



## State of Connecticut

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### Testimony of Susan I. Hamilton, Director of Delinquency Defense and Child Protection, Office of Chief Public Defender

Judiciary Committee - March 31, 2021

#### H. B. 6667 AN ACT CONCERNING THE RECOMMENDATIONS OF THE JUVENILE JUSTICE POLICY AND OVERSIGHT COMMITTEE.

The Office of Chief Public Defender *supports Raised Bill No. 6667, An Act Concerning the Recommendations of the Juvenile Justice Policy and Oversight Committee*. This bill implements several recommendations approved by the Juvenile Justice Policy and Oversight Committee (JJPOC) in an effort to support the important goals of the juvenile justice system. As a voting member of the JJPOC, the Office of Chief Public Defender (OCPD) supports the intent of the bill in its entirety but would offer the following comments regarding specific sections of the bill:

**Section 1** raises the lower age of juvenile court jurisdiction from age seven to age twelve, consistent with national best practices and trending legislation in states across the country which recognize that young children do not have the requisite intellectual, cognitive or developmental functioning necessary for criminal culpability. In Connecticut's current system, most children under the age of 12 are already diverted to community-based programs *following an arrest* either directly by the police or by probation for non-judicial handling of the case. In addition, the behaviors most often associated with these arrests are low-risk and more appropriately addressed through supportive behavioral health or other services outside of a formal court process. Given that any unnecessary arrest or court intervention for children can lead to unintended collateral consequences and poor outcomes, this change will ensure that young children's needs are addressed in a more effective and developmentally appropriate way while also reducing racial and ethnic disparity.

**Section 2** makes several revisions to the JJPOC enabling statute (CGS Sec. 46b-121n), including the creation of a working group charged with developing a diversion plan and referral process for developmentally appropriate services for children who might otherwise be referred to court. OCPD supports this new language but notes that the report due date referenced on line 496 of the bill should be

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January 1, 2022, and not January 1, 2021, as currently drafted. OCPD also supports expanding the JJPOC's mandate to collect and evaluate data related to persons up to the age of 21 for purposes of informing and evaluating juvenile justice policies.

**Section 4** requires the Commissioner of Children and Families to develop and implement an operational plan establishing an educational unit within DCF for the education of any child residing in a juvenile justice facility and any incarcerated child. This section would also require the Commissioner to report a host of education-related data to the JJPOC in lines 563 – 568. We assume that this report is intended to include de-identified data only, but OCPD would respectfully suggest that the language be amended to make that clear.

**Sections 5 – 10** make a host of changes related to educational services and the educational success of children incarcerated or placed in a juvenile justice facility both during such placement and upon release and re-entry, including prompt transfer of educational records upon placement, standardized conversion of credits, and the right to enroll immediately in the appropriate school district upon discharge. This has often been a barrier to educational stability and outcomes for children, and this would help to remove that barrier.

**Section 11** would eliminate schools' authority to impose out-of-school suspensions for students in preschool through second grade effective July 1, 2022, and establishes a committee to develop a phased-in plan to ban suspensions and expulsions of students in any grade. Children do better when they are able to be in school, so any effort to allow for that in lieu of out-of-school suspensions will improve their success.

**Section 12** revises the current process for transferring cases from the juvenile court to the adult court. Under current law, all Class A felonies and some Class B felonies are *automatically* transferred from the juvenile court to the adult court if the offense was committed when the child was age 15 and older. All other Class B felonies and Class C, D, E and Unclassified felonies are only transferrable following a transfer hearing in the juvenile court. This proposal would make *all* Class B felonies subject to this discretionary transfer hearing process and would preclude transfer of Class C, D, E felonies. The discretionary transfer hearing process would still allow the juvenile court to transfer a child to the adult court for a Class B felony if it finds that the child cannot be rehabilitated in the juvenile court without presenting a risk of serious physical injury to the public. Given the lack of age-appropriate services available in the adult court and the poor outcomes often associated with transfer, OCPD strongly supports the goal of keeping children in the juvenile court system whenever possible.

In addition, for any case transferred to the adult court that results in a conviction and period of incarceration, this section would require the court to review the sentence after the child has served fifty percent of the sentence or turns 18, whichever occurs first. Following this review, the court can reduce the sentence if there is no longer a need for incarceration. OCPD also strongly supports this provision as well, which recognizes the importance of restorative justice and the rehabilitative goals and principles that

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support youth success. Incarcerating young people in adult prisons fails to promote these goals and does not result in any long-term benefit to public safety.

**Section 13** would provide for automatic erasure of juvenile court and police records for children convicted in juvenile court under certain circumstances. Current law already allows for erasure of all police and court records once the child has turned 18 if: (1) it's been at least 2 years (or 4 years for a Serious Juvenile Offense) since the child's discharge from court supervision; (2) there's no subsequent adult or juvenile case pending against the child; and (3) the child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during that 2-year (or 4-year) period. However, current law requires that the child or the child's parent proactively file a petition for erasure under these circumstances, which is unnecessary and difficult for children and their families to remember to do so long after the court case is over. This bill eliminates the need for the child or parent to file a petition and, instead, makes erasure automatic if these conditions are met. Erasure would allow a young person applying to schools, vocation programs, employment, and other opportunities to honestly answer "no" when asked if they've ever been arrested or convicted of a crime. Given the importance of allowing children who successfully complete their court supervision and have no further convictions to have a "clean slate" moving forward, OCPD urges support for this proposal.

**Section 16** would preclude DOC, DCF and CSSD from using chemical agents on any child under 18 who is detained in a juvenile detention center or incarcerated in a correction facility effective January 1, 2022, and requires DOC to develop alternative means to deescalate situations. The harmful effects both physically and emotionally of the use of chemical agents on children are well documented and shouldn't be used as a means of controlling behavior when other more humane interventions can keep children and staff safe.

**Sections 17 and 18** will assist in addressing racial and ethnic disparities by expanding the current protections that apply to traffic stops to also include pedestrian stops. Current law requires, among other things, that municipal police departments and the state police adopt written policies that prohibit the stopping, detention, or search of any person if it is motivated *solely* by considerations of race, color, ethnicity, age, gender, or sexual orientation and when this would violate the person's civil rights. Given that the children and young adults served in both the juvenile and adult court are often stopped when walking and not necessarily as part of a traffic stop, this will help to ensure that these same protections apply under those circumstances. OCPD would also respectfully recommend that the word "solely" be removed on line 1337 of the bill and would argue that these considerations should never be the motivation for either a traffic or pedestrian stop.

**Sections 19 – 21** are intended to implement the approved JJPOC recommendations regarding decriminalization and mandatory pre-arrest diversion for low-level offenses by children. The approved recommendations included decriminalizing the infractions of Simple Trespass, Creating a Public Disturbance, and possession of less than ½ ounce of cannabis and related possession of drug paraphernalia by deleting them from the definition of "delinquent" and "delinquent act," thereby

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removing them from juvenile court jurisdiction. However, Sections 19 and 20 as currently drafted do not accomplish that goal and, in fact, appear to unintentionally move the infraction of possession of drug paraphernalia (associated with less than ½ ounce of cannabis) to the adult court for 16 and 17 year olds when that infraction has always been handled by the juvenile court for all children under 18. While OCPD supports the JJPOC recommendations as approved, if the intent of the bill was not to change the current juvenile court authority for any offenses at this time, then the brackets on lines 1536, 1537, 1558 and 1559 should be deleted. Section 21 creates an implementation team to develop plans for mandatory pre-arrest diversion of certain low-level offenses, which would include the offenses mentioned above that the JJPOC recommends for full decriminalization. However, we support any efforts to divert children from unnecessary juvenile court involvement and would request that the “stakeholder input” on line 1580 be expanded to include input from OCPD as our office represents many of the children that would benefit from these expanded diversion options.

**Section 22** requires the Judicial Branch to develop and submit an implementation plan by January 1, 2022, which would shift responsibility for secure placement of children detained pre-trial from DOC to the Judicial Branch by January 1, 2023. Currently, children whose cases are transferred to the adult court are detained pre-trial at Manson Youth Institute operated by DOC, while all other children requiring detention are placed in juvenile detention centers operated by CSSD. Given the unique needs of children, the new programming available in the juvenile detention centers, and the importance of providing all children with access to the same service array if detention is required, OCPD is pleased to see this long-standing JJPOC proposal moving forward.

OCPD appreciates this Committee’s efforts to help improve outcomes for children and young adults involved in both our juvenile and adult justice systems and urges you to act favorably on this proposal with the suggestions raised above.