



765 Asylum Avenue, 2nd Floor
Hartford, CT 06105
860-523-9146
www.acluct.org

Written Testimony Opposing House Bill 5418, An Act Revising Juvenile and Criminal Justice Statutes and Insurance Statutes Concerning Theft of a Motor Vehicle

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein, and distinguished members of the Judiciary Committee:

My name is Jess Zaccagnino, and I am the policy counsel of the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in strong opposition to House Bill 5418, An Act Revising Juvenile and Criminal Justice Statutes and Insurance Statutes Concerning Theft of a Motor Vehicle.

The ACLU-CT is an organization dedicated to ending mass incarceration, eliminating racial disparities in the criminal legal system, and reducing harms to justice-impacted people. Among the most vulnerable people who become enmeshed in the criminal legal system are young people under the age of eighteen, who suffer unique harms due to their involvement in the criminal legal system and are more likely to experience even wider racial disparities than exist for adults.¹

Recognizing these harms and disparities, the ACLU-CT believes that children should be supported with services and resources that support them, their families, and their communities, rather than criminalized. The policies proposed by Senate Bill 365, though, do not share this value; instead, this bill's proposals are primarily rooted in a criminal legal foundation. Senate Bill 365 is a problem in search of other problems. The bill is based on false narratives about young people. Politicians have made hyperbolic claims in the court of public opinion about the "rash" of car thefts. The only

¹ Colette Marcellin & Samantha Harvell, *Data Snapshot of Youth Incarceration in Connecticut*, URBAN INST. (May 2020), available at https://www.urban.org/sites/default/files/publication/102176/data-snapshot-of-youth-incarceration-in-connecticut_1.pdf.

problem is that there is no such “rash”—in fact, car thefts in 2020 were down 3 percent relative to 2018, after a record-setting reduction in 2019.² Connecticut differs from much of the country in that the state has seen a substantial decline in car thefts over the last decade, including a 20 percent drop in 2019 from the previous year.³ Since the peak of car thefts in Connecticut in 1991, the state saw a 77 percent reduction in the thefts to record lows in 2019.⁴ Like the rest of the country, rates of crimes across the board have increased since the COVID-19 pandemic has wrought economic destruction upon communities.⁵ Motor vehicle thefts have increased nationally, but Connecticut’s rate of theft has remained below the national rate.⁶ A majority of these motor vehicle thefts, in fact, are committed by adults, not children under eighteen.⁷ Moreover, data analysis makes clear that any perceived uptick in car thefts has no correlation to juvenile justice reforms made over the past few years.⁸ With that understanding, it does not make sense to enact far-reaching policies which are not data-driven or services-based to solve a problem that is not, in fact, a problem. This bill contains several particularly problematic sections, reviewed below.

Arraignment

Expedited next-day arraignment is a rigid requirement that will put incredible strain on families, which will be particularly felt by single parents and households where both parents work. Merely one business day does not grant families enough time to take time off work and secure a lawyer of their choosing. Section 3 also removes discretion around child identification and requires full processing for any delinquent act, including drug offenses and crimes against public order. For example, this would

² Kelan Lyons, *New Data Show Car Thefts Are Declining, Despite a Pandemic Bump*, CT MIRROR (Mar. 19, 2021), available at <https://ctmirror.org/2021/03/19/new-data-show-car-thefts-are-declining-despite-a-pandemic-bump/>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Zach Murdock, *Connecticut Has a Teen Car Theft Problem, But It Is Not Related to State Juvenile Justice Reforms, New Analysis Finds*, HARTFORD COURANT (Mar. 26, 2021), available at <https://news.yahoo.com/connecticut-teen-cartheft-problem-162200460.html>.

mean that if a child pulled a fire alarm, the bill would require courts to photograph and fingerprint the child and subject them to court proceedings.

The requirement that children are tried in the court where the crime occurred, rather than in the jurisdiction they reside is particularly troubling. The few motor vehicle thefts committed by youth overwhelmingly involve Black and Latinx youth from urban areas committing car thefts in predominantly white suburbs.⁹ Families without access to affordable transportation¹⁰ will struggle to travel to the far away court, which in turn can provide courts with an unnecessary excuse to detain the child. This bill leaves no room for parents to petition the court to reschedule the date if parents are unable to travel to a court that day. Even worse, if parents cannot appear in court with the child the next business day, the parents will be punished. The punishments a parent may be subject to for failing to attend court are troublingly vague. Sending Black and brown children to be tried in white suburban courts will inevitably result in all-white or nearly all-white juries, leaving too much room for racial bias to contaminate the fairness of the trial.

Section 4 disturbingly removes the requirement that there be probable cause that a child has committed the alleged acts as a necessary reason to hold a child in detention. Not only does this shock the conscience of basic human dignity, but detention without first finding probable cause is violative of due process rights as applied to the states under the 14th Amendment and 4th Amendment protections against unreasonable searches and seizures. Because Black and Latinx children are disproportionately arrested across judicial districts in the state, this unconstitutional

⁹ Murdock, *surpa* note 8; Jim Haddadin, Jacqueline Rabe Thomas, Walter Smith & Deidre Montague, *Charts: 5 Things to Know About Juvenile Crime in Connecticut*, CONN. PUB. RADIO (Nov. 1, 2021 at 10:59 AM), available at <https://www.ctpublic.org/2021-11-01/charts-5-things-to-know-about-juvenile-crime-in-connecticut>.

¹⁰ See Anthony Cherolis, *Analysis: Thinking Outside the Box – COVID-19 for Families Without Cars*, CT NEWS JUNKIE (Apr. 23, 2020 at 5:02 AM), available at https://ctnewsjunkie.com/2020/04/23/20200423_analysis_thinking_outside_box_covid-19_for_families_without_cars/.

removal of due process will disparately impact Black and Latinx children.¹¹ The ACLU-CT is vehemently opposed to this particular provision of House Bill 5418.

House Bill 5418 will result in more children going into detention, in part because prosecutors will be permitted to request to detain children. At the same time, Section 4 also lowers the legal standard used when a court determines whether to detain a juvenile, from a requirement that “there is no appropriate less restrictive alternative available” to whether the “detention of the child is more reasonable than a less restrictive alternative.” The “no appropriate less restrictive alternative” standard already in place is appropriate because the detention of juveniles is a substantial restriction on individual liberty, meriting a high bar. The shift proposed in this bill would result in an increased number of children being detained, and for this reason, the ACLU-CT asks this Committee to reject this change.

GPS Surveillance

There is little data regarding recidivism and electronic monitoring and there is no evidence demonstrating its rehabilitative effect. The financial penalties associated with electronic monitoring disproportionately fall on people of color and people with lower incomes.¹² Electronic monitoring also raises significant privacy concerns because the data generated can be accessed by law enforcement and private companies, resulting in increased interactions between youth and the police.¹³ Additionally, the overly rigid conditions of electronic monitoring, such as obtaining approval before leaving home or holding youth responsible when the equipment breaks, make it difficult for youth to work, change their schedules, or respond to emergencies.

¹¹ *Conditions of Confinement for Incarcerated Youth Age 15 to 21 at Manson Youth Institution and York Correctional Institution*, OFF. CHILD ADVOCATE (Nov. 2020), available at <https://portal.ct.gov/-/media/OCA/OCA-Recent-Publications/OCA-Report-MYIYCI-Nov-2020.pdf>.

¹² Leah Mack, *Electronic Monitoring Hurts Kids and Their Communities*, JUVENILE JUST. INFO. EXCHANGE (Oct. 24, 2018), available at <https://jjie.org/2018/10/24/electronic-monitoring-hurts-kids-and-their-communities/>.

¹³ Kate Weisbrud, *Monitoring the Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297 (2015), available at <https://ilr.law.uiowa.edu/print/volume-101-issue-1/monitoring-the-youth-the-collision-of-rights-and-rehabilitation/>.

Section 6 provides for GPS monitoring in cases where there is a service gap while a child has yet to be adjudicated delinquent when cases involve violence or a repeat offense. This purported solution is not aimed at providing the kind of support that has been proven to be most effective at extricating kids from criminal legal system involvement,¹⁴ but instead is a traditional, criminal law control and monitoring response. Electronic monitoring does not lower incarceration rates, it is not rehabilitative, and it is not cost-effective. The ACLU-CT opposes Section 6's unnecessary and invasive attempt to surveil children.

Automatic Transfer to Adult Court

Children do not belong in adult prisons, ever. According to a recent state audit, an overwhelming majority of transferred boys, and all of the transferred girls, in the adult system during 2019 lived in families previously investigated for child abuse or neglect, often multiple times.¹⁵ The audit found that most boys in the system completed few or no programs while incarcerated.¹⁶ Young people will most likely be unable to change behaviors until their root issues and traumas are addressed in a rehabilitative, non-carceral setting.¹⁷ Connecticut disproportionately incarcerates youth of color at significantly higher rates than it does white youth.¹⁸ When comparing young people with similar crimes and past encounters with the justice system, those who entered the adult system were 30 percent more likely to be re-arrested after returning to their community than the young people who remained in the juvenile system.¹⁹

¹⁴ *Ending the Criminalization of Youth: One Investment at a Time*, CONN. JUVENILE JUST. ALLIANCE (June 2020), available

at <https://static1.squarespace.com/static/5b8413b445776e48dcfec417/t/5ef33ed080c2046beb6c0723/1592999680513/VSP+-+Ending+the+Criminalization+of+Youth%2C+One+Investment+at+a+Time.pdf>.

¹⁵ *Conditions of Confinement for Incarcerated Youth Age 15 to 21 at Manson Youth Institution and York Correctional Institution*, OFF. CHILD ADVOCATE (Nov. 2020), available at <https://portal.ct.gov/-/media/OCA/OCA-Recent-Publications/OCA-Report-MYIYCI-Nov-2020.pdf>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Lonn Lanza-Kaduce, Donna M. Bishop, Charles E. Fraizer & Lawrence Winner, *Changes in Juvenile Waiver and Transfer Provisions: Projecting the Impact in Florida*, 18 U. DENVER L. & POL'Y 137 (1996).

Section 7 greatly and unnecessarily expands the pool of juveniles to be automatically transferred to adult court, both by age and by offense. Under current law, juvenile courts must already automatically transfer juveniles between fifteen and seventeen years old if they are charged with Class A felonies and most Class B felonies, and prosecutors still retain the discretion to transfer cases to adult court that are not subject to immediate transfer.²⁰ Current law already subjects a wide swath of cases to be automatically transferred to adult court, and it is unlikely that increasing the number of cases transferred to adult court will result in any reduction of crime. Recidivism has not substantially increased over the past decade in Connecticut.²¹ Most juvenile repeat offenders commit lower-level misdemeanors, not felonies.²² Connecticut has reduced the number of children in juvenile detention, and the state's rate of recidivism has not increased.²³

The charge to lower the age in which children can be put into the adult system to merely thirteen—middle school-aged children—is extremely concerning. Evidence has demonstrated that delinquency referrals to juvenile court for children fourteen and under were quite low.²⁴ Section 7 also impermissibly allows children to be held for over six hours if a detention order is being sought but fails to specify a maximum amount of time that the child can be detained. Allowing the indefinite detention of children while law enforcement seeks a court order to detain the child is deeply unethical, especially when considering police can detain children as young as ten years old.

Additionally, this bill changes the standard that courts follow when determining when to transfer a juvenile to adult court. Rather than require courts to consider *both*

²⁰ See Conn. Gen. Stat. § 46b-127 (2019).

²¹ Haddadin, *supra* note 9.

²² *Id.*

²³ *Id.*

²⁴ *Facts and Figures on Connecticut's Juvenile Justice System*, CONN. OFF. POL'Y & MGMT. (last accessed Mar. 14, 2022), available at <https://portal.ct.gov/OPM/CJ-JJYD/Facts-About-Juvenile-Justice/CT-Facts--Figures-Graph-7>.

the best interests of the child *and* the best interests of society, the bill changes this language to only require consideration of the child's interests *or* society's interests. This cuts against the rights of juveniles by permitting courts to potentially disregard the child's best interests wholesale, instead of compelling courts to weigh the two interests together. The ACLU-CT strongly opposes any expansion of the state's ability to put our state's children into the adult carceral system.

Assessment of Criminal Justice

The ACLU-CT supports efforts to study the status of our criminal legal system to glean ways to reduce incarceration in this state, especially amongst our youngest. But, it is essential for anybody dedicated to the study of our criminal laws and carceral system to lift up the voices of those directly impacted. We already have a body dedicated to the study of our juvenile justice system: the Juvenile Justice Policy and Oversight Committee (JJPOC). The JJPOC meets frequently—year-round as a group with subcommittees that meet monthly with the goal of studying how our legal system affects our youth. The JJPOC, most importantly, ensures the representation of directly impacted people in their work.

The ACLU-CT opposes Section 7 because there is simply no need for it. What is proposed is a watered-down version of the JJPOC, a committee that does excellent and thorough work on the juvenile justice system in Connecticut. Therefore, the working group proposed in Senate Bill 386 is duplicative of the JJPOC, yet it meets less often, with far fewer appointees, and no community voice. Convening a committee to study the criminal legal system in Connecticut while wholesale excluding those with lived experience and criminal justice advocates is nonsensical and reckless. Even further, this bill actively seeks to undermine the excellent work done by the JJPOC by eliminating a number of reports to the JJPOC that already exist in law without justification.

Conclusion

The ACLU-CT is committed to ending mass incarceration, especially for our youngest and most vulnerable. House Bill 5418 will increase racial injustice and incarceration by instituting draconian punishments against young children, even though evidence-based research disproves the efficacy of these policies. Youth of color are already more likely to be transferred to adult court than white youth in Connecticut.²⁵ Young people who are entangled with the criminal legal system need resources and support, not increased surveillance and exposure to the adult criminal legal system. Yet those are the “solutions” available in House Bill 5418. This bill additionally serves as an attempt to roll back successful reforms to juvenile justice and carve out more people from automatic erasure. Accordingly, the ACLU-CT strongly opposes House Bill 5418 and urges this Committee to do the same.

²⁵ *Conditions of Confinement for Incarcerated Youth Age 15 to 21 at Manson Youth Institution and York Correctional Institution*, OFF. CHILD ADVOCATE (Nov. 2020), available at <https://portal.ct.gov/-/media/OCA/OCA-Recent-Publications/OCA-Report-MYIYCI-Nov-2020.pdf>.