State of Connecticut
DIVISION OF CRIMINAL JUSTICE

TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE

IN OPPOSITION TO SECTION 7 OF:

H.B. No. 6671 (RAISED) AN ACT CONCERNING THE PROVISION OF LEGAL COUNSEL IN A CRIMINAL MATTER TO A PERSON UNDER EIGHTEEN YEARS OF AGE.

JOINT COMMITTEE ON JUDICIARY
March 30, 2021

The Division of Criminal Justice takes no position as to Sections 1 through 6 of H.B. 6671, An Act Concerning the Provision of Legal Counsel in a Criminal Matter to a Person under Eighteen Years of Age. However, the Division opposes Section 7 and, to the extent this bill is reported out of Committee, strongly recommends its removal.

Section 7 makes several substantial changes to § 46b-137. Subsection (a) pertains solely to cases in the juvenile court, while subsection (b) would pertain to cases in both juvenile court and adult court. The changes in these two subsections would make inadmissible any admission, confession, or statement made by a juvenile that was not made 1) in the presence of a guardian, 2) after being told their rights, including the right to counsel, 3) after being told that the adult guardian **could not** waive the right to counsel, and 4) in the presence of counsel.

These subsections would seek to strip an adult guardian of their right to waive counsel, which is very troublesome. What if the guardian wished to waive counsel so that the juvenile could make an exculpatory statement and resolve the matter quickly? They would no longer have this right.

Perhaps equally troublesome, on a procedural point, is the requirement that counsel must be present. This may be functional if the family can afford to hire their own attorney, but what if they cannot? Earlier portions of this bill would require a court to appoint an attorney to represent juveniles in all cases, and only a judge can appoint a public defender. Therefore, a juvenile could only have a public defender "present" if they have already been arrested and presented before the court. This becomes the proverbial chicken and the egg problem. This would mandate that the police arrest every juvenile who could not afford an attorney, so that the court could appoint a public defender, so that the police could speak to the juvenile, who may then have such charges dropped depending on what the juvenile says. This proposal would, in effect, bring a halt to all juvenile investigations.

Notably, this statute does not pertain to just suspected juvenile offenders; it also pertains to any juvenile witness or victim, which makes these subsections even more problematic. A court would not appoint a public defender as counsel to a witness or a victim. Would that mean that every juvenile witness or victim would be required to hire an attorney in order to be able to speak to police? Would a juvenile even be able to report a crime committed by another juvenile without counsel being present?

Currently, statements not made in the presence of a parent or guardian are inadmissible in juvenile court proceedings but may be admissible in adult court. Our Supreme Court has held that the protections of the statute apply only to delinquency proceedings and that if a case is transferred to adult court, a juvenile's statements will be assessed for admissibility using a "totality of the circumstances" test. The changes to subsection (b) would overrule this holding.

The Connecticut Supreme Court in State v. Ledbetter, 263 C. 1 (2003) held, omitting the citations and internal quotes, that the current statutory framework:

> … does not leave such a child without adequate recourse to challenge the state's use of his or her confession. No such confession 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 whether a waiver is voluntary, knowing and intelligent, the court is required to consider the totality of the circumstances, an approach that 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. The totality of the circumstances test, which must be applied with special care to confessions made by children, 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.

This bill also seeks to fully remove the current subsection (c). This subsection requires the admissibility of statements made by juveniles sixteen or seventeen years of age, whose case was transferred back to juvenile court, to be determined under a view of the totality of circumstances, similar to that described in the Ledbetter decision. As noted by our Supreme Court, this totality of the circumstances regarding each sixteen/seventeen year-old juveniles adequately protects their rights. As such, subsection (c) should not be deleted from § 46b-137.

In conclusion, the Division of Criminal Justice opposes Section 7 of H.B. 6671 and respectfully recommends the Committee remove its inclusion if this bill were to be reported out of Committee. We thank the Committee for affording this opportunity to provide input on this matter and would be happy to provide any additional information the Committee might require or to answer any questions that you might have.