To: Judge Patrick Carroll
From: Bernadette Conway
Re: P.A. 17-02 Sec. 321-323
Date: 11/9/17

Sec. 321 gives the court the discretion to sentence a child to a period of probation that may include 'a period of placement in a secure, limited secure or nonsecure residential facility.'

I assume a 'secure' facility is a physically locked facility and a 'nonsecure' facility is staff secured. I am unclear what is meant by a 'limited secure' facility.

Sec. 322 of the new public act requires the J.B. to expand its JJ services to 'include a comprehensive system of graduated responses with an array of services, sanctions and secure placements. . .to use to provide individualized supervision, care, accountability and treatment to any child.' A common sense interpretation of this legislative language readily lends itself to establishing a mental and behavioral health continuum of care model; the clinical needs of the convicted child would dictate, if, where and for how long a child is placed in the system.

STAFF SECURED FACILITIES

The Branch has a long history of making available staff secured treatment beds. Enlarging the range and scope of staff secured treatment beds for kids on probation is doable, given sufficient time and resources. Judges routinely fashion orders of probation (post conviction) to include testing and treatment as deemed appropriate by probation, including in patient treatment if needed. I envision that the predispositional study that probation prepares for sentencing will make recommendations about contingent use of the nonsecure beds. If there is no agreement about such an order, there may have to be an evidentiary sentencing hearing. Other than a potential increase in courtroom activity I do not foresee these type of cases drastically impacting court time.

If a child living in the community were not to 'willingly' enter a staff secured treatment bed as ordered, probation's recourse would be to apply for a violation of probation warrant. Whether a child would remain in the community pending the outcome of the VOP would depend on whether pretrial detention is warranted. I would respectfully push back against any policy, practice or legislation that would permit 'deterrence' (see below) to be a viable consideration if and when a VOP based detention order is sought.

SECURED (LOCKED) FACILITIES

Sec. 322 of the Public Act mandates judicial to "make such secure placements in a manner consistent with public safety in order to (1) deter any child from the commission of any further delinquent act, and (2) ensure that the safety of any other persons will not be endangered."

Presently, virtually all delinquency cases resolve via a plea bargain and it is not uncommon for the more serious or repeat offenders' cases to be the subject of productive judicial pretrials. In order to achieve the above two enumerated mandates (deterrence and public safety), absent some

type of gate keeping process (that all judges would be required to abide by) it may be that judicial discretion would quickly overrun bed capacity. Policy, practice and/or legislation may be needed to determined who and why a child should exit or 'step down' from a locked facility–is it a clinically driven decision or a judicial (justice based) decision and what is the distinction?

Under our present delinquency system, often when a child is serving 'dead time' in detention (not getting any pretrial detention time credited to his ultimate period of commitment (18 months or 4 years) said child often accepts a plea bargain. With this new law, I can see something similar happening: by agreement, the child is placed in a secured, locked facility. (Assuming we have addressed the capacity issue and/or locked is the most clinically appropriate placement or level of care for the child). But what happens when a convicted child placed on probation (who was not initially placed in a secured facility or was so placed but subsequently released) does 'something' that 'someone' perceives as a 'public safety' issue or 'someone' for 'deterrence' purposes requires the child placed in a locked facility? The closest corollary I can think of is the present day committed delinquent out in the community (or in a staff secured congregate care facility) who violates parole. The child's parole officer may (in theory) summarily revoke parole. The child however, is entitled to an administrative parole hearing within days of the revocation. What mechanisms will judicial put in place to timely, accurately and efficiently safeguard the convicted child's loss of liberty with the need to protect the public and/or to carry out our deterrence obligation? (Using deterrence as a reason to detain, according to the national experts does not work)

Will all of our contracted residential beds afford the same level of care? If so, does that mean that a child on probation who needs a higher level of care, could not summarily be placed in a locked secure bed–meaning that a child can 'step down' to a staff secured facility or be released back home but not, without some intervening or oversight event, be 'stepped up' to a lock bed under the premise of needing care not otherwise available?

DETENTION

Over the past eleven months there has been a significant reduction in the detention population. As we move forward we should at all costs avoid detention becoming a holding forum for children who are unable, for a variety of reasons, to have their issues addressed elsewhere. The timing (July 1st) is not ideal: summer months historically brings a rise in the detention population. (Schools are not in session, longer, hotter days will kids out and about with too much free time) Capacity and who is vested with the discretion to place and move children through the system are obviously critical issues.

COMM. KATZ MEMO OF NOVEMBER 7, 2017

Finally, if I could ask for some direction on a more imminent issue. In an email Comm. Katz sent to her staff on November 7th, she informed them of her decision to close CJTS to new admissions as of Jan. 1st. In the second paragraph she writes: "I have notified the Juvenile Judges and asked them to please not place our staff in the awkward position of seeking admission after that date. [Jan. 1]." Under our present statutory framework, judges do not have the ability to order a child to be placed at CJTS. Although we collaborate with DCF in determining what children are appropriate to go there, ultimately by statute, judges may only commit a child to the

Commissioner's care and custody and the Comm. retains discretion about CJTS placement. Is it the Branch's position that until the law changes, judges, as they continue to deal with daily cases that come before them, should continue to adhere to the law presently in effect, meaning that when appropriate, commit a child to the Commissioner's care and custody, understanding that where that child is placed is up to the Commissioner?

Let me know if I can be of any further assistance.