DCF was not able to provide data regarding program completion rates, that data provided regarding individual therapy rates was not accurate and reliable, and that OCA records review for a cohort of youth at CJTS revealed an average of slightly less than weekly individual clinical sessions provided to youth. While CJTS provided more services to youth than DOC is able to provide to youth at MYI, both facilities substantially underserved youth in need of intensive clinical programming. OCA also found that the Judicial Branch was unable to report on utilization rates for rehabilitative programming as well. Agencies reported to OCA that they are working on improving this aspect of data collection and reporting.

- **Use of Solitary Confinement persists for youth** in the adult prison system despite legislative efforts to ban this practice-- Youth in the adult prison system may be placed in segregation and other forms of prolonged or cumulative solitary confinement as a disciplinary sanction or due to suspected gang affiliation—despite research that consistently shows isolation has devastating impact for youth, increasing their risk of mental health deterioration and suicide. OCA identified many boys who were confined to their cells for 22 to 23 hours per day, sometimes for days (discipline), sometimes for months at a time (segregation). Youth in isolation did not attend rehabilitative programming and received minimal, and at times, no education.

- **Chemical Agent (pepper spray) is used on youth**—in contravention of most states' practices with juveniles and even where youth have diagnosed respiratory conditions that make the use of chemical agent potentially dangerous and even life threatening.

- **Lack of data regarding youth's self-harming and suicidal behaviors.** MYI (and DCF's CJTS) reported zero incidents of suicidal or self-harming behaviors during OCA's period of review (12 months), while by contrast, Judicial Branch detention facilities reported 41 incidents of youth placed on Constant Observation for Suicidal Behaviors. Given national research regarding propensity of suicidality among incarcerated youth, particularly in longer-term correction facilities, the lack of reliable data from DOC and DCF was concerning. Only the Judicial Branch utilized a framework for assessing quality and efficacy of suicide prevention protocols and the safety of facilities, as recommended by the U.S. Department of Justice.

- **No training for staff in working with adolescents**—youth in the adult prison system did not receive any specific training on how to work with, support or manage adolescents.

- **Most boys did not receive regular mental health treatment in the adult system**. OCA found that only 4/55 boys at MYI whose records were reviewed during the investigation were provided weekly mental health support. Many youth were identified as needing <u>no mental health services</u>.

- **Most boys received few or no visits and 24/53 boys received zero visits**. Only 13 boys were permitted a "Contact" visit with a family member during OCA's period of review (12 months), meaning that they could touch the family member visiting them.

- **Unreliable Data regarding critical conditions of confinement.** DOC data regarding use of isolation, force, chemical agent, and school attendance were often found to be unreliable and inaccurate.

- **The DOC has no ombudsman** to meet with youth and address concerns regarding conditions or unmet needs.

- **DOC staff and administrators working with youth in confinement are not mandated reporters of abuse and neglect.**

DOC administrators have responded to the OCA's report with a stated commitment to improve conditions for youth, within available resources and through collaboration with stakeholders.

OCA continues to meet regularly with DOC officials, legislators, and state government officials to discuss improving outcomes for incarcerated youth and addressing public safety.

OCA Findings Led State Oversight Committee to Recommend Removing Youth from Adult Correctional Facilities

The OCA's findings have contributed to multiple recommendations to the state's Juvenile Justice Policy and Oversight Committee (JJPOC) in 2017 and 2018[6] and 2019 to remove minors from the adult criminal justice system and house them in a more developmentally appropriate rehabilitation setting—recommendations that have overwhelmingly been approved by the JJPOC each year, two years in a row with the support of the Department of Correction[7].

Connecticut is well behind the national trend and norm with regard to maintaining youth in the adult prison system, and this bill will require that stakeholders work together to research best practices from other states, conceive a plan, and have a full year to implement a different housing strategy for juveniles. At any given time there are roughly 50 boys and 3 girls under 18 incarcerated by the DOC.

Research Commissioned by the U.S. Department of Justice and the U.S. Centers for Disease Control and Prevention Does Not Support Efficacy of Transferring Youth to Adult Corrections

Recommendations to move youth from DOC facilities to more developmentally appropriate settings is consistent with research over many years that demonstrates the transfer of minor youth to the adult criminal justice system has a negative public safety effect. The Federal Centers for Disease Control and Prevention (CDC)[8] recommended against such transfer policies, with a CDC taskforce finding, after a review of multiple studies:

> [on the basis of strong evidence that juveniles transferred to the adult justice system have **greater rates of subsequent violence than juveniles retained in the juvenile justice** system… [and that] [t]ransferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence.[9]

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[6] OCA conducted a shorter but similar review of conditions of confinement in 2016 and presented these findings to the JJPOC.

[7] 2017 and 2018 votes regarding recommendations for the JJPOC.

[8] Centers for Disease Control and Prevention. (2007) Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services. MMWR 2007; 56 (No. RR-9), published in the American Journal of Preventative Medicine, and Available online at http://www.courts.ca.gov/documents/BTB24-2M-1.pdf.

[9] Id. at S15.

A report by the U.S. Department of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP), made findings similar to the CDC.[10] Authors found, after review of six large-scale studies, that transfer to adult court *increased* youth recidivism rates:[11]

> [t]he strong consistency in results across the studies is … compelling, … [a]ll of the studies found higher recidivism rates among offenders who had been transferred to adult criminal court, compared with those who were retained in the juvenile system…[12] [therefore] **research provides sound evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism.**[13]

"Adult-style prisons that emphasize confinement and control are devoid of the essentials required for healthy adolescent development—engaged adults focused on their development, a peer group that models prosocial behavior, opportunities for academic success, and activities that contribute to developing decision-making and critical thinking skills. At the same time, these facilities provide too many of the elements that exacerbate the trauma that most confined youth already experienced and reinforce poor choices and impulsive behavior. Maltreatment is endemic and widespread." McCarthy, Patrick, Vincent Schiraldi, and Miriam Shark. *The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model. New Thinking in Community Corrections Bulletin.* Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 2016. NCJ 250142, available at https://www.ncjrs.gov/pdffiles1/nij/250142.pdf.

SB 504 – AN ACT CONCERNING THE SUSPENSION OF DELINQUENCY PROCEEDINGS FOR TREATMENT OR OTHER SERVICES IN MOTOR VEHICLE THEFT OR MISUSE CASES AND DETENTION OF JUVENILES

The OCA supports Senate Bill 504 which would create a specific diversionary program to treat the unique needs of children in delinquency proceedings involving motor vehicle theft and misuse by allowing a child in a delinquency case involving motor vehicle theft or misuse to be evaluated for treatment and/or other services and would authorize the court to suspend the delinquency proceeding for a set period of time to allow the child to participate in the treatment.

This diversionary option promotes the goals of rehabilitation, core values of the juvenile justice system, and the OCA strongly supports this effort.

Thank you for your time and attention to these important matters.

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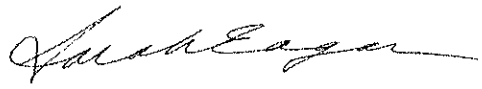
[10] Redding, R. (2008). Juvenile transfer laws: An effective deterrent to delinquency? Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

[11] The studies used large sample sizes, different methodologies, multiple measures of recidivism, and were conducted in five jurisdictions (Florida, New Jersey, New York, Minnesota, Pennsylvania) that have different types of transfer laws (automatic, prosecutorial, or judicial). Id. at 6.

[12] Id.

[13] At the time of the study, authors noted that with regard to one subset of offenders, nonviolent property offenders, effects of transfer were unclear.

Respectfully Submitted,



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PROPOSED AMENDMENTS TO BILL 7389

LANGUAGE

Sec. 6. (NEW) (Effective from passage) (a) The Commissioners of Correction and Children and families and the executive director of the Court Support Services Division of the Judicial Department shall implement best practices in juvenile detention centers and correctional facilities where persons age seventeen years and under are detained. Such practices shall [address] ensure: (1) Effective screening and response protocols for reducing youth's Suicidal and self-harming behaviors, including the development of a screening tool, periodicity schedule for screening, and response protocol designed to [determine which detained persons are at risk for] prevent suicidal and self-harming behaviors and promote youth's mental health; (2) [Negative impacts of solitary confinement] elimination of solitary confinement as required by P.A. 17- and General Statute Section[14]; (3) Harmful effects of using chemical agents and prone restraints on detained persons, including prohibiting the use of such chemical agents and limiting the use of prone restraints on such persons, provided that prone restraint shall be prohibited for all minors with a medical conditions that increase risk of bodily harm, and prone restraints shall be eliminated from practice with youth by January 1, 2020; and (4) Programming and services for such detained persons, including implementing behavior intervention plans for such persons whose behavior interferes with the safety or rehabilitation of other detained persons and providing trauma-responsive rehabilitative, pro-social and clinical services embedded into such person's daily schedule.

(b) The practices implemented under subsection (a) of this section shall provide developmentally healthy and appropriate activities and recreational opportunities for such detained persons and their family members during visitation periods that are designed to strengthen family bonds and minimize trauma of separation. Such visitations shall be presumed to include contact visits, unless [such visit creates a risk of a harm to any person] the facility's superintendent or warden determines that contact visits create an imminent risk of harm to the youth or others and provided that such determination is i) documented in the child's record, (ii) copied to his or her legal representative and parent or guardian, and (iii) subject to re-determination every 30 days.

(c) The Commissioners of Correction and Children and Families and the executive director of the Court Support Services Division of the Judicial Department shall report to the Juvenile Justice Policy and Oversight Committee established under section 46b-121n of the general statutes, as amended by this act, annually, not later than January fifteenth for the previous calendar year on the following: (1)

[14] JJPOC members are currently working on adsditional language to clarify, where necessary, the state's definition of what constitutes impermissible solitary confinement.

Suicidal and self-harming behaviors exhibited by persons detained in juvenile detention centers and correctional facilities where persons ages seventeen years and under are detained under the commissioners' or executive director's control or oversight and the agency's framework for tracking, preventing and responding to such behaviors; (2) Uses of force against and the imposition of physical isolation persons detained in juvenile detention centers and correctional facilities where persons ages seventeen years and under are detained under the commissioners' or executive director's control or oversight; and (3) [Any educational or mental health concerns] Information regarding utilization, and completion, of rehabilitative, clinical and educational programming provided to persons detained in juvenile detention centers and correctional facilities where persons ages seventeen years and under are detained under the commissioners' or executive director's control or oversight; and (4) information regarding visitation rates, including contact visitation rates, and impediments to visitation, for persons detained in juvenile detention centers and correctional facilities where persons ages seventeen years and under are detained under the commissioners' or executive director's control or oversight.

Sec. 7. ...

Sec. 8. Section 17a-101 of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2019): (a) The public policy of this state is: To protect children whose health and welfare may be adversely affected through injury and neglect; to strengthen the family and to make the home safe for children by enhancing the parental capacity for good child care; to provide a temporary or permanent nurturing and safe environment for children when necessary; and for these purposes to require the reporting of suspected child abuse or neglect, investigation of such reports by a social agency, and provision of services, where needed, to such child and family. (b) The following persons shall be mandated reporters: ...and (40) any person employed, including any person employed under contract and any ombudsman or ombudswoman, to work at a juvenile detention facility or any other correctional facility where children under eighteen years of age are detained or incarcerated.

Sec. 9. (NEW) (Effective October 1, 2019) (a) For purposes of this section, "ombudsman or ombudswoman services" includes (1) the receipt of complaints by the ombudsman or ombudswoman from persons detained in juvenile detention centers and correctional facilities where persons ages seventeen years and under are detained and the parent or guardian of any such person regarding decisions, actions and omissions, policies, procedures, rules and regulations of the center or facility, (2) touring each such center or facility, (3) investigating such complaints, rendering a decision on the merits of each complaint and communicating the decision to the complainant, (4) recommending to the head of the agency that operates or oversees such center or facility a resolution of any complaint found to have merit, and (5) recommending policy revisions to the head of such center or facility. (b) The Commissioners of Correction and Children and Families and the executive director of the Court Support Services Division of the Judicial Department shall ensure that ombudsman or ombudswoman services are available at any juvenile detention center or correctional facility where persons ages seventeen years and under are detained that any such agency operates or oversees. (c) reports from ombudsmen or ombudswomen shall include information regarding the number of youth complaints, the nature of such complaints, the resolution of the complaints, and any resulting policy or practice recommendations arising from the ombudsperson's activities, and such reports shall be made available to the JJPOC. Youth complaints made to the ombudsperson shall be provided to the Office of the Child Advocate.