File No. 625

Substitute House Bill No. 5696

House of Representatives, April 27, 1998. The Committee on Human Services reported through REP. KEELEY, 125th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING JUVENILE MATTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 46b-120 of the general statutes, as amended by section 18 of public act 97-319, is repealed and the following is substituted in lieu thereof:

The terms used in this chapter shall, in its interpretation and in the interpretation of other statutes, be defined as follows: (1) "Child" means any person under sixteen years of age AND, FOR PURPOSES OF DELINQUENCY MATTERS, "CHILD" MEANS ANY PERSON (A) UNDER SIXTEEN YEARS OF AGE OR, (B) SIXTEEN YEARS OF AGE OR OLDER WHO, PRIOR TO ATTAINING SIXTEEN YEARS OF AGE, HAS VIOLATED ANY FEDERAL OR STATE LAW OR MUNICIPAL OR LOCAL ORDINANCE, OTHER THAN AN ORDINANCE REGULATING BEHAVIOR OF A CHILD IN A FAMILY WITH SERVICE NEEDS, AND, SUBSEQUENT TO ATTAINING SIXTEEN YEARS OF AGE, VIOLATES ANY ORDER OF THE SUPERIOR COURT OR ANY CONDITION OF PROBATION ORDERED BY THE SUPERIOR COURT WITH RESPECT TO SUCH DELINQUENCY PROCEEDING; (2) "youth" means any person sixteen to eighteen years of age; (3) "abused" means that a child or youth (A) has had physical injury or injuries inflicted upon him other than by

accidental means, or (B) has injuries which are at variance with the history given of them, or (C) is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment; (4) a child may be found "mentally deficient" who, by reason of a deficiency of intelligence, which has existed from birth or from early age, requires, or will require, for his protection or for the protection of others, special care, supervision and control; (5) a child may be [found] CONVICTED AS "delinquent" [(A)] who has violated (A) any federal or state law or municipal or local ordinance, other than an ordinance regulating behavior of a child in a family with service needs, [as defined in this section or (B) who has violated] (B) any order of the Superior Court OR (C) CONDITIONS OF PROBATION AS ORDERED BY THE COURT; (6) a child or youth may be found "dependent" whose home is a suitable one for him, save for the financial inability of his parents, parent, guardian or other person maintaining such home, to provide the specialized care his condition requires; (7) a "family with service needs" means a family which includes a child who (A) has without just cause run away from his parental home or other properly authorized and lawful place of abode; (B) is beyond the control of his parent, parents, guardian or other custodian; (C) has engaged in indecent or immoral conduct; (D) is a truant or habitual truant or who, while in school, has been continuously and overtly defiant of school rules and regulations; or (E) is thirteen years of age or older and has engaged in sexual intercourse with another person and such other person is thirteen years of age or older and not more than two years older or younger than such child; (8) a child or youth may be found "neglected" who (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being, or (D) has been abused; (9) a child or youth may be found "uncared for" who is homeless or whose home cannot provide the specialized care which his physical, emotional

or mental condition requires. For the purposes of this section the treatment of any child by an accredited Christian Science practitioner in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute neglect or maltreatment; (10) "delinquent act" means the violation of any federal or state law or municipal or local ordinance, other than an ordinance regulating the behavior of a child in a family with service needs, or the violation of any order of the Superior Court; (11) "serious juvenile offense" means (A) the violation by a child, including attempt or conspiracy to violate sections 21a-277, 21a-278, 29-33, 29-34, 29-35, 53-21, 53-80a, 53-202b, 53-202c, 53-390 to 53-392, inclusive, 53a-54a to 53a-57, inclusive, 53a-59 to 53a-60c, inclusive, 53a-70 to 53a-71, inclusive, 53a-72b, 53a-86, 53a-92 to 53a-94a, inclusive, 53a-95, 53a-101, 53a-102a, 53a-103a, 53a-111 to 53a-113, inclusive, subdivision (1) of subsection (a) of section 53a-122, subdivision (3) of subsection (a) of section 53a-123, 53a-134, 53a-135, 53a-136a, 53a-166, 53a-167c, subsection (a) of section 53a-174, 53a-196a, 53a-211, 53a-212, 53a-216 or 53a-217b, or (B) running away, without just cause, from any secure placement other than home while referred as a delinquent child to the Office of Alternative Sanctions or committed as a delinquent child to the Commissioner of Children and Families for a serious juvenile offense; (12) "serious juvenile offender" means any child convicted as delinquent for commission of a serious juvenile offense; (13) "serious juvenile repeat offender" means any child charged with the commission of any felony if such child has previously been convicted delinquent at any age for two violations of any provision of title 21a, 29, 53 or 53a which is designated as a felony; (14) "alcohol-dependent child" means any child who has a psychoactive substance dependence on alcohol as that condition is defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders"; (15) "drug-dependent child" means any child who has a psychoactive substance dependence on drugs as that condition is defined in the most recent edition of the American Psychiatric Association's "Diagnostic and

Statistical Manual of Mental Disorders". No child shall be classified as drug dependent who is dependent (A) upon a morphine-type substance as an incident to current medical treatment of a demonstrable physical disorder other than drug dependence, or (B) upon amphetamine-type, ataractic, barbiturate-type, hallucinogenic or other stimulant and depressant substances as an incident to current medical treatment of a demonstrable physical or psychological disorder, or both, other than drug dependence.

Sec. 2. Subsection (b) of section 46b-121k of the general statutes is repealed and the following is substituted in lieu thereof:

(b) The Office of Alternative Sanctions may contract to establish regional secure residential facilities and regional highly supervised residential and nonresidential facilities for juveniles [sentenced to probation] REFERRED by the court. Such facilities shall operate within contracted-for capacity limits. Such facilities shall be exempt from the licensing requirements of section 17a-145.

Sec. 3. Section 46b-127 of the general statutes, as amended by section 1 of public act 97-4 and section 21 of public act 97-319, is repealed and the following is substituted in lieu thereof:

(a) The court shall automatically transfer from the docket for juvenile matters to the regular criminal docket of the Superior Court the case of any child charged with the commission of a capital felony, a class A or B felony or a violation of section 53a-54d, provided such offense was committed after such child attained the age of fourteen years and counsel has been appointed for such child if such child is indigent. Such counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer. The child shall be arraigned in the regular criminal docket of the Superior Court at the next court date following such transfer. The file of any case so transferred shall remain sealed until the tenth WORKING day following such arraignment unless the state's attorney has filed a motion pursuant to this subsection in which case such file shall remain sealed until the court makes a decision on

the motion. A state's attorney may, not later than ten working days after such arraignment, file a motion to transfer the case of any child charged with the commission of a class B felony to the docket for juvenile matters for [disposition] PROCEEDINGS in accordance with the provisions of this chapter. The court sitting for the regular criminal docket shall, after hearing and not later than ten working days after the filing of such motion, decide such motion.

(b) Upon motion of a juvenile prosecutor and [approval by] ORDER OF the court, the case of any child charged with the commission of a class C or D felony or an unclassified felony shall be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court, provided such offense was committed after such child attained the age of fourteen years and the court finds ex parte that there is probable cause to believe the child has committed the act for which he is charged. The file of any case so transferred shall remain sealed until such time as the court sitting for the regular criminal docket accepts such transfer. The court sitting for the regular criminal docket may return any such case to the docket for juvenile matters NOT LATER THAN TEN WORKING DAYS AFTER THE DATE OF THE TRANSFER for proceedings in accordance with the provisions of this chapter. The child shall be arraigned in the regular criminal docket of the Superior Court [at] BY the next court date following such transfer.

(c) Upon the effectuation of the transfer, such child shall stand trial and be sentenced, if convicted, as if he were sixteen years of age. Such child shall receive credit against any sentence imposed for time served in a juvenile facility prior to the effectuation of the transfer. A child who has been transferred may enter a guilty plea to a lesser offense if the court finds that such plea is made knowingly and voluntarily. Any child transferred to the regular criminal docket who pleads guilty to a lesser offense shall not resume his status as a juvenile regarding said offense. If the action is dismissed or nolled or if such child is found not guilty of the charge for which he was transferred OR OF ANY LESSER INCLUDED OFFENSES, the child shall resume

his status as a juvenile until he attains the age of sixteen years.

(d) Any child transferred to the regular criminal docket of the Superior Court who is detained shall be in the custody of the Commissioner of Correction upon the finalization of such transfer. A transfer shall be final (1) upon the expiration of ten working days after the arraignment if no motion has been filed by the state's attorney pursuant to subsection (a) of this section or, if such motion has been filed, upon the decision of the court to deny such motion, or (2) upon the court accepting the transfer pursuant to subsection (b) of this section. Any child returned to the docket for juvenile matters who is detained shall be in the custody of the Judicial Department.

(e) The transfer of a child to a Department of Correction facility shall be limited to the provisions of subsection (d) of this section and said subsection shall not be construed to permit the transfer of or otherwise reduce or eliminate any other population of juveniles in detention or confinement within the Judicial Department or the Department of Children and Families.

Sec. 4. Section 46b-133 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Nothing in this part shall be construed as preventing the arrest of a child, with or without a warrant, as may be provided by law, or as preventing the issuance of warrants by judges in the manner provided by section 54-2a, except that no child shall be taken into custody on such process except on apprehension in the act, or on speedy information, or in other cases when the use of such process appears imperative. Whenever a child is arrested and charged with a crime, such child may be required to submit to the taking of his photograph, physical description and fingerprints. Notwithstanding the provisions of section 46b-124, [the photograph of] INFORMATION CONCERNING any child arrested for the commission of a capital felony or class A felony, INCLUDING THE CUSTODY STATUS OF SUCH CHILD, may be disclosed to the public.

(b) Whenever a child is brought before a judge of the Superior Court, such judge shall

immediately have the case proceeded upon as a juvenile matter. Such judge may admit such child to bail or release him in the custody of his parent or parents, his guardian or some other suitable person to appear before the Superior Court when ordered. If detention becomes necessary or desirable, the same shall be in the manner prescribed by this chapter.

(c) Upon the arrest of any child by an officer, such officer may release him to the custody of his parent or parents, guardian or some other suitable person or agency or may immediately turn him over to a juvenile detention center. When a child is arrested [or referred] for the commission of a delinquent act and the child is not placed in detention OR REFERRED TO A DIVERSIONARY PROGRAM, an officer shall serve a written complaint and summons on the child and his parent, guardian or other person having control of the child. Such parent, guardian or other person shall execute a written promise to appear in court at the time and place specified in such summons. If any person so summoned wilfully fails to appear in court at the time and place so specified, the court may issue a warrant for the child's arrest or a capias to assure the appearance in court of such parent, guardian or other person. The court may punish for contempt, as provided in section 46b-121, AS AMENDED BY THIS ACT, any parent, guardian or other person so summoned who wilfully fails to appear in court at the time and place so specified.

(d) The court or detention supervisor may turn such child over to a youth service program created for such purpose, if such course is practicable, or such child may be detained pending a hearing which shall be held on the business day next following his arrest. No child shall be detained after such hearing or held in detention pursuant to a court order unless it appears from the available facts that there is probable cause to believe that the child has committed the acts alleged and that there is (1) a strong probability that the child will run away prior to court hearing or disposition, (2) a strong probability that the child will commit or attempt to commit other offenses injurious to him or to the community before court disposition, (3) probable

cause to believe that the child's continued residence in his home pending disposition will not safeguard the best interests of the child or the community because of the serious and dangerous nature of the act or acts he is alleged to have committed, (4) a need to hold the child for another jurisdiction or (5) a need to hold the child to assure his appearance before the court, in view of his previous failure to respond to the court process. Such probable cause may be shown by sworn affidavit in lieu of testimony. No child shall be released from detention who is alleged to have committed a serious juvenile offense except by order of a judge of the Superior Court. In no case shall a child be confined in a community correctional center or lockup, or in any place where adults are or may be confined, except in the case of a nursing infant; nor shall any child at any time be held in solitary confinement. When a female child is held in custody, she shall, as far as possible, be in the charge of a woman attendant.

(e) The police officer who brings a child into detention shall have first notified, or made a reasonable effort to notify, the parents or guardian of the child in question of the intended action and shall file at the detention center a signed statement setting forth the alleged delinquent conduct of the child. Unless the arrest was for a serious juvenile offense, the child may be released by a detention supervisor to the custody of his parent or parents, guardian or some other suitable person.

(f) In conjunction with any order of release from detention the court may, when it has reason to believe a child is alcohol-dependent or drug-dependent as defined in section 46b-120, AS AMENDED BY THIS ACT, and where necessary, reasonable and appropriate, order the child to participate in a program of periodic alcohol or drug testing and treatment as a condition of such release. The results of any such alcohol or drug test shall be admissible only for the purposes of enforcing the conditions of release from detention.

(g) Whenever the population of a juvenile detention center equals or exceeds the maximum capacity for such center, as determined by the

Judicial Department, the detention supervisor in charge of intake shall only admit a child who: (1) Is charged with the commission of a serious juvenile offense, (2) is the subject of an ORDER TO DETAIN OR AN outstanding court order to take such child into custody, (3) is ordered by a court to be held in detention, or (4) is being transferred to such center to await a court appearance.

Sec. 5. Section 46b-133a of the general statutes is repealed and the following is substituted in lieu thereof:

(a) A nolle prosequi may not be entered as to any [charge] COUNT of delinquency if the juvenile objects to the nolle prosequi and demands either a trial or dismissal, except with respect to prosecutions in which a nolle prosequi is entered upon a representation to the court by the juvenile prosecutor that a material witness has died, disappeared or become disabled or that material evidence has disappeared or has been destroyed and that a further investigation is therefore necessary.

(b) Whenever a nolle prosequi has been entered as to any [charge] COUNT of delinquency, or whenever any [charge] COUNT of delinquency has been dismissed without prejudice, if at least thirteen months have elapsed since such nolle or dismissal without prejudice, all police and court records pertaining to such [charge] COUNT shall be erased. Whenever any such [charge] COUNT has been continued at the request of the juvenile prosecutor and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the [charge] COUNT shall be construed to have been nolled as of the date of termination of such thirteen-month period and such erasure may thereafter be effected as provided in this subsection for nolled cases.

Sec. 6. Section 46b-140 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) In determining the appropriate disposition of a child convicted as delinquent, the court shall consider: (1) The seriousness of the offense, including the existence of any aggravating factors such as the use of a firearm

in the commission of the offense and the impact of the offense on any victim; (2) the child's record of delinquency; (3) the child's willingness to participate in available programs; (4) the existence of other mitigating factors; and (5) the culpability of the child in committing the offense including the level of the child's participation in the planning and carrying out of the offense.

(b) Upon conviction of a child as delinquent, the court may: (1) Place the child in the care of any institution or agency which is permitted by law to care for children; (2) order the child to participate in an alternative incarceration program; (3) order the child to participate in a wilderness school program operated by the Department of Children and Families; (4) order the child to participate in a youth service bureau program; (5) [order the child to remain in his own home or in the custody of a relative or any other fit person subject to the supervision of the probation officer] PLACE THE CHILD ON PROBATION; (6) order the child or the parents or guardian of the child or both to make restitution to the victim of the offense in accordance with subsection (d) of this section; (7) order the child to participate in a program of community service in accordance with subsection (e) of this section; or (8) withhold or suspend execution of any judgment.

(c) The court may order, as a condition of probation, that the child (1) RESIDE WITH A PARENT, RELATIVE OR GUARDIAN OR IN A SUITABLE FOSTER HOME OR OTHER RESIDENCE APPROVED BY THE COURT, [(1)] (2) attend school and class on a regular basis and comply with school policies on student conduct and discipline, (3) REFRAIN FROM VIOLATING ANY FEDERAL OR STATE LAW OR MUNICIPAL OR LOCAL ORDINANCE, (4) UNDERGO ANY MEDICAL OR PSYCHIATRIC EVALUATION OR TREATMENT DEEMED NECESSARY BY THE COURT, (5) SUBMIT TO RANDOM DRUG OR ALCOHOL TESTING, OR BOTH, [or (2)] (6) participate in a program of [periodic alcohol and drug testing and] ALCOHOL OR DRUG treatment, or both, (7) MAKE RESTITUTION TO THE VICTIM OF THE OFFENSE IN ACCORDANCE WITH SUBSECTION (d) OF THIS SECTION, (8) PARTICIPATE IN AN ALTERNATIVE INCARCERATION PROGRAM OR OTHER PROGRAM ESTABLISHED THROUGH THE OFFICE OF ALTERNATIVE SANCTIONS, (9)

PARTICIPATE IN A PROGRAM OF COMMUNITY SERVICE, AND (10) SATISFY ANY OTHER CONDITIONS DEEMED APPROPRIATE BY THE COURT. THE COURT SHALL CAUSE A COPY OF ANY SUCH ORDER TO BE DELIVERED TO THE CHILD, THE CHILD'S PARENTS OR GUARDIAN AND THE CHILD'S PROBATION OFFICER.

(d) If the child has engaged in conduct which results in property damage or personal injury, the court may order the child or the parent or parents or guardian of the child, if such parent or parents or guardian had knowledge of and condoned the conduct of the child, or both the child and the parent or parents or guardian, to make full or partial restitution to the victim of such offense, provided the liability of such parent or parents or guardian shall be limited to an amount not exceeding the amount such parent or parents or guardian would be liable for in an action under section 52-572. Restitution may consist of monetary reimbursement for the damage or injury, based on the child's or the parent's, parents' or guardian's ability to pay, as the case may be, in the form of a lump sum or instalment payments, paid to the court clerk or such other official designated by the court for distribution to the victim.

(e) The court may order the child to participate in a program of community service under the supervision of the court or any organization designated by the court. Such child shall not be deemed to be an employee and the services of such child shall not be deemed employment.

(f) If the court further finds that its probation services or other services available to the court are not adequate for such child, the court shall commit such child to the Department of Children and Families in accordance with the provisions of section 46b-141. Prior to making such commitment, the court shall consult with the department to determine the placement which will be in the best interest of such child.

(g) Any child or youth coming within the jurisdiction of the court, who is found to be mentally ill, may be committed by said court to the Commissioner of Children and Families and, if the court convicts a child as delinquent and finds him to be mentally deficient, it may commit him to

an institution for mentally deficient children or youth or delinquents. Whenever IT IS FOUND THAT a child convicted by the court as delinquent or adjudged by the court to be a member of a family with service needs WHO is fourteen years of age or older [and is further found to be either mentally deficient or too educationally retarded to] WOULD NOT benefit from continued school attendance, the court may order him to be placed on vocational probation if such court finds that he may properly be employed for part or full-time at some useful occupation and that such employment would be [more] favorable to his welfare, [than commitment to an institution] and the probation officer shall supervise such employment. For the purposes of this section the limitations of subsection (a) of section 31-23 on the employment of minors under the age of sixteen years shall not apply for the duration of such vocational probation.

(h) Whenever the court commits a child to the Department of Children and Families, there shall be delivered with the mittimus a copy of the results of the investigations made as required by section 46b-134. The court may, at any time, require from the department in whose care a child has been placed such report as to such child and his treatment.

(i) [(1)] If the delinquent act for which the child is committed to the Department of Children and Families is a serious juvenile offense, the court may set a period of time during which the Department of Children and Families shall place such child out of his town of residence at the commencement of such child's commitment.

[(2)] The setting of any such time [periods] PERIOD shall be in the form of an order of the court included in the mittimus. For good cause shown in the form of an affidavit annexed thereto, the Department of Children and Families, the parent or guardian of the child or the child may petition the court for temporary modification of any such order not to extend or reduce the term of such placement.

Sec. 7. Section 46b-146 of the general statutes is repealed and the following is substituted in lieu thereof:

Whenever any child has been found delinquent or a member of a family with service needs, and

has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to whom he has been committed by the court, such child, his parent or guardian, may file a petition with the Superior Court and, if such court finds that at least TWO YEARS OR, IN THE CASE OF A CHILD CONVICTED AS DELINQUENT FOR THE COMMISSION OF A SERIOUS JUVENILE OFFENSE, four years have elapsed from the date of such discharge, [and] THAT no subsequent juvenile proceeding has been instituted against [him and he] SUCH CHILD, THAT SUCH CHILD has not been found guilty of a crime [, if] AND THAT such child has reached sixteen YEARS OF AGE within such [four-year] period, it shall order all police and court records pertaining to such child to be erased. Upon the entry of such an erasure order, all references including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency or that the child was a member of a family with service needs shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it is in the best interests of such child to do so. No child who has been the subject of such an erasure order shall be deemed to have been arrested ab initio, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency or family with service needs proceedings affecting such child. Whenever a child is dismissed as not delinquent or as not being a member of a family with service needs, all police and court records pertaining to such charge shall be ordered erased immediately, without the filing of a petition.

Sec. 8. (NEW) (a) At any time during the period of probation or suspended commitment, after hearing and for good cause shown, the court may modify or enlarge the conditions, whether

originally imposed by the court under this section or otherwise, and may extend the period as deemed appropriate by the court. The court shall cause a copy of any such order to be delivered to the child or youth and to such child or youth's parent or guardian and probation officer.

(b) The period of participation in an alternative incarceration program, as a condition of probation or suspended commitment, unless terminated sooner, shall not exceed the original period of probation or suspended commitment.

(c) At any time during the period of probation or suspended commitment, the court may issue a warrant for the arrest of a child or youth for violation of any of the conditions of probation or suspended commitment, or may issue a notice to appear to answer to a charge of such violation, which notice shall be personally served upon the child or youth. Any such warrant shall authorize all officers named therein to return the child or youth to the custody of the court or to any suitable juvenile detention facility designated by the court.

(d) If such violation is established, the court may continue or revoke the order of probation or suspended commitment or modify or enlarge the conditions and, if such order of probation or suspended commitment is revoked, require the child or youth to serve the commitment imposed or impose any lesser commitment. No such revocation shall be ordered, except upon consideration of the whole record and unless such violation is established by reliable and probative evidence.

Sec. 9. (NEW) When deemed in the best interests of a child placed in a juvenile detention center, the administrator of such detention center may authorize, under policies promulgated by the Chief Court Administrator, such medical assessment and treatment and dentistry as is necessary to ensure the continued good health or life of the child. The administrator of the detention center shall make reasonable efforts to inform the child's parents or guardian prior to taking such action, and in all cases shall send notice to the parents or guardian by letter to their last-known address informing them of the actions taken and of the outcome, provided failure

child is indigent. Such counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer. (2) THE JUVENILE PROSECUTOR MAY, NOT LATER THAN TEN WORKING DAYS AFTER SUCH APPEARANCE, FILE A MOTION TO RETAIN THE CASE OF SUCH CHILD ON THE DOCKET FOR JUVENILE MATTERS FOR PROCEEDINGS IN ACCORDANCE WITH THE PROVISIONS OF THIS CHAPTER. THE COURT SHALL, NOT LATER THAN TEN WORKING DAYS AFTER THE FILING OF SUCH MOTION, DECIDE SUCH MOTION. (3) The child shall be arraigned in the regular criminal docket of the Superior Court at the next court date following such transfer. [The file of any case so transferred shall remain sealed until the tenth day following such arraignment unless the state's attorney has filed a motion pursuant to this subsection in which case such file shall remain sealed until the court makes a decision on the motion. A state's attorney may, not later than ten working days after such arraignment, file a motion to transfer the case of any child charged with the commission of a class B felony to the docket for juvenile matters for disposition in accordance with the provisions of this chapter. The court sitting for the regular criminal docket shall, after hearing and not later than ten working days after the filing of such motion, decide such motion.]

(b) Upon motion of a juvenile prosecutor and approval by the court, the case of any child charged with the commission of a class C or D felony or an unclassified felony shall be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court, provided such offense was committed after such child attained the age of fourteen years and the court finds ex parte that there is probable cause to believe the child has committed the act for which he is charged. The file of any case so transferred shall remain sealed until such time as the court sitting for the regular criminal docket accepts such transfer. The court sitting for the regular criminal docket may return any such case to the docket for juvenile matters for proceedings in accordance with the provisions of this chapter. The child shall be arraigned in the regular criminal docket of the Superior Court at the next court date following such transfer.

(c) Upon the effectuation of the transfer, such child shall stand trial and be sentenced, if convicted, as if he were sixteen years of age. Such child shall receive credit against any sentence imposed for time served in a juvenile facility prior to the effectuation of the transfer. A child who has been transferred may enter a guilty plea to a lesser offense if the court finds that such plea is made knowingly and voluntarily. Any child transferred to the regular criminal docket who pleads guilty to a lesser offense shall not resume his status as a juvenile regarding said offense. If the action is dismissed or nolled or if such child is found not guilty of the charge for which he was transferred, the child shall resume his status as a juvenile until he attains the age of sixteen years.

(d) Any child transferred to the regular criminal docket of the Superior Court who is detained shall be in the custody of the Commissioner of Correction upon the finalization of such transfer. A transfer shall be final (1) upon the expiration of ten working days after the arraignment if no motion has been filed by the state's attorney pursuant to subsection (a) of this section or, if such motion has been filed, upon the decision of the court to deny such motion, or (2) upon the court accepting the transfer pursuant to subsection (b) of this section. Any child returned to the docket for juvenile matters who is detained shall be in the custody of the Judicial Department.

(e) The transfer of a child to a Department of Correction facility shall be limited to the provisions of subsection (d) of this section and said subsection shall not be construed to permit the transfer of or otherwise reduce or eliminate any other population of juveniles in detention or confinement within the Judicial Department or the Department of Children and Families.

Sec. 12. Subsection (a) of section 46b-137 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any admission, confession or statement, written or oral, MADE by a child to a police officer or Juvenile Court official shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such

admission, confession or statement unless made by such child in the presence of his parent or parents or guardian and after the parent or parents or guardian and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements and (3) that any statements he makes may be introduced into evidence against him.

HS COMMITTEE VOTE: YEA 12 NAY 2 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER sHB 5696

STATE IMPACT	Indeterminate Cost, Minimal Cost, Can Be Absorbed, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Children and Families, Judicial Department, Criminal Justice Agencies

EXPLANATION OF ESTIMATES:

This bill extends the definition of a delinquent to include any person sixteen years or older who, prior to sixteen, violated a federal, state or local law, and after attaining sixteen years violates an order of the court or a condition of probation. It also allows the court to enlarge a term of probation and expands the definition of serious juvenile offense to include robbery involving an occupied motor vehicle. This would result in an indeterminate cost to the Judicial Department associated with additional juvenile probation supervision. In addition, a child committed to the Commissioner of Children and Families due to a conviction for a serious juvenile offense is subject to a longer length of stay as, unlike for lesser offenses, the commissioner does not have sole discretion to discharge these juveniles. To the extent that these changes may result in additional placements and/or a longer average length of stay of children placed in Long Lane School, exacerbation of its current overcrowding problem may result.

The bill's provisions concerning the administration of medical and dental treatment to juveniles in detention

would result in minimal absorbable costs to the Judicial Department.

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OLR BILL ANALYSIS

sHB 5696

AN ACT CONCERNING JUVENILE MATTERS

SUMMARY: This bill makes a number of changes in the juvenile justice law. It specifies the types of probation the juvenile court can impose and how it may be enforced. It allows the court to continue enforcing probation on a child after he turns 16, the age a child normally ceases to be a juvenile for delinquency purposes.

The bill makes conflicting changes in the procedure for transferring a juvenile to adult court for trial and sentencing as an adult (see COMMENT). It allows a juvenile detention supervisor to provide medical and dental treatment. It allows a juvenile who did not commit a serious juvenile offense to have his records erased two years earlier, provided he still meets the other statutory requirements.

Finally, the bill makes several minor and technical changes.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Juvenile Court Jurisdiction Over 16- and 17-Year Olds

Juvenile court has delinquency jurisdiction over children until they turn 16. The bill allows the court to retain jurisdiction after a child turns 16 if (1) he committed a delinquent act before that age (other than violating a family with service needs (FWSN) order) and (2) after turning 16 violates any court order or condition of probation relating to the delinquency proceeding.

The bill specifically allows a child to be convicted as delinquent for violating a court-ordered condition of

probation.

Juvenile Delinquency Probation

The bill specifically authorizes the court to place a juvenile on probation. Current law allows the court to order a juvenile to remain at home or in a relative's custody under the supervision of a probation officer.

The bill gives the court additional conditions of probation that it may impose. It can require the child to: (1) reside with a guardian or in a suitable foster home or other court-approved residence; (2) refrain from violating laws or ordinances; (3) undergo medical or psychological evaluation or treatment; (4) submit to random drug or alcohol testing (currently it can order periodic testing); (5) make restitution to the victim (a court can already order restitution, the bill allows it to be a condition of probation); (6) participate in an alternative incarceration program or other program of the Office of Alternative Sanctions (OAS); (7) participate in community service; or (8) satisfy other conditions the court deems appropriate.

The court must order a copy of any probation order to be delivered to the child, his parents, and his probation officer.

The bill broadens the circumstances under which the court can order vocational probation for certain children. By law, this provision applies to children who are at least age 14 and who have been found delinquent or a member of a FWSN. The bill allows the court to place a child on such probation based on its finding that he would not benefit from further schooling and that the placement would benefit him. It removes a provision that limits this probation to children with mental deficiency or educational retardation and a requirement that such a placement be better for the child than institutionalization.

Enforcement of Probation

The bill authorizes the court, after a hearing and for good cause, to modify or expand conditions it has imposed, including extending their length, anytime during the period of probation or suspended commitment. The court must give a copy of such an order to the same

parties that get the original.

Under the bill, participation in an alternative incarceration program as a probation or suspended commitment condition cannot exceed the original period of probation or suspended commitment imposed.

If a child or youth violates any condition of probation or suspended commitment, the court can issue an arrest warrant or a notice to appear to answer the violation charge. The child must be personally served with such a notice, and the arrest warrant must direct the officers to bring him to court or a suitable juvenile detention facility.

If a violation is established, the court can revoke or continue the probation or suspended commitment and modify or expand the conditions. It may revoke only based on the whole record and if the violation is established by reliable evidence. If the court revokes the order, it can require the child or youth to serve the commitment originally imposed or a lesser one.

Transfers to Adult Court

The law requires any child accused of a capital felony, a class A or B felony, or arson-murder who was age 14 or 15 when he committed the offense to be automatically transfered to adult court. The state's attorney in adult court has 10 working days to file a motion to have a child charged with a class B felony returned to juvenile court. The court has 10 days to hold a hearing and decide on the motion. The law also allows for transfers of juveniles accused of class C and D felonies.

Conflicting Provisions. Two sections of the bill amend this statute in conflicting ways.

Section 3 specifies that the file of a juvenile remains sealed for 10 working days so that it cannot be made public before a state's attorney decides, in the case of a juvenile charged with a class B felony, to send him back to juvenile court. It also makes it clear that a child returned to juvenile court is subject to all juvenile proceedings, not just disposition.

Under section 11 of the bill, the child's case remains

in juvenile court for 10 days following his initial appearance and then is automatically transfered unless the juvenile prosecutor files a motion to retain it there. The court has 10 working days to decide on the motion. This new procedure applies to children charged with capitol felonies, class A felonies, and arson-murder, as well as class B felonies.

Other Provisions. The bill requires that in order for a juvenile accused of a class C or D felony to be transfered to adult court, the juvenile court must "order" the transfer not just "approve" a juvenile prosecutor's motion to transfer.

It requires the adult court, if it wishes to return a juvenile class C or D felony case to juvenile court to act within 10 working days. Finally, the bill allows a juvenile who was found not guilty in adult court of lesser included offenses to resume his legal status as a juvenile. This is already true under current law regarding the charge for which he was transfered.

Medical and Dental Treatment of Children in Detention

The bill allows a juvenile detention center administrator to authorize medical tests and treatment and dental care for a detained child if he follows policies developed by the chief court administrator. The treatment must be necessary to ensure the child's life or continued good health and must be deemed in his best interest.

The administrator must make reasonable efforts to notify the child's parents or guardian ahead of time and must inform them of the actions taken and outcome by letter at their last known address. Failure to provide notice does not affect the validity of the authorization.

Records Erasure

The bill allows a child convicted of delinquency for an offense that is not a serious juvenile offense to have his records erased after two, rather than four, years. He must still meet the other requirements for erasure,which are that since his discharge from custody no further juvenile proceedings were brought, he was not convicted of a crime, and he has reached age 16.

Other Changes

The bill makes a number of other changes in juvenile law. It:

1. adds carjacking to the list of serious juvenile offenses;

2. specifies that juveniles can be referred to OAS-contracted residential and nonresidential facilities without being sentenced to probation;

3. makes statutory juvenile nolle (decision not to prosecute) provisions apply to "counts" rather than "charges" (one charge can have a number of counts);

4. prohibits disclosure of a photograph of a child charged with a capital or class A felony and instead allows disclosure of other information about such a child, including his custody status;

5. removes the requirement that a police officer serve a written complaint and summons on a child and his parents if the child is referred to a diversionary program; and

6. requires a detention center that is at or above capacity to accept a child under an order to detain (an order filled out by police and signed by a judge).

BACKGROUND

Serious Juvenile Offense

Over 50 crimes are listed as serious juvenile offenses. They include all class A, most class B, and many class C felonies. They must also include drug crimes, carrying a handgun without a permit, manufacturing bombs, and several loan-shark-type offenses. Children accused of serious juvenile offenses face more severe consequences than other juveniles.

Legislative History

On April 14 the House referred the bill (File 434) to the Human Services Committee. On April 16 the committee deleted a provision of the bill that would have increased the situations where a juvenile's statements could be introduced in a proceeding and favorably reported the amended bill.

COMMENT

Conflicting Sections

Sections 3 and 11 both amend the same statute. They contain different and conflicting procedures for automatically transferring juveniles to adult court. In Section 3 the transfer occurs unless the adult court state's attorney moves otherwise. In section 11 the transfer occurs unless the juvenile prosecutor moves otherwise.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 39 Nay 0

Human Services Committee

Joint Favorable Substitute
Yea 12 Nay 2