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## **OLR Bill Analysis**

### **sHB 6505**

#### ***AN ACT CONCERNING COURT OPERATIONS.***

#### **SUMMARY**

This bill makes various unrelated changes in laws related to court procedures and operations. Generally, it:

1. replaces references to “juvenile detention center” with a new term “juvenile residential center” in statutes on juvenile matters (§§ 2-10, 12-14, 25, 28 & 30-34);
2. allows certain education and service providers to visit juvenile residential centers and interact with residents and staff, prohibits disclosure of confidential information, and imposes a penalty for violations (§ 55);
3. gives the Judicial Review Council’s members and employees access to juvenile records when required, including for investigations (§§ 26, 27, 40, 41 & 49);
4. expressly requires the probate court to hold hearings on new regulations (§ 15) and provides for the expeditious adoption of the state Supreme, Appellate, and Superior courts’ rules (§ 39);
5. allows other court-designated entities to produce court transcripts (§§ 42 & 43);
6. allows a Superior Court judgment that is based on default or nonsuit, or a civil judgement, to be opened or set aside within four months after the date the decision was sent instead of when it was rendered, as under current law (§§ 44 & 45);
7. requires the court clerk to promptly schedule a hearing instead of setting the matter down for a short calendar hearing in

- matters related to a (a) personal property execution claim, (b) child support withhold where the obligor claims mistake of fact, and (c) judgment debtor exemption claim (§§ 46-48);
8. allows the court, instead of holding a hearing in certain family relations matters, to accept an affidavit, made under oath, stating the requirements in the matter and that no civil restraining order or family violence protective order between the parties is in effect or pending before the court (§§ 11, 17-23, 35 & 36);
  9. allows certain family court findings to be made without a hearing as required under current law, but instead through a written judgment, order, or memorandum of decision of the court (§§ 11, 24 & 35-37);
  10. allows parties to settle, by arbitration, issues related to child support, visitation, and custody, which is prohibited under current law with regard to divorce matters (§§ 22 & 54);
  11. addresses the child support guidelines and family support magistrates' powers and duties (§§ 37 & 38);
  12. gives victims, and their next of kin, access to the private proceedings of juveniles being tried on the adult criminal docket (§§ 1 & 29);
  13. makes any member of a crime victim's immediate family eligible to receive certain victim notifications and expands victim compensation eligibility (§§ 52 & 53);
  14. clarifies the scope of the Court Support Services Division's and the Board of Pardons and Paroles' monitoring of offenders on provisional pardons or certifications of rehabilitation (§§ 50 & 51); and
  15. creates the crime of abuse of an oath document as a class D felony (§§ 56 & 57) and addresses agriculture-related violations (§§ 58-60).

Lastly, the bill corrects an internal statutory cross reference (§ 16) and makes other technical and conforming changes.

EFFECTIVE DATE: Upon passage, except for the provisions on (1) the “juvenile residential center” references (§§ 2-10, 12-14, 25, 28 & 30-34), which are effective January 1, 2022; (2) court transcripts and victim disclosure (§§ 42-43 & 53), which are effective July 1, 2021; and (3) Judicial Review Council testimony, settlements by arbitration, abuse of an oath document, and agriculture-related violations (§§ 41, 54, 56 & 58-60), which are effective October 1, 2021.

### **§§ 2-10, 12-14, 25, 28 & 30-34 — JUVENILE RESIDENTIAL CENTER**

The bill creates a general definition for the term “juvenile residential center” to replace current references to the term “juvenile detention center” throughout the statutes on juvenile matters.

Under the bill, a “juvenile residential center” is a hardware-secured residential facility operated by the judicial branch’s Court Support Services Division that includes direct staff supervision, surveillance enhancements, and physical barriers that allow for close supervision and controlled movement in a treatment setting for pre-adjudicated juveniles and juveniles adjudicated as delinquent.

### **§ 55 — JUVENILE RESIDENTIAL CENTER VISITS AND INTERACTIONS**

***Individuals Allowed to Visit and Enter Centers.*** Under the bill, the judicial branch, subject to policies and procedures approved by the chief court administrator, may allow the following individuals to enter, physically or virtually, a juvenile residential center and interact with the staff and juveniles without a court order, if the entry and interaction are required by the individual to perform his or her duties:

1. a judicial branch employee or official;
2. an employee or authorized agent of the organization or agency providing educational services in the center;
3. a Division of Public Defender Services employee;

4. an attorney representing a juvenile;
5. a Department of Children and Families (DCF) employee or official;
6. an employee or authorized agent of an organization or agency contracted with the judicial branch to provide direct services to juveniles;
7. an individual who the Judicial Branch authorized to provide training, enrichment, recreational, or religious services to the juveniles; and
8. an individual the judicial branch authorized to repair or maintain the center.

***Court's Authorization.*** The bill allows a Superior Court judge, upon finding that an individual is not authorized to enter but has a legitimate interest in entering a juvenile residential center, to order they be allowed to enter.

***Confidentiality.*** The bill prohibits an individual who is allowed to enter a juvenile residential center from disclosing any information that specifically identifies a juvenile, unless authorized by court order or otherwise provided by law.

***Penalty for Violations.*** Under the bill, individuals who violate the confidentiality provision are guilty of a class B misdemeanor, punishable by a fine up to \$100 and up to six months in prison. (By law, a class B misdemeanor is punishable by up to \$1,000 fine, up to six months in prison, or both.)

## **§ 15 — PROBATE COURT RULES OF PROCEDURE**

The law generally requires the probate court administrator to recommend uniform rules of procedure for the probate courts that the state Supreme Court may adopt and promulgate. The bill clarifies that it is the probate court, not the state Supreme Court, that must hold the public hearing on the rules.

The bill specifically requires the probate court administrator to designate at least three probate court judges who must hold a public hearing on any proposed new rule or any change in an existing rule before it is presented to the state Supreme Court judges for adoption and promulgation pursuant to CGS § 51-14. Under the bill, reasonable notice of the hearing must be given in the Connecticut Law Journal and otherwise as the probate court administrator deems proper, which are the same hearing requirements current law requires of the state Supreme Court.

### **§ 39 — COURT RULES AND FORMS**

By law, the state's Supreme Court, Appellate Court, and Superior Court judges must adopt and promulgate, and may occasionally modify or repeal, rules and forms regulating pleading, practice, and procedure in judicial proceedings.

Under current law, the rules become effective on the date the judges specify but not before 60 days after they were promulgated. The bill allows the court to waive this 60-day requirement if a rule must be adopted expeditiously.

### **§§ 42 & 43 — COURT TRANSCRIPTS**

The bill allows the chief court administrator to designate any other entity, in addition to an official court reporter or a court recording monitor, to produce transcripts. It does so by expanding the definition of the term "transcript" to also mean the official written record of a proceeding by any other entity designated by the chief court administrator, instead of only one made by an official court reporter or court recording monitor as under existing law.

The bill also eliminates the \$2.00 per page rate paid to official court reporters and court reporting monitors when they type transcripts for a judicial officer or judicial branch employee. Under current law, in addition to a salary, court reporters and court recording monitors are entitled to charge a public official \$2.00 per page ordered and transcribed from the official record.

**§ 41 — SUBPOENA TO TESTIFY BEFORE THE JUDICIAL REVIEW BOARD**

By law, anyone can be compelled, by subpoena, to testify before the state Supreme Court or the Judicial Review Council in relation to a complaint against a judge, compensation commissioner, or family support magistrate.

Under existing law, this pertains to conduct that could be grounds for removal or censure (e.g., mental infirmity or willful and persistent failure to perform the duty of a judge). The bill also applies this to matters before the council that pertain to a judge becoming so permanently incapacitated that he or she is unable to adequately fulfill the duties of the office and may be retired by the Judicial Review Council.

**§§ 17 & 18 — CIVIL ORDERS OF PROTECTION**

***Civil Restraining Order (§ 17)***

By law, a family or household member may apply for a civil restraining order for relief from physical abuse, stalking, or a pattern of threatening from another family or household member (CGS § 46b-15).

***Statement Under Penalty of False Statement.*** Under current law, to obtain a restraining order, the victim must file an application and an affidavit made under oath that includes a brief statement of the condition from which relief is sought. Instead of an affidavit under oath, the bill requires the application be accompanied only by the statement made under penalty of false statement.

A person is guilty of false statement, a class A misdemeanor, when he or she (1) intentionally makes a false written statement that he or she does not believe to be true with the intent to mislead a public servant in the performance the public servant's official function and (2) makes the statement under oath or pursuant to a form providing notice, authorized by law, to the effect that false statements are punishable. A class A misdemeanor is punishable by a fine up to \$2,000, up to one year in prison, or both (CGS § 53a-157b).

**Service of Process.** By law, the court must hold a hearing on the application for a restraining order within 14 days after receiving it. The court must give the alleged offender at least three days' notice before the hearing, although it may issue an order without notice or hearing if there is an immediate and present physical danger to the applicant (i.e., ex parte order). If the court issues an ex parte order because the applicant indicates that the respondent (i.e., accused) holds a permit to carry a pistol or revolver or possesses firearms or ammunition, the court must hold a hearing within seven days after issuing the order.

Under current law, the respondent must be served with a copy of the application, the applicant's affidavit, and a copy of any ex parte order. The bill makes a conforming change and requires that the respondent and the law enforcement agency, as applicable, be served with a copy of the application along with the statement of the specific facts that form the basis for the relief made under penalty of false statement instead of an affidavit as required by current law.

***Civil Protection Order (§ 18)***

By law, a victim of sexual abuse, sexual assault, or stalking may apply for a civil protection order if he or she is not eligible for the restraining order described above (CGS § 46b-16a).

The bill makes the identical changes described above for obtaining a civil restraining order to the provisions on obtaining a civil protection order. Specifically, it removes the requirement that an affidavit made under oath stating conditions from which relief is sought accompany an application for a civil protection order and instead requires that a statement of the conditions from which relief is sought made under penalty of false statement accompany an application. It also makes the corresponding conforming changes regarding the documents that must accompany the application when process is being served to give the respondent notice of a hearing on the application.

Additionally, the bill adds a provision allowing the court to extend an ex parte order up to another 14 days from the originally scheduled hearing date, to allow more time for service of process. Under the bill,

the court must do so upon the request of the applicant and based on the information in the original application. In such a case, the court clerk must prepare a new order with the new hearing date, which must be served on the respondent in the same manner associated with the original application. (Under existing law, this same provision already applies to civil restraining orders.)

**§§ 11, 19-23, 35 & 36 — FAMILY MATTERS WITHOUT PHYSICAL COURT APPEARANCE**

The bill allows the court, as an alternative to an in-person court hearing, to accept an affidavit made under oath, stating the requirements in the matter and that no civil restraining order or family violence protective order between the parties is in effect or pending before the court. The bill generally provides this additional option when the court is determining the following family relations matters:

1. cash medical support for children who are public assistance recipients (IV-D support cases) (§ 11);
2. divorce after a marriage has broken down irretrievably (§ 19);
3. waiver of the right to educational support (affidavit must state that the party fully understands the consequences of the waiver) (§ 20);
4. divorce decree after a decree of legal separation (§ 21);
5. financial resources in custody and visitation of a minor child (§ 22);
6. identifying medical and dental expenses, including cases where paternity is determined in non-marital cases (§§ 23 & 35); and
7. enforcement orders to support a spouse or minor child (§ 36).

In matters related to cash and medical support in IV-D cases and cases involving paternity determination, and support enforcement orders, the bill also generally allows the court to make its findings from a written judgment, order, or memorandum of decision of the

court in addition to from a hearing on the record, as allowed under existing law (§§ 11 & 35-36).

The bill also expressly states that it does not preclude the court from requiring that the parties attend a hearing and that findings be made on the record in certain matters involving divorce and educational support waiver (§§ 19 & 20).

## **§ 22 — FINANCIAL AGREEMENT IN DIVORCE CASES**

By law, in a divorce case where the parties have submitted a final agreement concerning any of the children or regarding alimony or property disposition, in order to determine whether the agreement is fair and equitable under the circumstances, the court must inquire about the parties' financial resources and needs, and their respective fitness to have physical custody of or visitation rights to any minor children.

Under existing law, an arbitration pursuant to an agreement may proceed only after the court has made certain inquiries and is satisfied with its findings, such as that the agreement was voluntary and without coercion. The bill specifies that an arbitration award in such an action is not enforceable until it has been confirmed, modified, or vacated in accordance with laws on arbitration proceedings and incorporated into a court divorce order or decree.

Under current law, the agreement must not include issues related to child support, visitation, and custody. However, the bill allows the court to enter an arbitration award that concerns child support, if the court finds that the award complies with the child support guidelines. Under the bill, an arbitration award related to a divorce that is incorporated into a divorce order or decree must be enforceable and modifiable to the same extent as an agreement of the parties that is incorporated into an order or decree of the court as described above.

## **§§ 24 & 37 — CHILD SUPPORT GUIDELINES AND MODIFICATIONS**

By law, there is a rebuttable presumption that the child support amount that resulted from applying the guidelines is the amount to be

ordered. To rebut the presumption there must be a specific finding on the record (in a hearing) that the application of the guidelines would be inequitable or inappropriate in a particular case, as determined under the deviation criteria established by the guidelines. Under the bill this finding can also be made in a written judgment, order, or memorandum of decision of the court.

Additionally, the bill allows the court to make its findings in a written judgment, order, or memorandum of decision of the court, and in a hearing on the record as allowed under existing law. This provision also applies in cases involving alimony and support modifications (§ 24).

### **§ 38 — FAMILY SUPPORT MAGISTRATES' POWERS AND DUTIES**

The bill expands the powers and duties of family support magistrates regarding the enforcement and modification of certain support orders as described below. It also states that it does not preclude a family support magistrate from modifying an existing support order under any other section of the statutes.

#### ***Modification in IV-D Support Cases***

Under the bill, agreements between parties to modify or enforce support orders in IV-D support cases may be filed with the assistant clerk of the Family Support Magistrate Division for the judicial district where the child's mother or father lives and where the parties have submitted a motion for modification or an application for contempt of an existing support order. The agreements may be approved by the family support magistrate after an inquiry into the financial needs, resources, and the respective abilities of the parties.

The bill allows the inquiry to take place on the record at a hearing or be based on an affidavit from each party, made under oath, stating that (1) each party has the financial resources and other facts satisfying any requirement of the inquiry in question and (2) no civil restraining order or family violence protective order between the parties is in effect or pending before the court. If each party attests to this, a family support magistrate may:

1. determine whether the agreement is fair and equitable under all the circumstances and
2. make any other findings required by this provision.

***Obligor Qualified for Disability***

The bill allows a family support magistrate to reduce a support order to zero dollars or make other changes if the obligor (i.e., person from whom support is due) qualifies for federal Supplemental Security Income (SSI) Program disability benefits.

Under the bill, if a support enforcement officer files an affidavit that the Social Security Administration (SSA) or a state agency that awards disability benefits has determined the obligor qualifies for SSI disability benefits, a family support magistrate may (1) modify the existing support order to zero dollars without a hearing, (2) schedule the motion for a hearing, or (3) deny the motion without a hearing.

The bill requires the support enforcement officer's affidavit to state:

1. the date the child support obligor qualified for SSI disability benefits;
2. that the officer confirmed this with SSA (or another appropriate federal agency);
3. that a diligent search failed to identify any other income or assets that could be used to satisfy the child support order;
4. that support enforcement services provided notice to the custodial party, consistent with service of process in a civil action, or by certified mail, return receipt requested, about the proposed modification and that the custodial party had the right to object to the proposed modification, generally within 15 days after receiving it; and
5. that support enforcement services did not receive an objection from the custodial party.

The bill allows any support order modified based on this provision to be later modified upon a finding of a substantial change in circumstances.

### **§§ 1 & 29 — VICTIM ACCESS TO JUVENILE PROCEEDINGS**

The bill allows victims and their next of kin to access the private proceedings of juveniles being tried on the adult criminal docket. It does so by prohibiting the court from excluding them from the proceedings.

Under the bill (1) a “victim” is the victim of the crime; his or her parent, guardian, or legal representative; a victim advocate; or a person designated by a victim for decision making and (2) “next of kin” is a spouse, adult child, parent, adult sibling, aunt, uncle, or grandparent.

### **§ 52 — FAMILY VIOLENCE VICTIM COMPENSATION**

The bill expands eligibility for victim compensation by expanding the types of professionals that victims of eligible crimes may report to, or by allowing them to report it in applications for restraining or protection orders.

#### ***Family Violence Victims***

Under existing law, the Office of Victim Services or, on review, a victim compensation commissioner, may order compensation to be paid to certain victims if the (1) personal injury has been disclosed to certain professionals, such as a doctor, police officer, or licensed marriage or family therapist, and (2) office or commissioner reasonably concludes that the violation occurred. However, to be eligible for compensation, current law requires that the victims of family violence disclosed their alleged personal injury to a domestic violence or sexual assault counselor. The bill instead allows family violence victims to report to the same list of professionals existing law allows for reporting personal injury from other crimes.

#### ***Eligible Crime Victims***

For all victims of eligible crimes, the bill adds child advocacy center

employee to the list of professionals to whom a victim, including a family violence victim, may disclose the alleged personal injury.

### ***Restraining or Protection Orders***

Under current law, victims of family violence, but not victims of other crimes, may be eligible for compensation if they report the alleged personal injury in an application for a restraining or protection order. The bill allows all eligible victims to report personal injury in this way.

### **§ 53 — CRIME VICTIM NOTIFICATION**

The bill allows a member of a crime victim's immediate family to request that the Judicial Branch's Office of Victim Services (OVS) or the Department of Correction's (DOC) Victim Services Unit (VSU) notify them about certain events, such as when:

1. an inmate applies to the Board of Pardons and Paroles, DOC, the sentencing court or judge, or review division for a review of sentence;
2. an inmate is scheduled to be released from a correctional institution other than on furlough; or
3. certain felony or sexual offenders or offenders against minor victims file to be exempt from registration on the sex offender registry.

Existing law allows crime victims to request these same notifications. And as is the case for crime victims under existing law, the bill makes the family member responsible for notifying OVS and VSU of his or her current mailing address and telephone number, which is kept confidential.

### **§§ 50 & 51 — CERTIFICATE OF REHABILITATION**

By law, a "certificate of rehabilitation" is a form of relief, other than a provisional pardon, from barriers or forfeitures to employment or the issuance of licenses, that is granted to an eligible offender by the (1) Board of Pardons and Paroles (BPP) or (2) judicial branch's Court

Support Services Division (CSSD) (CGS § 54-130e).

***Court Support Services Division (CSSD) (§ 50)***

By law, CSSD may (1) issue a certificate of rehabilitation to an eligible offender who is under the division's supervision while on probation or other supervised release, (2) issue a new certificate to enlarge the relief previously granted, or (3) revoke a certificate as allowed under the law.

Existing law requires the division to immediately notify BPP in writing if it either enlarges or revokes relief under a certificate of rehabilitation. The bill specifies that the division is not required to continue monitoring the criminal activity of anyone to whom the division issued a certificate of rehabilitation but who is no longer under its supervision.

***Board or Pardons and Paroles (§ 51)***

By law, BPP may issue a provisional pardon or certificate of rehabilitation before an eligible offender has completed his or her term of incarceration, probation, or parole. The bill applies these provisions to offenders who are on special parole and makes the corresponding conforming changes. Under the law, these provisional pardons are temporary and may be revoked.

Like the clarification provided regarding the scope of CSSD's monitoring responsibility (see above), the bill also specifies that BPP is not required to continue monitoring the criminal activity of anyone to whom it has issued a provisional pardon or certificate of rehabilitation but who is no longer under parole or special parole supervision.

**§§ 56 & 57 — ADMINISTERING OATHS**

***Abuse of an Oath Document (§ 56)***

The bill creates the crime of abuse of an oath document, executed subsequent to an oath taken by a judicial officer, and makes a person guilty of the crime when he or she disseminates the oath document by telegraph, mail, computer network, electronically transmitting a fax through connection with a telephone network, or any other form of

written communication, with the intent to defraud, deceive, intimidate, injure, or harass a judicial officer.

Under the bill, abuse of an oath document is a class D felony, punishable by a fine up to \$5,000, up to five years in prison, or both.

***Means of Administering Oaths (§ 57)***

The bill allows a Judicial Department official authorized to administer oaths to do so using an interactive audiovisual device or other remote technology to any party, counsel, witness, or other participant in a court proceeding or appearing before the official for a purpose related to a court process.

**§§ 58-60 — AGRICULTURE-RELATED VIOLATIONS**

The bill expands the agriculture commissioner’s authority by expressly allowing him, or his agent, to issue citations for infractions or violations of statutes that are under the commissioner’s authority (§ 58).

The bill reduces certain seed-related violations (e.g., proper labeling) from a class D misdemeanor to a violation. Under the bill, these violations are no longer subject to up to 30 days in prison but, as under existing law, they are punishable by a fine of \$100 for the first offense and \$200 for the second offense (§ 60).

The bill adds the agriculture-related violations shown in Table 1 to the list of violations handled by the Superior Court’s Centralized Infractions Bureau, which processes payments or not guilty pleas for committing infractions or violations (§ 59). Generally, anyone who is alleged to have committed an infraction or a violation may either plead not guilty or pay the established fine and any additional fee or cost for the infraction or the violation.

**Table 1: Additional Violations that May be Handled Through the Centralized Infractions Bureau**

<b><i>Statute (CGS §)</i></b>	<b><i>Provision</i></b>
22-30	Improper use of brand name

22-61j	Seed label and other requirements
22-61l(n)(1)	License required to cultivate or processes hemp
22-61m(f)(1)	License required to manufacture hemp
22-96	Certificate of inspection of imported nursery stock
22-277(c)	Keeping record of the sale and purchase of livestock
22-278	Preventing the spread of contagious and infectious diseases among livestock
22-344(g)	Failure to pass inspection of kennel, pet shop, shelter, or grooming or training facility
22-344b(b)(2)	Posting a statement of customer's rights in pet shops required
22-344c(d)	Required licensing of anyone keeping at least 10 unneutered or unspayed dogs capable of breeding
22-344d(d)	Specific signs required in pet shops selling dogs
22344f	Animal importer required to provide for a veterinarian to examine each imported dog or cat and maintain the record
22-350a	Tethering a dog to a stationary object or mobile device prohibited
22-354	Certificate of good health required to import dog or cat, including from areas under quarantine from rabies

The bill also removes certain violations from the list of violations handled by the bureau, making it no longer able to process their associated fines. The bill removes violations associated with (1) certain kennel owners' and keepers' failure to get a town-issued license and (2) animal shelters' failure to register (§ 59).

## **BACKGROUND**

### ***Related Bills***

sSB 1091, favorably reported by the Judiciary Committee, has similar provisions regarding obtaining a civil restraining order. Specifically, provisions related to (1) removing the requirement for an affidavit made under oath and requiring instead a statement of the conditions from which relief is sought made under penalty of false statement and (2) making the corresponding changes related to service of process (§ 17).

sHB 6385 (§ 5), favorably reported by the Environment Committee, makes the same change as § 60 in this bill (seed law penalty).

sHB 6500 (§ 2), favorably reported by the Environment Committee, makes a violation of the state hemp law (CGS § 22-61*l*), which is an infraction, payable by mail, as in § 59 of this bill.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 29 Nay 7 (04/09/2021)