



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

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Testimony of Susan I. Hamilton, MSW, JD
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Judiciary Committee - March 14, 2022
Raised SB 365 - AAC Juvenile and Criminal Justice Reforms
Raised HB 5418 - AA Revising Juvenile and Criminal Justice Statutes and Insurance
Statutes Concerning Theft of a Motor Vehicle

Mission Statement of the Division of Public Defender Services

Striving to ensure justice and a fair and unbiased system, the Connecticut Division of Public Defender Services zealously promotes and protects the rights, liberty and dignity of all clients entrusted to us. We are committed to holistic representation that recognizes clients as individuals, fosters trust and prevents unnecessary and wrongful convictions.

The Office of Chief Public Defender (OCPD) **opposes** the following sections of both **Raised SB 365 - AAC Juvenile and Criminal Justice Reforms** and **Raised HB 5418 - AA Revising Juvenile and Criminal Justice Statutes and Insurance Statutes Concerning Theft of a Motor Vehicle**, which contain similar proposals.

Next Day Arraignments

SB 365 would require a child and the child's parents/guardians to appear at court the very next business day after an arrest regardless of the nature of the charge(s). It's unclear what public policy goal will be furthered by this proposal, and it would create an unnecessary hardship for working parents among others. HB 5418 would also require next-day arraignments but only for certain serious offenses. Given that a child can already be detained at the time of arrest if they pose a risk to public safety, and the child would be given a hearing the next day under those circumstances, this proposal is duplicative and unnecessary. In addition, HB 5418 would require that the child and parent(s)/guardian(s) appear in the adult court GA where the crime allegedly occurred rather than in the juvenile court venue where the child and parent(s)/guardian(s) reside. Again, the public policy goal here is unclear, and this could make it unnecessarily difficult for parents to appear in court with their

children, particularly for next-day arraignments.

Mandatory Fingerprinting/Photographs

Both SB 365 and HB 5418 would *require* that a child be photographed and fingerprinted if arrested for certain offenses. Under current law, the court already has discretion to order this for any arrest regardless of the charge. The court's existing authority to exercise that discretion as it deems necessary and appropriate based on the nature of the offense should remain intact.

Grounds for Detention

Under existing law, a child can be incarcerated in a juvenile detention center if the court finds: (1) probable cause that the child committed the alleged offense(s), (2) there is no appropriate less restrictive alternative available; and (3) there is probable cause that the risk the child poses to public safety cannot be managed in a less restrictive setting.

HB 5418 at lines 116-117 would change the "no appropriate less restrictive alternative available" in prong (2) above to "detention of the child is *more reasonable* than a less restrictive setting." The phrase "more reasonable" in this instance is unclear and fails to strike the proper balance to ensure that children are incarcerated only when necessary based on their risk and needs. It should also be noted that the word "appropriate" was already added by PA 18-31 to narrow the scope of that prong of the detention grounds, which now allows the court to detain a child if the less restrictive setting isn't appropriate.

Confinement in Community Correctional Centers/Lock-up

Both bills would also allow a child to be held in a community correctional center or lock up for longer than the current six hours "for purposes that include when a detention order is being sought." Given the new CSSD process that allows law enforcement immediate 24/7 access to the information needed to pursue a detention order, OCPD believes the current 6-hour holding period is sufficient. However, if this period is extended, there should be a statutory limit on the total number of hours a child can be held during this investigation period. (See, SB 16 at line 1407, which caps this at a maximum period of 8 hours). In addition, any extension should be limited to situations where the police officer is pursuing a detention order (See, HB 5417).

Transfer to the Adult Court

OCPD is opposed to any proposals that would result in increased transfer of children to the adult court system. Despite beliefs to the contrary, transferring children to the adult court does not provide any long-term benefit to public safety and is often counterproductive to improving youth outcomes and success. The juvenile court system has undergone enormous change over the last decade, which has allowed more children to be successfully diverted from court involvement and, therefore, more resources being available to court-involved children with more complex needs and behaviors. These individualized supports and services, including secure and staff-secure confinement with specialized treatment, are simply not available to children in the adult court system.

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However, there may be occasions where transfer may be deemed necessary, and we believe the existing statutory framework strikes the correct balance for making that determination. Under current law, any child age 15 or older is *automatically transferred* to the adult court if charged with a Class A felony and some Class B felonies and is *eligible for transfer* after a hearing in the juvenile court for other serious crimes, including Class B, C, D, E unclassified felonies, if the best interests of the child and the public will not be served by keeping the case in the juvenile court. In making that determination, the court must consider: (1) prior offenses and the seriousness of those offenses, (2) any evidence that the child has intellectual disability or mental illness, and (3) the availability of services in the juvenile court that can meet the child's needs.

However, both SB 365 and HB 5418 would expand the type of offenses that would be automatically transferred to the adult court and would also lower the transfer age to 14 (SB 365) and 13 (HB 5418) for certain offenses. In addition, it would allow all other discretionary transfers to occur regardless of the best interests of the child. It's unclear what public policy goal would be furthered by this proposal other than transferring more (and younger) children to the adult court system, which is ill-equipped to provide the necessary age-appropriate services to address their behavior and, ultimately, reduce recidivism.

Access to Records

Both bills propose amending the juvenile court confidentiality statute by adding a new section allowing records to be disclosed by and exchanged between municipal police departments, State Police, the Divisions of Criminal Justice and Public Defenders Services for purposes of seeking, supporting, opposing or granting a post-arrest detention order. This new language is duplicative and unnecessary. The existing language of Sec. 46b-124 already allows law enforcement, prosecutors and children's attorneys access to these records. In addition, pursuant to a Standing Order issued on September 1, 2021, any police officer who is determining whether to seek a detention order has 24/7 access to the information relevant to that determination.

Electronic Monitoring/GPS

Both bills would also require the court to order GPS monitoring whenever a child with a pending charge is later charged with a subsequent violent offense or has a prior delinquency adjudication. As currently written, this GPS monitoring would be required without any finding of guilt or public safety risk by the court on the pending charges, which raises constitutional issues. In addition, under existing law, the court already has the authority to issue electronic monitoring/GPS when a child is released and placed on suspended orders of detention, and this can also be ordered as part of any probation supervision. The court should continue to have the discretion to order such individualized sanctions in cases where the child has been found to present a risk to public safety.

The Office of Chief Public Defender requests that the Committee take no action on these proposals.