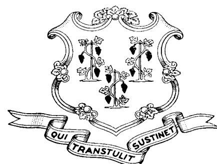

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Testimony of the Office of Chief Public Defender

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JUDICIARY COMMITTEE – MARCH 20, 2024

Raised House Bill No. 5509
AN ACT CONCERNING THE ENTICEMENT OF A MINOR TO COMMIT A CRIME, SEARCHES OF A MOTOR VEHICLE, THE PSYCHIATRIC SECURITY REVIEW BOARD AND VICTIMS' COMPENSATION

The Office of Chief Public strongly opposes Sections 1 through 7 of *Raised Bill No. 5509, An Act Concerning the Enticement of a Minor to Commit a Crime, Searches of a Motor Vehicle, the Psychiatric Security Review Board and Victims' Compensation*[1] for the following reasons.

Section 1 - This section addresses the offense of "enticement of a minor to commit a crime" in ***C.G.S. 53a-225, Enticing a juvenile to commit a criminal act: Class A misdemeanor or class D felony***, and would reduce the age threshold of the actor from twenty-three years of age to twenty-one years of age. Given the substantial scientific evidence regarding brain development, as well as the coincidence of higher education with this stage of life, this office opposes the lowering of such threshold ages. Twenty-three years of age is a compromise that reflects the above factors and data showing that twenty-five years of age is closer to the age at which individuals' brains are fully mature.

Section 2 - This section would amend C.G.S. Section 54-33p (a)(1) to allow the odor of cannabis or burnt cannabis to be a consideration in the determination of whether probable cause or

[1] OCPD takes no position on Sections 8 – 11.

reasonable suspicion exists for law enforcement to conduct a stop or search of a person or motor vehicle "when a law enforcement official reasonably expects there is a person under the age of eighteen years of age in the motor vehicle."

Such a change could allow law enforcement officials to use otherwise innocuous observations as considerations for a determination of reasonable suspicion to stop or probable cause to search a motor vehicle. For example, this change presents the risk that such decorative additions to a motor vehicle such as a "Baby on Board" or "Proud Parent of the Middle Schooler of the Month" or the common "Stick Figure Family" decals can be considered when a law enforcement official is considering reasonable suspicion to stop or probable cause to search a motor vehicle.

The same risk could apply to otherwise innocuous *activities*. For example, consider an adult motorist leaving a public park in which both youth and adult sporting activities have taken or are taking place. That adult motorist will be more likely to be stopped and their motor vehicle searched than one who is not leaving such an area or event. Also consider a situation in which an adult motorist happens to simply be passing through such an area.

This proposed change will also allow law enforcement officials to employ highly subjective observations and conclusions regarding the age of occupants within a motor vehicle from outside of a motor vehicle. It speaks for itself equally that some adolescents below eighteen years of age appear older than eighteen years of age and some adults above eighteen years of age appear younger than eighteen years of age.

As such, this proposed change would allow for the sort of hunches in determining whether there exists reasonable suspicion for a stop or search of a person or motor vehicle that has been condemned under federal and state precedents. (See generally Terry v. Ohio, 392 U.S. 1(1968); State v. Oquendo, 223 Conn. 635 (1992); State v. Lamme, 216 Conn.172 (1990)).

Based on the foregoing considerations, this legislation would result in both over- and under-inclusive application. Additionally, the observations and considerations targeted in this bill are such that they would most commonly be observed in congested urban areas which have as their residents a greater percentage of minority residents. As such, this change would disproportionally impact communities of color.

In September 2022, legislative leaders, policy professionals, advocates, and others convened in support of racial and ethnic impact statements (REIS), tools to analyze a proposed policy's anticipated impact through an equity lens. A REIS on this proposal could more thoroughly analyze how the proposed policy might impact people in practice.

Ultimately, the proposed change to C.G.S. Sect. 54-33p (a)(1) would negate the law's practical meaning and effect. The proposed change presents the likelihood of both overinclusive and underinclusive application, as well as a disproportionate impact on minority communities.

Section 3 through 7 – These sections propose changes pertaining to the Psychiatric Security Review Board. Just two years ago, this legislature passed ***Public Act 22-45, An Act Concerning Connecticut Valley and Whiting Forensic Hospitals,*** which changed the law concerning Whiting Forensic Hospital, the PSRB, and patients acquitted of criminal charges by reason of mental disease or defect. P.A. 22-45 was prompted by the Whiting Task Force report following the horrific patient abuse scandal at Whiting Forensic Hospital, abuse which included staff forcing an invalid patient to wear his own soiled diaper on his head, and a staff member straddling the patient and rubbing his crotch on the patient's face.

These shocking actions – captured on videotape – are among the reasons P.A. 22-45 now mandates that the PSRB (and the superior court) balance "public safety" with the "safety and well-being of the acquittee" when making certain decisions. However, Sections 3 and 4 of the proposed bill seek to undo that important patient safeguard by making the patient's "safety and well-being" secondary to "public safety". Since P.A. 22-45 became law, nothing has happened to adversely impact public safety, that could possibly justify rolling back this very recent and critical protection for mentally ill patients.

The remaining sections pertaining to the PSRB seek to place obstacles in the path of acquittees' recovery and eventual community reintegration. For instance, the bill wants to make the patient wait twelve months (instead of the current six) between filing applications for temporary leave or conditional release. There is no practical reason for this change, as the Board is not currently overwhelmed by temporary leave or conditional release applications, nor have they ever been. This proposed change is designed solely to keep patients confined, even when clinically ready to progress in their recovery.

The bill also seeks to prevent acquittees from being in their own custody **at any point while on temporary leave**. This is counter-productive to public safety. The PSRB's existing practice of gradually lifting restrictions and increasing the freedom of acquittees in the community has been extremely successful in reducing recidivism. The proposed bill would make that practice impossible--essentially requiring a baby-sitter with the patient at all times—giving no opportunity for them to prove they can be safe.

Finally, the bill would raise the standard of proof at all PSRB hearings to **clear and convincing evidence**. Preponderance of evidence has always been the standard at PSRB hearings since the Board was created in 1985. There is no data to suggest that the preponderance standard is not working or is inadequate to ensure public safety. There are no PSRB decisions which have compromised public safety. There is no reason for this proposed change, other than to punish the mentally ill by making it harder for them to progress in their treatment.

For the foregoing reasons, this office requests that Sections 1 through 7 of this bill be stricken. Thank you.