IV. PRACTICING CRIMINAL LAW IN JUVENILE COURT

1. JURISDICTION

Juvenile matters in the *criminal session* include all proceedings concerning delinquent children or children alleged to be from a Family with Service Needs (FWSN) in the state… as opposed to the *civil session* which concerns uncared for and neglected children, C.G.S. 46b-121(a).

P.A. 09-7 raised the age of juvenile court jurisdiction from 16 to 17, effective January 1, 2010. The legislation was not retroactive and does not apply to most motor vehicle or other infraction cases. 17 year olds will come under juvenile jurisdiction as of July 1, 2012. P.A. 10-1 from the June Special Session, clarifies that motor vehicle cases involving 16 year olds will originate in adult court but the court will have the ability to transfer those cases to the juvenile court if appropriate. The jurisdictional age changes also apply to status offenses, known as Families with Services Needs or FWSN. 16 and eventually 17 year olds will are now subject to the court's jurisdiction for status offenses.

2. ROLE OF COUNSEL

Constitutional rights in delinquency cases run to the child, as they are the party with a liberty interest at stake. An attorney's ethical allegiance is to the child and not to the parent or guardian paying you for representation. Parents are not allowed to waive rights for their children, since they may have conflicting interests. Parents need not be present when lawyers interview clients and cannot be present if the child objects. Attorneys must take care to preserve the attorney client relationship with the child The parents are not bound by attorney client privilege and may share information with the prosecution if they wish. This includes situations where the state, through the Department of Children and Families, is the parent. The child must be apprised and counseled as to all developments in his/her case. The lawyer is ethically required to present the child's position to the court.

The court, state, or attorney for the child can request that a *guardian ad litem* be appointed to investigate and present the child's best interest. These advocates do not have an attorney client relationship with the client and are not bound by confidentiality, so defense counsel should advise their clients before allowing them to cooperate with a guardian ad litem. Attorneys acting as defense counsel for a child should beware of accepting an appointment as a guardian ad litem for the client, since the child's best interest may conflict with their stated wishes.

Sources: Connecticut Public Defender Services Commission, *Guidelines on Indigent Defense, Sec. 1.1(a)-(c;*, American Bar Association, Juvenile Justice Standards, *Standards for Representing Private Parties, Part VIII, Section 8.1-8.2*

The duty to the juvenile client does not end at sentencing. Representation in juvenile matters continues through the end of any sentence, including probation and commitment to the Department of Children and Families. This could include appearances at administrative hearings or representation in probation modification requests. Connecticut Practice Book §3-9(e).

3. ARREST

Under C.G.S §46b-133, police can arrest children for violations of the penal code, municipal or local ordinances. Children over the age of 16 charged with a motor vehicle offense will be sent to the adult court. Children arrested as juveniles can be photographed and fingerprinted. The child can be released to the parent or guardian with a summons and ordered to appear in court. This still counts as being arrested. C.G.S. Sec 46b-133 gives police the option of releasing a child on his own recognizance. The accused child is required to sign the summons form and the police must make reasonable efforts to notify the parents. At the very least, the summons should be mailed to the address given by the child. If the accused child does not show up for the court date, the court can issue a warrant charging failure to appear and the parents are subject to a capias or contempt proceedings. Children charged with a delinquency offense are not entitled to have bond set by the police but may request bond at the arraignment. *(see below)*

4. DETENTION

A. Admission

Juvenile Detention Centers are located in Hartford and Bridgeport. The police may detain a child in one of the two Juvenile Detention Centers if:

1. The a child is charged with a Serious Juvenile Offense (SJO) as defined in C.G.S.§ 46b-120(12) or ,
2. The police get an order from a judge finding that probable cause exists for the offense and no less restrictive alternative is available and one of the following criteria, set out in C.G.S.§ 46b-133(d) is met:
    a. the child is at risk to runaway,
    b. the child is at risk to commit another offense
    c. the child poses a risk to the community based on the nature of the alleged offense
    d. the child is wanted in another jurisdiction
    e. the child has a history of failing to appear
    f. the child has violated one or more of the conditions of a suspended detention order
3. The child must be presented to a judge for arraignment on the next business day.
4. Like adults, children cannot be held for more than 48 hours without a probable cause finding. County of Riverside v. McLaughlin, 500 U.S. 44 (1999).

5. A detention hearing will be held at arraignment. A child can be released without conditions, detained for up to 15 days or released with orders and supervised by a probation officer.

It is important to note that the court must find that no less restrictive alternatives exist before ordering detention for a child. Defense counsel is encouraged to consider release alternatives involving relatives or suitable adults when preparing to argue the issue of detention.

B. Evaluations while in detention

A child will be subject to several screening devices to determine if he or she has mental health issues prior to the initial detention hearing. All children admitted to detention will be administered mental health assessments and risk assessments. An educational assessment may also be performed.

Detention officials will use these assessments to determine security level and eligibility for placement in community detention. C.G.S.§46b-124(j) prohibits the use of assessment material prepared by juvenile detention staff from being used against a client at trial. At arraignment however, the judge and the prosecutor will get a form from detention that indicates if an accused child is recommended for further evaluation. This must be made available to defense counsel prior to arraignment.

The court may attempt to persuade the child client to agree to a recommended assessment. Counsel for the child should be aware that court ordered evaluations are not confidential. This can negatively impact your ability to have a client released from detention. Counsel can agree or object to further evaluation including a risk assessment. It is important to advise the client or be present during this evaluation should the information likely to be divulged by the child negatively impact his or her case.

C. Bail

Superior Court judges have the authority to set bail for a child in juvenile court on delinquency charges. C.G.S §46b-133(b). It is rarely requested, since most children can be released on conditions. When a client wants bail set, the court generally applies the criteria for detention set out in C.G.S.§46b-133(d)(strong probability that the child will run, commit other offenses injurious to himself or others, child presents a risk to the community, hold for another jurisdiction). If the court tries to deny bond, counsel should argue that the criteria for denying bond in adult criminal cases should be applied, as they both relate to the denial of a liberty interest.

5. INTERROGATION

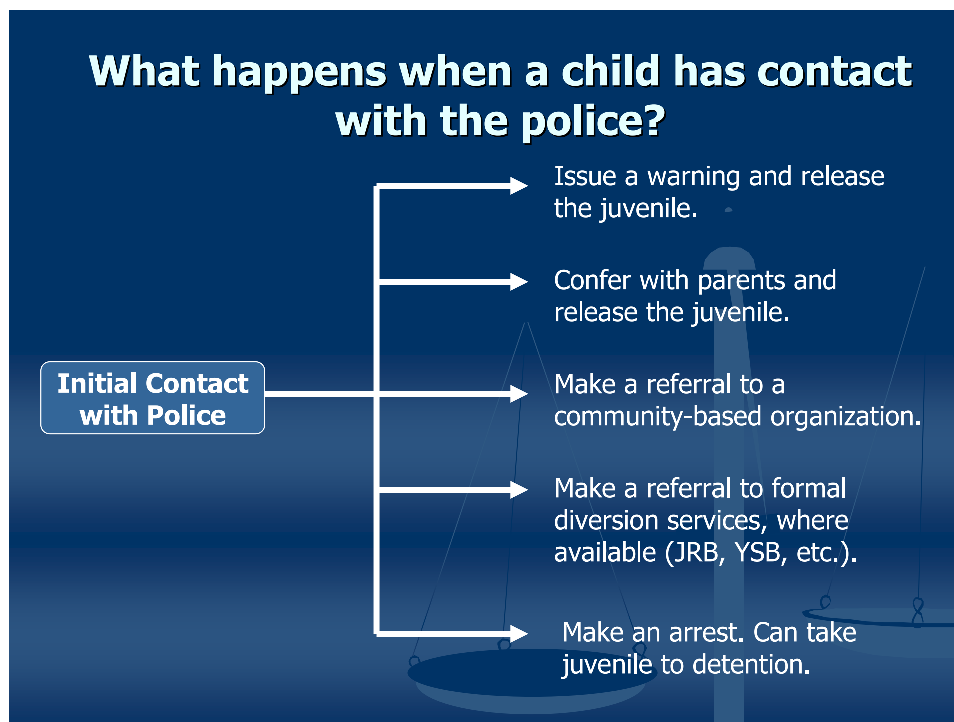
Any statements taken from a juvenile under the age of 16 are inadmissible in a delinquency proceeding unless taken in the presence of a parent. C.G.S.§ 46b-137. See In Re: Jonathan M. 46 Conn. App. 545 *cert. denied* 243 Conn. 930 (1997)

Juveniles age 16 and above have the right to have a parent present and must be advised of that right. Police are required to make a reasonable effort to contact parents, even in the absence of an invocation of the right to have them present by the accused. Absence of a parent will not make the statement per se inadmissible. The court will judge admissibility based on the totality of the circumstances, using criteria set out in C.G.S. 46b-137.

The protections given juveniles under C.G.S.§46b-137, which requires that a statement taken from a juvenile be done in the presence of a parent, do not apply if the case is transferred. State v. Ledbetter, 263 Conn. 1 (2003) Admissibility for transferred cases is determined using a totality of the circumstances test.

6. REFERRAL/DIVERSION

A. When police determine there is cause to file charges against a juvenile, they have several options. The following flow chart outlines the options.



B. Community Services
In many towns, the police may divert the case to a *juvenile review board(JRB) or youth services bureau(YSB).* These diversion options are generally limited to misdemeanor cases and situations that the police feel can be resolved with mediation or short term intervention. Not every town funds review boards or other diversionary programs. The State of Connecticut, through the Department of Children and Families and the Court Support Services Division

of the Judicial Branch, funds review boards Hartford, New Haven, Bridgeport and Waterbury.

C. Non Judicial Handling
Connecticut Practice Book §27A-1 through 8A provides that if there is no diversionary program or if, in the opinion of the officer, the case does not qualify for such treatment, the case is referred to the juvenile court. The file is reviewed by a probation officer and a juvenile prosecutor to determine if the case can be diverted for *non-judicial handling* if:

a. Child has little or no prior court involvement
b. Child is not charged with a serious juvenile offense as defined in C.G.S 46b-120(12), theft or unlawful use of a motor vehicle or sale or possession of drugs or firearms.
c. Case does not involve restitution.

If the case is referred for non judicial handling, the child and family meet informally with a probation officer to discuss the case and the options. **The child must admit to the charges to be eligible for non judicial handling of the case.** If the child admits the charges, he can be given informal consequences by the probation department in exchange for a discharge. Non Judicial consequences can include counseling, community service, or supervision by a probation officer. All children who agree to admit a charge non-judicially are subject to a *risk assessment* and a *mental health screening.* Those assessments will be used to determine the level of service and might be made available to the court if the case is eventually sent for formal judicial handing. If the child fails to comply with the consequences the case can be sent to court for formal judicial prosecution.

7. TRANSFER

Conn. Gen. Stat.§46b-127 allows the State to transfer children over the age of 14 who are charged with a felony from the juvenile matters docket to the regular criminal docket in adult court. If a child is transferred and held on bond, he or she will be held at an adult correctional facility. Transfer can happen two ways.

A. Automatic

If the child is fourteen or older, and charged with an A or B felony, the case will be automatically transferred to the adult court. If a case is transferred, the child appears in juvenile court to have their rights reads and is then sent to adult court for an arraignment. C.G.S. §46b-127(a) specifically prohibits counsel for the child from making any argument at this hearing. Probable cause will not be determined until the adult court hearing. For most B felonies, the state can move to transfer the case back to juvenile court. The statute does not give the defense the right to file such a motion.

B.Discretionary

For all other felonies, C.G.S. §46b-127(b) gives the juvenile prosecutor discretion to transfer cases upon an *ex parte* finding of probable cause to maintain the charges. The adult court can decide to return the case to juvenile court.

In **State v. Fernandes**, 300 Conn.104 (2010) the Connecticut Supreme Court found that juveniles have a vested liberty interest in maintaining their juvenile status and due process requires that they be given a hearing before a transfer ending those protections is finalized. The hearing is held in the adult court after the child has been physically transferred but before the court enters the final order. The case law provides no guidance on the standards or parameters for this hearing and judges have invoked various procedures. Some courts have allowed formal evidence and witnesses and some have not. It is up to counsel to determine the best plan for each individual case.

8. ARRAIGNMENT/PRETRIAL PROCEDURE

The juvenile arraignment is similar to the adult arraignment. Counsel is appointed and clients are advised of their Constitutional rights. Formal "not guilty" pleas are taken and the matters are set for pretrial discussion. Judicially supervised pretrials are not common in juvenile court but most judges will conduct them at the request of counsel.

Prosecutors regularly ask judges to change conditions of release at the initial arraignment, even for kids who are not incarcerated. These requests often include asking the judge to detain a child. Many judges entertain these requests even when made without giving proper notice to defense counsel, citing the 'best interest" of the child. The judge needs to find probable cause for the crime charged and one of the conditions for detention set out in C.G.S. §46b-133(d) before ordering detention for any juvenile defendant.

If an agreement is reached at the pretrial conference, the case is referred to an intake probation officer who conducts a *predispositional study*. That study will include information on the child's family history, school performance, community resources and criminal history. Counsel for the child should supply any relevant, helpful reports or documentation to the probation officer. The process also includes a mental health screening and a risk assessment. In appropriate cases, the child may have undergone a *court ordered psychological evaluation.* This information would also be included in the study. In 2008, C.G.S Sec. 46b-124 was amended to make many juvenile records, including predispositional studies, available to the Departments of Adult Probation and Parole, so counsel should take care to insure that the information in the study is accurate and not inflammatory.

9. COMPETENCY

Pleas must be knowing and voluntarily made and the child must be advised of the possible consequences of his/her plea.

Lawyers should be aware that children, like adults must be competent to stand trial. In Re: Juan L. 291 Conn. 556, 563 fn11. In general, courts use the standards set out by the United States Supreme Court in U.S. v. Dusky to determine if a juvenile defendant is capable of understanding the proceedings against him and assisting in his defense. In Juan L. the Connecticut Supreme Court in found that juvenile courts should apply the adult standards and procedures set out in C.G.S. §54-56d when competence of an accused juvenile is raised as an issue. Scientific research indicates that children can be developmentally incompetent, which should be investigated along with the more traditional mental health issues. The U.S. Supreme Court in Graham v. Florida indicated that they believed children to be less able to assist in their defense than adults. Graham is a relatively new case, decided in 2010, but it may provide a basis for counsel to argue that different criteria should be used to determine competency in juveniles and young defendants in adult criminal court.

The consequences of a request for a competency evaluation in juvenile court must be carefully considered by counsel. The current system provides only limited options for a child to be restored to competence in the community. If no outpatient restoration options are available, and the child is found not competent but restorable the court must commit the child to a facility for restoration. Riverview Hospital in Middletown is the only available facility in Connecticut. If a child is not restorable the court must commit the child to DCF for treatment. A child who presents no danger but is too young or mentally impaired to participate in trial may be forced into some form of custody to receive restoration if no outpatient service is available.

10. VICTIMS RIGHTS

As in adult court, the victim has the right to be present at all hearings and is allowed to speak at sentencing. The victim is advised that the proceedings are confidential but there are generally no enforcement provisions for violating the defendant's confidentiality. C.G.S. §46b-122.

11. SENTENCING

The sentencing court can order a case withdrawn for informal, non-judicial handling without a plea or discharge the child with a warning not to reoffend after a plea has been entered.

Many children are placed on probation. Terms of probation generally range from 3 months to two years. Children on probation can be ordered to pay restitution, complete community service, participate with counseling, attend school and obey house rules. C.G.S. §46b-140. They can also be ordered to cooperate with

mental health examination and participate in a court sponsored program. Many judges authorize graduated sanctions as part of probation. This allows a probation officer to modify conditions without court authorization, should the client violate. This is usually done as a consequence short of filing an actual violation of probation charge. Defense counsel should ask to be notified of all sanctions or modifications, as representation continues through the client's discharge from probation pursuant to C.P.B.§ 3-9.

12. SENTENCING: DELINQUENCY COMMITMENTS

If the sentencing court determines that a convicted child cannot be returned home because probation services are not adequate to ensure the safely of the child or the community the child can be *committed as a delinquent* and have their custody turned over to DCF. C.G.S. §46b-140(f)

Under such a commitment a child can be sent to a residential facility or to the Connecticut Juvenile Training School for up to four years if the charge is an SJO or 18 months for non-SJO offenses. C.G.S. §46b-141(a) C.G.S.§46b-141(b) gives DCF the right to ask the court to extend the commitment of a delinquent child beyond the initial sentence if they can prove it is in the best interest of the child. Children must also be advised of the possibility of DCF commitment extensions when making a guilty plea. See In Re: Jason C., 255 Conn.565 (200l)

Current practice requires that the court hold a Case Review Team to determine if there are programs in the child's community that could serve his or her needs before ordering removal to residential placement or the Connecticut Juvenile Training School. If residential placement is sought, the requesting party must submit a Centralized Placement Team (CPT) packet which is an application for residential placement. This application must include information about the child's criminal history, school records and a psychological evaluation. Defense counsel or their representative should participate in these case review meetings.

13. POST CONVICTION MATTERS

1. Children are entitled to post dispositional legal representation, whether on probation, committed to DCF or on appeal. See CPB §3-9(e)

2. C.G.S. §46b-124 requires that a convicted child's individual educational plan (IEP) be included in the pre-dispositional study if the child has been identified as requiring special education services.

3. The court is required to hold permanency plan hearings for all children committed as delinquent to DCF no later than 12 months after their initial commitment, and every 12 months thereafter so long as the child is committed to DCF. The court must determine that the plan is in the child's best interest and that DCF has made reasonable efforts to achieve the permanency plan. See CPB §31a-19.

4. For children committed to DCF, C.G.S. Sec. 17a-103c requires DCF to give written notice of a report of suspected abuse to the child's legal guardian and the child's attorney no later than 10 days after receipt of the complaint. This includes children committed as delinquent.

5. Defense counsel should be aware that DCF policy has resulted in an increase in the number of Motions to Extend Commitment. Clients must know that DCF can move to hold them past their initial sentence if the Department feels it is in the client's best interest.

14. <u>JUVENILE RECORDS</u>, §46b-124

Although juvenile records are presumed to be confidential, there are many exceptions and the exceptions are expanded regularly. Below are some examples of exceptions to confidentiality'

A.Disclosure of records of juvenile delinquency proceeding is allowed to and between state agencies and employees including:

a. judicial branch employees
b. employees/agents of state or federal agencies involved in delinquency proceedings, provision of services to child, or design and delivery of treatment programs
c. law enforcement
d. state and federal prosecutorial officials
e. school officials
f. court officials in both adult and juvenile court
g. public defender offices
h. the Division of Criminal Justice
i. DCF
j. Adult Probation
k. Bail Commissioner
l. Board of Parole
m. agencies having contact with the Office of Court Support Services
n. victims advocate
o. attorney representing the child in any proceeding in which such records are relevant
p. parents of child until child reaches majority
q. the child upon reaching majority
r. "law enforcement officials and prosecutorial officials conducting legitimate criminal investigations"
s. The Department of Motor Vehicles, if the offense implicates the accused's driving privileges
t. state or federal agency providing services related to the collection of moneys due or funding to support the service needs of eligible juveniles
u. any records disclosed are restricted from further disclosure except that the Bail Commissioner may disclose information relevant to bail

or sentencing in open court

B. Records disclosed to DCF if the child is found delinquent and committed include:

a. educational records
b. records for past treatment of physical and mental illness and substance abuse
c. records of prior placement
d. records created by the Judicial Department regarding the child

C. Other Exceptions to Confidentiality

1. photograph, name and custody status of any child arrested for a Class A or capital felony may now be disclosed to the public

2. records obtained or created by a state facility or private residential program regarding a delinquent child committed to DCF and assigned to the program **shall be disclosed as necessary to facilitate the apprehension and return of the child** who has failed to return from a leave from the facility or program, §17a-8a as amended by **P.A. 00-209, §1** (the act makes the child guilty of escape from custody, previously the records were disclosed only to the appropriate law enforcement agency)

D.Consequences of a Juvenile Record

1. If a child is convicted of a Serious Juvenile Offense (SJO) they are not eligible for Youthful Offender treatment.
2. SJO and felony convictions could be calculated into federal sentencing guidelines.
3. Some school programs deny admission to children with records for violent crimes or felonies.
4. Record will be considered if seeking parole as an adult.
5. Conviction on certain sex offenses will result in registration requirements in other states, including Massachusetts.
6. Possible immigration consequences

15. SUPSENSIONS AND EXPULSIONS

1. CGS **§**10-233c(a) & (d) requires consideration of certain factors when determining whether a pupil should be suspended or expelled
   See Packer v. Board of Education, 246 Conn. 89 (1998), where the court found that the child had no notice his conduct would be disruptive of the school process where 2 ounces of marijuana was found in the trunk of his car which was off school grounds
2. C.G.S. Sec. 10-233d allows schools to expel or suspend a child for conduct that results in an arrest and a commitment to DCF. However, this law requires that the expulsion run concurrent with the child's commitment. Schools are also required to immediately readmit a

student once they are released from juvenile detention or DCF custody.

16.YOUTHFUL OFFENDER

Connecticut General Statute Section 54-76b et seq. created the status of youthful offender for young people who are charged with crimes. The statutes provide that:

- Every accused person under the age of eighteen is presumed to a youthful offender and is treated as such until found not eligible.
- Youth charged with a Class A felony or a violation of 53-21,53a-70,70a,70b,71,72a or 72b unless consensual sex with a person between 13 and 16 are automatically excluded from Youthful Offender eligibility.
- Clients can use YO more than once. Clients are considered to be Youthful Offenders for crimes **occurring after** January 1, 2006 even if they have a prior Youthful Offender adjudication.
- Statute maintains exclusions for prior SJO and SRJO convictions and felony convictions in adult court.

Prosecutor can move to transfer any person charged with any felony from the Youthful Offender docket to the regular criminal docket.

In State v. Bond B. 300 Conn. 748 (2011), the Connecticut Supreme Court ruled that youth eligible to be treated as youthful offenders have a vested liberty interest in the benefits conferred by the YO statute and required that a hearing be held before a youth can be denied Youthful Offender status. Judicial hearings should be demanded every time the State seeks to remove a case from the YO docket.

Other highlights of the Youthful Offender statute include:

- **Client must waive their right to a jury trial to maintain Youthful Offender status.**
- **Client needs the consent of the parent and the lawyer to waive their right to Youthful Offender treatment and elect a jury trial on the regular docket**.
- **Commitment to the Department of Corrections for Youthful Offenders is limited to four years.**
- **Initial probation terms cannot exceed 3 years. However, the court can now extend the probationary period “as deemed appropriate by the court” for “good cause shown”.**