

January 6, 2022

To: Justice Andrew MacDonald
Chairman, Rules Committee of the Superior Court

From: Honorable Dawne Westbrook, Chief Administrative Judge, Juvenile Matters

Re: Proposed Amendments to Practice Book Sections 27-1A and 27-4a, re. Non-Judicial Case Handling

Dear Justice McDonald,

I'm writing to clarify the intent of the above proposal and to respond to the concerns raised by Chief State's Attorney Richard Colangelo and State Victim Advocate Natasha Pierre.

This proposal was submitted by Judge Conway this past May and first considered by the Rules Committee in September. I believe there is some misunderstanding about the effect that the proposed changes will have, as articulated below.

Purpose:

The purpose of these proposed changes is to move the Juvenile Court in the direction of **Risk-Based Case Handling**. Risk-Based Case Handling requires an early screening of each case, using a validated risk assessment tool, to determine how a case should be handled. There is ample research-based evidence that a risk-based approach to case handling, rather than a solely charge or juvenile history-based approach, is more effective at deterring future crime.

Current language in the Practice Book restricts the type of cases that can be handled nonjudicially based on charge and criminal history; these proposed changes would amend to Practice Book to base the handling decision on a risk-needs assessment rather than charge or juvenile history. The proposed change does not eliminate any consideration of charge or juvenile history. Those elements will be considered when determining risk.

Highlights of this Approach:

Should these Practice Book revisions go into effect, the following will be implemented:

- Juvenile Probation will screen all juvenile referrals for risk of recidivism and behavioral health needs to identify high, medium and low-risk cases.
- This will allow Juvenile Probation Officers to match youth both pre- and post-disposition with the most appropriate level, type, and quality of supervision and services to reduce future reoffending.
- Victims' rights will be preserved throughout. Victims will receive written notification of their rights, even in cases diverted from formal system intervention. Victims wishing to participate in restorative justice interventions will be offered the opportunity to do so.

Response to the Concerns Chief State's Attorney Colangelo raised in his letter:

1. **Concern Raised:** *A child who has had cases handled non-judicially twice previously should have to go to court. If the prior two non-judicial interventions did not work, our experience shows a third is unlikely to change meaningfully the juvenile's behavior. We also question how a juvenile who has admitted delinquency twice previously could be considered at low risk of reoffending.*

RESPONSE: Years of research shows that risk assessments are a much better way to predict whether a juvenile is likely to re-offend, as opposed to the static number of previous Nonjudicial cases.

2. **Concern Raised:** *Similarly, we disagree that a juvenile who was adjudicated delinquent previously should be considered at low risk for reoffending.*

RESPONSE: One prior adjudication is not an accurate predictor of future offending. Many of our adjudicated juveniles are assessed as low to moderate risk (Tier 1-2) and do not re-offend. The assessment is a much more accurate approach.

3. **Concern Raised:** *Due to the recent dramatic increase in car thefts, many accompanied by violence, the Division believes that these cases demand a more structured supervision through formal court proceedings, not less.*

RESPONSE: The risk assessment takes violence into account, so violent offenses be handled judicially.

In terms of the effectiveness of "formal court proceedings" versus nonjudicial handling where a Juvenile Probation Officer oversees the case: Behavior change is not determined by case status. The judicial process takes longer and the result, probation supervision and services, are the same result as if it were a Nonjudicial case. Nonjudicial supervision is risk-level based, has a case plan, services and a risk reduction plan. Behavior change occurs because of these things, not because of a judicial adjudication.

4. **Concern Raised:** *The Division believes strongly that cases in which a child possesses a firearm should be handled formally in court to assure public safety given the dramatic increase in shootings and homicides.*

RESPONSE: Possession of a firearm is on the list of violent felonies and those cases will continued to be handled as judicial cases.

5. **Concern Raised:** *The Division also has concerns with the language that only cases where children are deemed to be at the highest risk will be handled in court. This would prevent judicial intervention that could help juveniles who are at moderate risk.*

RESPONSE: Research shows that judicial intervention is best allocated to those cases assessed at the highest risk, not to moderate risk cases. In addition, the interventions that are available in Judicial cases are also available in Nonjudicial cases.

Response to the Concerns State Victim Advocate Natasha Pierre raises in her letter:

- 1. Concern Raised:** *The Office of the Victim Advocate opposes the efforts to divert criminal matters from the judicial systems when there are crime victims involved.*

Most cases that will be diverted will not involve a victim. In those that do, crime victim's input and needs will be taken into consideration. They will not be excluded from the process.

- 2. Concern Raised:** *Removing these cases from the court eliminates the victims' ability to practice their constitutional rights.*

First, the intent of this proposal is NOT to remove cases from Juvenile Court – it is to allow the handling decision to be made through a risk assessment. Nonjudicial cases in Juvenile Court remain in court and are overseen by Juvenile Probation Officers. Juvenile Probation Officers are located in the courts.

Second, it is not true that diverting a case from court (not Nonjudicial handling) eliminates the victims' ability to practice their constitutional rights. The Juvenile Probation Victim Policy applies equally to both Judicial and Nonjudicial cases. For cases involving a victim diverted from court to a Youth Service Bureau, the Youth Service Bureau allows for victim input and participation.

- 3. Concern Raised:** *Similar recommendations have failed legislatively.*

I am not aware of any recent legislative recommendations that addressed the matter of Judicial vs. Nonjudicial handling. In fact, the case handling decision-making process governed by the Connecticut Practice Book and not the statutes.

- 4. Concern Raised:** *Proponents of the diversionary theory claim that the "restorative justice" process will address crime victim's concerns; however, they have repeatedly failed to produce any evidence that the diversionary plans would honor the right or Connecticut crime victims or benefit them in any way.*

This is not true. While there may not be consensus among all crime victims' groups in favor of restorative practices, there is ample anecdotal evidence of the benefits that it can provide to crime victims. In addition, a number of studies of restorative practices are ongoing; preliminary results are positive.

It's important to note that the restorative process honors victims' wishes – no one is forced to participate in the process. Many victims who have participated have indicated that they found the process beneficial. This is because the adversarial system of justice, built to ensure fairness in fact-finding through trial, is too narrow a tool to provide fairness and accountability in cases where guilt is not contested – the majority of court cases. Restorative practices can fill this gap.

Thank you for your consideration.

Dawne Westbrook
Chief Administrative Judge, Juvenile Matters