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TESTIMONY OF CHRISTINE PERRA RAPILLO CHIEF PUBLIC DEFENDER

COMMITTEE ON CHILDREN FEBRUARY 27, 2018

S.B. No. 187 (RAISED)

AAC THE TRANSFER OF A CHILD CHARGED WITH CERTAIN OFFENSES TO THE CRIMINAL DOCKET AND THE GROUNDS FOR DETENTION OF AN ARRESTED CHILD

The Office of the Chief Public Defender (OCPD) is opposed to **S.B. No. 187 – THE TRANSFER OF A CHILD CHARGED WITH CERTAIN OFFENSES TO THE CRIMINAL DOCKET AND THE GROUNDS FOR DETENTION OF AN ARRESTED CHILD**. In essence, this bill proposes to prematurely and unjustifiably undo several recent legislative changes supported by this Committee and the General Assembly, which were appropriately aimed at advancing the goals of the juvenile justice system.

More specifically, this bill proposes, in effect, to repeal the recent legislative advancements in juvenile justice outlined in PA 15-183 (effective October 1, 2015) and PA 16-147 (effective January 1, 2017) as follows:

Section 1 of the bill would *require* the court to *automatically* transfer *all* Class A and Class B felonies for all children over the *age of fourteen* from the Superior Court for Juvenile Matters to the adult court. As this Committee is aware, PA 15-183 expressly raised the transfer age from fourteen to fifteen in light of the generally recognized and approved goals of the juvenile court, including providing individualized supervision, care, accountability and treatment to children in a manner consistent with public safety. The younger a child is, the more likely he or she is to exercise poor decision making and to be amenable to the treatment and services available in the juvenile court. Reducing the age of automatic transfer back to fourteen is without justification and counterproductive to these goals.

Similarly, PA 15-183 specifically eliminated several Class B felonies from the list of charges that are *automatically* transferred from the juvenile court to the adult court and, instead, created a *discretionary* transfer hearing procedure for those cases. This current law already allows the court to transfer those cases if it finds, in part, that the best interests of the child *and* the public will *not* be served by maintaining the case in the juvenile

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court. Giving the courts the discretion to decide if the facts and circumstances surrounding a child charged with a B felony warrant transfer to adult court is consistent with the emerging body of law on the treatment of juveniles and served as a basis for the changes in PA 15-183. Both the United States and the Connecticut Supreme Courts have held that that an individual child's propensity to change and develop must be considered before a court can impose a sentence of death, or life without parole, or a lengthy sentence that results in an effective life sentence.¹ These rulings take into account the fact that a child, even a child who is charged with a serious crime, is an unformed being, capable of change and rehabilitation. Section 1 of this bill proposes to undo these important and deliberate advancements by completely eliminating this new discretionary transfer hearing procedure and again making all Class B felonies for even younger children automatically transferrable to the adult court.

In addition, Section 1 amends CGS Sec. 46b-127(b) by allowing the court to rely on a sworn affidavit in lieu of testimony when making the probable cause finding needed to transfer the case of a child charged with a class C, D or E felony or an unclassified felony and expanding the criteria for transferring these cases as well. Under current law, these less serious cases cannot be transferred unless the court finds that the best interests of the child *and* the public will not be served by maintaining the case in the juvenile court. This bill proposes to change the "and" to "or" in this subsection, mandating the court transfer these cases to the adult court regardless of the best interests of the child assuming the other prongs are met. Due process considerations and the lasting and significant implications for a child whose case is transferred to the adult court require that all three prongs of the transfer test be given equal weight and be based on testimony and the opportunity for cross examination.

Section 2 of the bill also seeks to undo the very recent changes to the grounds for detention that were revised pursuant to PA 16-147. More specifically, PA 16-147, which has been in effect for just over one year, appropriately eliminated several specific grounds for placing a child in detention, including running away, likelihood of committing other offenses and violation of suspended detention orders, and *replaced* those grounds with a finding that (1) the child poses a risk to public safety; (2) there's a need to hold the child based on his or her failure to respond to court process; or (3) there's a need to hold the child for another jurisdiction. This new and current law already allows a child who is charged with an offense (often prior to any adjudication or conviction) to be incarcerated if he or she is found to pose a risk to public safety. This is based on a risk assessment tool that requires the court to consider a host of risk factors, including, but not limited to, the seriousness of the pending charge(s) and the child's prior history with services, probation and the court.

The Committee will likely hear testimony from the bill's proponents and maybe others that there's a need to backslide because these well-intended changes have made it too difficult to detain children and to transfer serious cases from the juvenile court to the adult court. However, neither the data nor existing law supports that argument. The OCPD, along with the proponents of this bill and others, including the General Assembly, recognized that there are certainly cases that are serious enough to warrant automatic transfer to adult court as well as less serious cases that might warrant transfer upon a finding that the best interests of the child *and* the public will *not* be served by maintaining the case in the juvenile court.

As noted above, these factors were all considered and then embodied in PA 15-183, which now allows the State

¹ Roper v. Simmons, 543 U.S. 1 (2005); Graham v. Florida, 130 S. Ct. 2011, (2010); Miller v. Alabama 132 S. Ct. 2455, 2464 (2012); State v. Riley, (SC 19109) (2015)

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to file motions to transfer the specified Class B felonies to the adult court. Despite that option, there have been very few such motions filed since the law went into effect, which contradicts any conclusion that such transfers are now “impossible.” Moreover, in several instances where such a motion *has* been filed, the courts have, in fact, transferred the case to the adult court.

The current goals of our juvenile justice system, promoted by PA 15-183 and PA 16-147, already include holding juveniles accountable for their behavior, adequately protecting the community and the child and providing secure and therapeutic confinement to those children who pose a danger to the community. Notably and distinct from the adult system, however, this is done by providing supervision, residential, in-home and community-based services to the child and the child’s family to promote rehabilitation and reduce recidivism.²

This bill is unnecessary and counterproductive to these goals. The OCPD appreciates this Committee’s interest in promoting and supporting juvenile justice reforms consistent with public safety and the best interests of children, and we look forward to working with you and others toward that end.

² CGS Sec. 46b-121h