



Office of the Chief Public Defender
State of Connecticut

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COMMITTEE ON THE JUDICIARY

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**R. B. No. 1229 - AN ACT CONCERNING EVIDENCE AND
DETENTION IN JUVENILE MATTERS**

The Office of the Chief Public Defender supports passage of **RAISED SENATE BILL 1229 - AN ACT CONCERNING EVIDENCE AND DETENTION IN JUVENILE MATTERS.**

Section 1 would provide credit for time served pretrial in a juvenile detention facility to children eventually committed to the Department of Children and Families as Delinquent. Currently, children are only given credit for time served off of a probation sentence. This makes no sense, as it is days in custody that are important. A child who is being sentenced to a residential facility will often wait for weeks or months for an appropriate placement to be found. This is especially problematic for girls, who have no choice but to wait. An accused boy can plead guilty to the charges or opt for a trial and could almost immediately be sent to the Connecticut Juvenile Training School. He could start serving his time while DCF determined if he needed a different placement. This is not possible for girls, since no state operated secure facility exists. Any girl being committed be it after trial or by guilty plea must wait for the placement process to unfold before she can begin serving her sentence. This results in girls remaining in custody for longer periods of time and presents a possible equal protection issue under both the state and federal constitutions.

People opposed to this measure will argue that juvenile sentences are not punishments but are designed to rehabilitate the accused. While rehabilitation is an important aspect of juvenile justice, C.G.S. §46b-121h defines the first goal of the system as punishment and accountability and that is certainly how the committed children see it. Opponents will also argue that DCF needs to keep a child for the full commitment period to provide maximum treatment. Again, this argument is flawed. C.G.S. §17a-10 allows DCF to seek an extension of commitment whenever

they feel that it is in the child or the community's best interest, so they are able to maintain children who need more extensive treatment in their custody.

Section 2 would apply the current protections of *C.G.S. §46b-137, Admissibility of confession or other statement in juvenile proceedings* to cases that have been transferred to the adult court from the juvenile docket. These provisions were updated for 16 and 17 year olds as part of the Raise the Age legislation. C.G.S. §46b-137 deems statements taken from a juvenile, outside the presence of a parent, inadmissible in a later delinquency prosecution and provides special protection for 16 and 17 year olds when a court reviews the use of statements they made outside the presence of a parent or guardian. Under current Connecticut case law, this same statement that was made without the presence of a juvenile's parents becomes admissible against the child once the case is transferred to adult court. C.G.S. §46b-137 was originally passed to ensure that a minor, who is not legally able to waive his rights or make legal decisions, has the counsel of a parent or guardian before choosing to speak to the police. Whether a statement made by a juvenile is admissible should not be dictated by the venue of the criminal prosecution. Nor should it provide motivation for the prosecution to transfer the matter from the juvenile court to the adult court.

The United States and the Connecticut Constitutions require that any confession be knowing and voluntary. Because of the young age of the accused, there is always a question of whether a truly knowing and voluntary waiver can be taken from a juvenile without the assistance of a concerned adult. In recent cases outlawing the use of the death penalty and life without parole on juveniles, the United States Supreme Court recognized that children have been scientifically proven to be less able to understand the consequences of their actions than adults. The fact that a child's case has been transferred should not affect our desire to ensure that all interrogations meet Constitutional standards. Connecticut should adopt the Supreme Court's conclusion that people under 18 need special protection and treatment. This proposal would simply ensure that all accused who begin their cases as juveniles receive equal protection of their right not to incriminate themselves. This proposal imposes no additional burden on the police. The decision to transfer a case is made once the case comes to the juvenile court. Law enforcement should be following the rules of C.G.S. §46b-137 when taking a statement from any juvenile, since they will not know if the case will be transferred. Allowing the protections to dissolve once the child moves to the adult court creates an incentive for law enforcement to ignore the rules, since the prosecutor can simply transfer the case to adult court and avoid the requirements. This is not fair and not consistent with knowledge that children require special protection when being questioned.

Section 3 addresses the discretion the Commissioner of Children and Families has in determining when a child committed to DCF custody should be granted leave and is similar to a proposal in *Raised Senate Bill 6088, An Act Concerning Children Convicted as Delinquent who are Committed to the Commissioner of Children and Families*. The Office of the Chief Public Defender submitted testimony on that bill.