

# The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

March 14, 2022

Joint Committee on Judiciary  
Legislative Office Building  
Hartford, CT 06106

## **Re: In Opposition of S.B. 365, H.B. 5418, H.B. 5417, S.B. 16, and S.B. 386**

Dear Senator Winfield, Representative Stafstrom, Senator Kissell, Representative Fishbein and all members of the Judiciary Committee,

We are students in the Criminal Justice Advocacy Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School, and we submit this testimony in opposition of S.B. 365, H.B. 5418, H.B. 5417, S.B. 16, and S.B. 386, bills that would result in increased incarceration of young people, many of whom are victims of violence and other traumas themselves. Such increased incarceration will not promote public safety. In fact, it will exacerbate the underlying reasons why many youth become involved in crime, and it will worsen racial injustices in Connecticut's criminal and juvenile legal systems. We urge lawmakers to instead pass reforms that will curb juvenile delinquency by investing in educational opportunities and alleviating poverty and racial injustices. Such social investment will better promote public safety.

First, we respectfully remind the legislature to keep in mind that *children* are the targets of this suite of bills. Holding young people accountable for their wrongdoing is important. As we describe below, diversionary programs, required community service, and other mandatory interventions are effective at holding them accountable. However, legislation that punishes children harshly for behavior that often arises from circumstances outside of their control is simply unjust. After all, children do not choose the environments that they are born into. They do not choose the number or quality of resources available to them, or their schools, or their families. Children do not choose to grow up amidst poverty, structural racism, or violence. Nor do they choose to suffer, as so many do, the mental health consequences of these social ills.

The bills seek to improve public safety. Yet some of the bills' proposals to protect the public, including harsher punishment and increased detention of children, are based on outdated "tough on crime" approaches that decades of mass incarceration have proven do nothing to enhance public safety. For example, S.B. 365 would make the change: "If a judge declines to detain a child, such judge shall articulate the reasons in writing for not holding the child in a juvenile residential center." This provision converts Connecticut's current law that a child should not be held in custody without a good reason to a presumption that children should be detained unless a judge explains why they should be released.<sup>1</sup>

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<sup>1</sup> See Conn. Gen. Stat. §46b-133(c). The current law requires a court order detain a child only after at least one of several criteria showing an imminent risk of flight, or dangerousness to the child or to public safety, are met. Conversely, the proposed amendment would require the judge to justify their reasoning when *releasing* the child, which would change the presumption from one favoring release of children who do not pose a flight risk or a danger to themselves or others, to one favoring detention of children).

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Yet, after decades of states incarcerating millions of people and subjecting millions more to correctional control outside of prisons, recidivism is at an all-time high.<sup>2</sup> Studies show that incarcerating more people does not reduce crime.<sup>3</sup> In fact, “[y]oung people are particularly ill-suited to prison – detention renders them more likely to graduate from low-level juvenile offenders to lifetime criminals via a stint in corrections.”<sup>4</sup> The Centers for Disease Control and Prevention has found that “transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth.”<sup>5</sup> Further, studies show that, for children, felony convictions actually increase recidivism by limiting reintegration into society and diminishing employment opportunities. Instead, “research findings suggest that the first policy goals should be to minimize the number of juvenile cases transferred to criminal court, particularly cases involving first-time offenders charged with crimes against persons.”<sup>6</sup>

Some of the proposed bills acknowledge the need for community investment, mental health care, and educational resources as solutions to increase community safety and prevent crime. For example, S.B. 365 aims to create a “Trauma, Truancy, Mediation and Mentorship Program” to coordinate providing children with supportive community services to prevent and deter crime. While we support such social investments, we oppose these bills because of their reliance on detention and aims to increase youth transfers to adult court. The bills mainly ratchet up punishment for young people and increase the risk of incarceration for juvenile offenses. Such a shift to harsher penalties, including increased incarceration, runs counter to public safety and will exacerbate the underlying health and social conditions that contribute to youth delinquency.<sup>7</sup>

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<sup>2</sup> Nayely Esparza Flores, *Contributing Factors to Mass Incarceration and Recidivism*, Themis: Research Journal of Justice Studies and Forensic Science, Vol. 6, 56, (2018).

<sup>3</sup> Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer*, Vera Institute of Justice (July, 2017) [https://www.vera.org/downloads/publications/for-the-record-prison-paradox\\_02.pdf](https://www.vera.org/downloads/publications/for-the-record-prison-paradox_02.pdf)

<sup>4</sup> Jarryd Bartle, *We know that prison doesn't work. So what are the alternatives?*, The Guardian (Aug. 15, 2019), <https://www.theguardian.com/commentisfree/2019/aug/16/we-know-that-prison-doesnt-work-so-what-are-the-alternatives> citing Mark Lynch, Julianne Buckman, & Leigh Krenske, *Youth justice: criminal trajectories*, Australian Institute of Criminology (Sep., 2003), <https://www.aic.gov.au/publications/tandi/tandi265>

<sup>5</sup> Robert Hahn et al., *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System*, Centers for Disease Control and Prevention (Nov. 30, 2007), <https://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>

<sup>6</sup> Richard E. Redding, *Examining Legal Issues: Juvenile Offenders in Criminal Court and Adult Prison*, *Corrections Today*, 61(2) (1999).

<sup>7</sup> See Kaitlyn Sill, *A Study of the Root Causes of Juvenile Justice System Involvement*, Criminal Justice Coordinating Council Nov., 2020) “[I]nvolvement in the system, particularly secure detention, is well-established to have lasting negative effects on youth such as increased risk of adult incarceration, decreased likelihood of high school graduation and success in the labor market, and worsening of mental health disorders.” <https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/CJCC%20Root%20Cause%20Analysis%20Report%20Compressed.pdf>

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Rather, studies have shown that programs outside of prison are significantly more effective at curbing juvenile delinquency than incarceration is. For example, the Center for Alternative Sentencing and Employment Services (CASES) and the Center for Community Alternatives, both in New York, provide community-based alternatives to incarceration, which are more effective in preventing crime and increasing safety while costing significantly less than incarceration.<sup>8</sup> North Carolina's Eckard Juvenile Justice Center is an intensive rehabilitative center for boys that combines various types of behavioral, educational, and family-based treatments.<sup>9</sup> AMIKids is a program that uses education and behavioral treatments to prevent recidivism among children.<sup>10</sup> Innovative, effective non-carceral solutions such as these are what Connecticut needs rather than laws that will increase the number of children in the state's prisons.

Furthermore, the bills contain provisions that would shift more—notably younger—children out of the juvenile system and into the adult criminal legal system. Again, doing so will not protect the public. In fact, it will do the opposite. Evidence shows that children age out of crime, and transferring children to adult court serves to increase recidivism: “only 10 percent of serious juvenile offenders become adult criminals. It is important to avoid responding to juveniles’ crimes in ways that will make them more likely to re-offend, as does incarceration in prison, a staggeringly expensive sanction that is ineffective beyond the period of incapacitation.”<sup>11</sup> Adult court is a poor choice for children because the juvenile system was specifically designed to account for young persons’ high propensity to rehabilitate. In addition, sending youth to prison will not rehabilitate them, nor will it effectively hold them accountable when they break the law. In fact, Connecticut’s Manson Youth Institute, the prison for young people, is currently under federal oversight because it fails to provide mental health services, special education services, and violates young people’s constitutional rights.<sup>12</sup>

Courts have also recognized that children are neurobiologically more vulnerable to peer pressure and negative influences.<sup>13</sup> Punishing them as harshly as adults notwithstanding these

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<sup>8</sup> Cases: There is an Alternative, <https://www.cases.org/>, and Center for Community Alternatives, <https://www.communityalternatives.org/>.

<sup>9</sup> North Carolina Department of Public Safety- Short-Term Residential Programs, <https://www.ncdps.gov/juvenile-justice/community-programs/short-term-residential-programs>

<sup>10</sup> AMIKids, <https://www.amikids.org/about-ami-kids/our-story>

<sup>11</sup> Laurence Steinberg, *Sentences Should Acknowledge Juveniles’ Maturity, and Immaturity*, The New York Times (Feb. 6, 2015),

<https://www.nytimes.com/roomfordebate/2012/06/05/when-to-punish-a-young-offender-and-when-to-rehabilitate/sentences-should-acknowledge-juveniles-maturity-and-immaturity>

<sup>12</sup> *Justice Department Finds that Manson Youth Institution Violates the U.S. Constitution and the Individuals with Disabilities Education Act*, Department of Justice (Dec. 21, 2021), <https://www.justice.gov/opa/pr/justice-department-finds-manson-youth-institution-violates-us-constitution-and-individuals>

<sup>13</sup> *Roper v. Simmons*, 543 U.S. 551 (2005) (“First, as any parent knows and as the scientific and sociological studies respondent and his amici cite tend to confirm, ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young.

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biophysiological differences is unjust. The United States Supreme Court has been adamant that children are less culpable than adults and deserve more leniency.<sup>14</sup> In *Roper v. Simmons*, the Court explained that children have “diminished culpability” for crime because of their “lack of maturity and an underdeveloped sense of responsibility,” the fact that children are “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,” and because they have a lack of control “over their own environment.”<sup>15</sup> Because of these fundamental differences between youth and adults, the Court recognized that children’s traits are “more transitory, less fixed,” and thus rehabilitation is more likely to be successful.<sup>16</sup>

Finally, transfers into the adult legal system disproportionately affect children of color because law enforcement over-polices these communities.<sup>17</sup> It is not that kids of color commit more or worse crimes, but that for the same actions they are arrested, charged, and sentenced more often and harshly than their white peers.<sup>18</sup> Connecticut’s Supreme Court recently threw out a man’s 60-year sentence for a crime he committed as a 14-year-old; the court explained that the trial court erred in transferring him from juvenile to adult court, and “by invoking the superpredator theory to sentence the young, Black male defendant in the present case, the sentencing court, perhaps even without realizing it, relied on materially false, racial stereotypes that perpetuate systemic inequities—demanding harsher sentences—that date back to the founding of our nation.”<sup>19</sup>

The bills’ supporters may be concerned about the rights of victims. So are we. Children who have no choice but to live in impoverished and violent environments are also victims, even when they commit offenses that harm their communities. They deserve to be provided with opportunities for healing and treatment, even as they are held accountable and required to restore the people and property they harm. Harsh punishment of children, including increased incarceration, neither

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These qualities often result in impetuous and ill-considered actions and decisions.”) (internal citation omitted).

<sup>14</sup> See *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 130 S.Ct. 2011 (2010), *Miller v. Alabama* 132 S.Ct. 2455 (2012), *Montgomery v. Louisiana* 136 S.Ct. 718 (2016), and Josh Rovner, *Juvenile Life Without Parole: An Overview*, The Sentencing Project (May 24, 2021), <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>

<sup>15</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>16</sup> *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>17</sup> See Jonathan Jackson et al., *Centering race in procedural justice theory: Systemic racism and the under-policing and over-policing of Black communities*, (2021), [SocArXiv Papers | Centering race in procedural justice theory: Systemic racism and the under-policing and over-policing of Black communities \(osf.io\)](https://arxiv.org/abs/2105.08111)

<sup>18</sup> See Kristin Henning, “*The Rage of Innocence: How America Criminalizes Black Youth*,” (2021). See also, *Professor Kristin Henning: Exposing What Black Children Endure*, Georgetown Law (Sep. 28, 2021), <https://www.law.georgetown.edu/news/professor-kristin-henning-exposing-what-black-children-endure/> and Robin Walker Sterling, *For Black Kids, Typical Childhood Behavior Is Often Seen as a Crime*, Washington Post (Nov. 12, 2021) [https://www.washingtonpost.com/outlook/for-black-kids-typical-childhood-behavior-is-often-seen-as-a-crime/2021/11/10/cae0b412-260b-11ec-9de8-156fed3e81bf\\_story.html](https://www.washingtonpost.com/outlook/for-black-kids-typical-childhood-behavior-is-often-seen-as-a-crime/2021/11/10/cae0b412-260b-11ec-9de8-156fed3e81bf_story.html)

<sup>19</sup> *State v. Belcher*, 342 Conn. 1, 23 (2022).

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makes victims of crime whole nor provides the therapeutic interventions and economic supports that will help young people who break the law to better cope with their adversities.

For these reasons, we recommend that Connecticut legislators not pass bills that roll back justice reforms that were enacted to acknowledge that children are fundamentally different from adults and that the legal system should treat them accordingly.

Respectfully,  
Avi Feinsod  
Rachel Ruderman  
The Criminal Justice Advocacy Clinic  
Jerome N. Frank Legal Services Organization