JOURNAL OF THE SENATE

Monday, July 26, 2021

The Senate was called to order at 10:17 a.m., Senator Looney of the 11th in the Chair.

The prayer was offered by Acting Chaplain, Timothy Kehoe of East Hartford, Connecticut.

The following is the prayer:

Please bless us with an inner strength so that our lives and our work may be a blessing on others.

PLEDGE

Senators Duff of the 25th and Kelly of the 21st led the Senate in the Pledge of Allegiance.

COMMUNICATIONS FROM THE STATE OF SECRETARY:
CALL RECONVENING THE
2021 REGULAR SESSION OF
THE GENERAL ASSEMBLY

Whereas, the regular session of the 2021 General Assembly adjourned on, in accordance with the Constitution of Connecticut; and

Whereas, the Governor has disapproved certain bills passed by the regular Session of the 2021 General Assembly and has transmitted same to the Secretary of the State with his objections; and

Whereas, said bill were not reconsidered by the General Assembly or were so disapproved by the Governor after said adjournment;

Now Therefore, as required by Article Third of the Amendments to the Constitution of Connecticut , I hereby call the 2021 Regular Session of the General Assembly to reconvene in session at Hartford on July 26, 2021 at ten o'clock in the morning, for a period not to exceed three days following such reconvening, for the sole purpose of reconsidering and, if the General Assembly so desires, repassing

Given under my hand and the Seal of the State at the City of Hartford, this 14th day of July, 2021

Denise W. Merrill

Secretary of State

COMMUNICATIONS FROM HIS EXCELLENCY THE GOVERNOR

The following communications were received from His Excellency, the Governor, read by the Clerk:

June 30, 2021

The Honorable Denise W. Merrill
Secretary of the State
30 Trinity Street
Hartford, CT 06106

Dear Madam Secretary:

I hereby return, without my signature, Senate Bill 1059, An Act Concerning the Office of the Correction Ombuds, the Use of Isolated Confinement, Seclusion and Restraints, Social Contacts for Incarcerated Persons and Training and Workers' Compensation Benefits for Correction.

I fully support the purpose of this legislation, to make certain that isolated confinement is not used in any correctional facility in Connecticut. Under my directive today, the Commissioner of Correction will increase out of cell time for all incarcerated individuals, including those individuals in restrictive statuses, and he will do so well before the effective dates of this bill. But he will also do so in a manner that prioritizes the safety of people in the Department of Correction's custody and Department employees who are not only correction officers but also teachers, chaplains, medical staff, mental health counselors, and addiction counselors.

Specifically, I am today issuing an executive order to the Department of Correction to institute policies that limit how long an incarcerated person may be held with severely restricted out of cell time (i.e., isolated confinement) in Connecticut correctional facilities. Currently, incarcerated persons in restrictive status programs and disciplinary status may be held in isolated confinement. Under my order, the use of isolated confinement in restrictive status programs must end. Outside of disciplinary status or extraordinary circumstances, the Department must allow incarcerated people at least four hours of out¬ of-cell time each day, and the use of isolated confinement in disciplinary status must be limited to fifteen days and allow at least two hours of out-of-cell time each day. These rules, which are stronger than both the United Nations' Mandela Rules and progressive policies and laws instituted in other states, will be implemented across all Department of Correction facilities within 150 days. The executive order also directs the Commissioner to file a report within 90 days that outlines the steps taken and to be taken to increase contact visits and decrease the use of in-cell restraints.

I am not signing this legislation because, as written, it puts the safety of incarcerated persons and correction employees at substantial risk.

This legislation places unreasonable and dangerous limits on the use of restraints. The bill as written only permits correctional officers with the rank of captain or higher to order the use of handcuffs and only pennits therapists to order restraints during a_psychiatric emergency.

These restrictions apply regardless of the circumstances, including whether the incident is inside or outside a cell. As a practical matter, captains are not always supervising wings of correction facilities and may not be on duty over weekends. To require that a correctional officer

wait for the authorization of a captain torestrain an incarcerated person involved in a serious physical altercation risks the lives of incarcerated persons and correction employees.

The bill sets a limit of 72 hours during any 14-day period that an incarcerated person may be limited to less than 6.5 hours out of cell each day. That out-of-cell time and discipline limitation is far out ofline with what has been successfully implemented in any other state. For example, if an individual is placed in isolated confinement for 72 hours, returns to the general population, and slashes the throat of a cell mate, under this legislation, the Department of Correction could not immediately place the incarcerated person back into isolated confinement, even as a temporary, emergency measure. Although I do support the "Stop Solitary" movement, I do not support these arbitrary limits on the Department's ability to protect the incarcerated population.

The legislation also creates a safety risk by failing to provide the Department with flexibility to limit visitors who are allowed in the facilities for contact visits with an incarcerated person. Under this legislation, the Department cannot deny a contact visit solely based on the visitor's criminal history. Thus, an individual convicted of multiple violent crimes or of smuggling drugs into a correctional facility would be allowed into a facility for a 60-minute contact visit with an incarcerated person.

Contact visits present heightened risk for transfer of contraband, including drugs or weapons, into the facility. The Department must have the ability to set reasonable visitation policies that promote family and community connections, while limiting safety and security risks.

Finally, the bill makes certain changes to the Ombuds program that create security and litigation risks. The bill gives the ombuds person access to Department records, "notwithstanding any provision of the general statutes concerning the confidentiality of records and information." Current statutes protect the safety of incarcerated persons and correctional employees by making the Department responsible for limiting the disclosure of sensitive records that could lead to security breaches. There is nothing in this bill requiring the ombuds person to assume the same duty. The bill as written also puts into question whether the ombuds person could access and then disclose records protected by the attorney-client and work product privileges.

For these reasons, I disapprove of Senate Bill 1059, An Act Concerning the Office of the Correction Ombuds, the Use of Isolated Confinement, Seclusion and Restraints, Social Contacts for Incarcerated Persons and Training and Workers' Compensation Benefits for Correction. Pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut, I am returning Senate Bill 1059 without my signature.

Sincerely,

Ned Lamont
Governor

July 13, 2021

The Honorable Denise W. Merrill
Secretary of the State
30 Trinity Street
Hartford, CT 06106

Dear Madam Secretary:

I hereby return, without my signature, Senate Bill 940, An Act Concerning State Agency Compliance with Probate Court Orders.

This bill requires state agencies to recognize, apply, and honor probate court decisions to which they were not a party. In effect, this means that probate court decisions would bind state agency eligibility determinations for various state assistance programs, including the Medicaid program. This requirement may violate federal and state law, pose a substantial risk oflosing federal funds, violate a basic principle oflaw, and result in increased costs that were not included in the budget.

The Attorney General has previously testified that this legislation may violate federal and state laws and thus "poses a substantial threat of loss of billions of federal dollars to the State."1 Federal law requires the State to designate one single agency that is responsible for administering the Medicaid program and for making eligibility determinations.2 This single state agency requirement represents Congress's recognition that in managing Medicaid, states should enjoy both an administrative benefit, i.e., the ability to designate a single state agency to make final decisions in the interest of efficiency, but also a corresponding burden, i.e., an accountability regime in which that agency cannot evade federal requirements by deferring to the actions of other agencies.3 In Connecticut, the Department of Social Services (DSS) is the designated agency.4 This legislation, by requiring that a decision made in a different forum, under different rules be binding on DSS in its determination of Medicaid eligibility could lead the federal

government to conclude that Connecticut is not in compliance with the single administrator requirement.5 Such a determination would allow the federal government to reduce or withhold federal matching funds.6

Testimony in support of this legislation has described the legislation as simply codifying a 2018 Connecticut Supreme Court decision, Valliere v. Commissioner of Social Services, 328 Conn.
294 (2018). That case, however, does not stand for the broad proposition that a probate court can bind DSS in determinations of Medicaid eligibility. Valliere applies to a limited factual and legal circumstance concerning community spouse assistance determinations as permitted by federal law. It was a federal statute,7 in Valliere, that required DSS to follow an existing court order.

I do not see a good reason to take on this risk of a loss of federal funds to address an issue that is not clearly defined or a problem that may not exist.

We have a system in place that works. There is no need to change it. The probate court makes binding decisions for issues that are within its jurisdiction. State agencies do the same for benefit eligibility determinations. If an agency makes an arbitrary or capricious determination, there is an existing appeal right codified in the Uniform Administrative Procedures Act.8

This legislation binds an agency to factual findings made in a probate proceeding to which it was not a party. This situation goes against basic principles of law and, practically speaking, would require the agency to identify every probate proceeding where a factual finding may later be relevant to a matter that may come before the agency at some future date. The agency or the Attorney General's office would then have to send an attorney to every one of those probate proceedings. This process is unworkable and fiscally irresponsible. The Attorney General has previously testified "that this bill would result in hundreds of new probate cases per year based on Medicaid eligibility applications alone," and that the cost to the Attorney General's Office, state agencies, and the courts is "significant."9 These significant costs were not included in the budget.

For these reasons, I disapprove of Senate Bill 940, An Act Concerning State Agency Compliance with Probate Court Orders. Pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut, I am returning Senate Bill 940 without my signature.

Sincerely,

Ned Lamont
Governor

July 13, 2021
The Honorable Denise W. Merrill
Secretary of the State
30 Trinity Street
Hartford, CT 06106

Dear Madam Secretary:

I hereby return, without my signature, Senate Bill 1110, An Act Concerning the Conveyance of Parcels of State Land to the New Haven Port Authority. The bill would require the Department of Transportation (DOT) to deduct from the sale price of several parcels of land approved for conveyance three years ago any costs for environmental investigation and remediation,

This property was originally purchased using federal funds, Except in certain circumstances, federal law requires the sale be for fair market value; not the fair market value less remediation costs, 1The Federal Highway Administration (FHWA) also requires that the sale proceeds be used as a match toward other federally participating projects, FHWA annually audits and reviews DOT's property transactions and has the authority to withhold federal funding for current and future projects for being non-compliant with federal law. As a result, DOT cannot use any of the sale proceeds to cover the remediation costs but must find an alternative source of funds,

Standard appraisal practice does not deduct remediation costs from the property value unless there are remediation orders issued by the Department of Energy and Environmental Protection,2 Environmental testing is typically part of the due diligence of the purchaser, here the New Haven Port Authority, and not paid by the seller, DOT,

While the legislation requires remediation, it does not specify the level of remediation. The level of remediation and associated costs are dependent on the use of the land. The legislation is silent as to how the land will be used. As written, therefore, the legislation opens DOT and consequently the state taxpayers to an unknown and potentially very high cost.

For these reasons, I disapprove of Senate Bill 1110, An Act Concerning the Conveyance of Parcels of State Land to the New Haven Port Authority. Pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut, I am returning Senate Bill l l l0 without my signature.

Sincerely,

Ned Lamont
Governor

July 13, 2021

The Honorable Denise W. Merrill
Secretary of the State
30 Trinity Street
Hartford, CT 06106

Dear Madam Secretary:

I hereby return, without my signature, House Bill 6678, An Act Concerning the Conveyance of a Parcel of State Land in the Town of Wolcott. The bill would require the Department of Transportation to sell a parcel of property to an individual private business owner for $6,000 plus the administrative costs of making the conveyance.

This bill comes after negotiations between the private individual, who is leasing the property, and the Department of Transportation (DOT) failed to produce a sales price that the department could reasonably justify to the Office of Policy and Management (OPM) or the State Properties Review Board as being in the best interest of Connecticut and its taxpayers. The $6,000 sale price required by the legislation is less than one quarter of the appraised fair market value for the property. My administration has not been informed of any extenuating circumstance or other justification for turning over a taxpayer asset to a private interest for far less than fair market value. Accordingly, the DOT and OPM both provided testimony opposing this bill as drafted.

For these reasons, I disapprove of House Bill 6678, An Act Concerning the Conveyance of a Parcel of State Land in the Town of Wolcott. Pursuant to Section 15 of Article Fourth of the Constitution of the State of Connecticut, I am returning House Bill 6678 without my signature.

Sincerely,

Ned Lamont
Governor

ADJOURNMENT

On motion of Senator Duff of the 25th, the Senate at 10:24 a.m. adjourned Sine Die.

ATTEST:
Timothy Kehoe
Permanent Assistant Clerk of the Senate
Hartford, Connecticut
July 26, 2021
10:24 a.m.