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# *Committee Meeting*

of

## SENATE LAW AND PUBLIC SAFETY COMMITTEE

*Senate Bill No. 2003*  
*Makes certain reforms to juvenile justice system*

*Senate Bill No. 2718*  
*Requires Attorney General to appoint special prosecutor*  
*when criminal complaint is filed against law enforcement officer*

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**LOCATION:** Committee Room 11  
State House Annex  
Trenton, New Jersey

**DATE:** March 12, 2015  
10:30 a.m.

**MEMBERS OF COMMITTEE PRESENT:**

Senator Linda R. Greenstein, Chair  
Senator Peter J. Barnes III, Vice Chair  
Senator Nicholas J. Sacco  
Senator Christopher “Kip” Bateman  
Senator James W. Holzapfel



**ALSO PRESENT:**

Wendy S. Whitbeck  
*Office of Legislative Services*  
*Committee Aide*

Keri Salerno  
*Senate Majority*  
*Committee Aide*

Frank Dominguez  
*Senate Republican*  
*Committee Aide*

***Excerpt Recorded and Transcribed by***  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey

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LINDA R. GREENSTEIN  
Chair

PETER J. BARNES III  
Vice-Chair

NICHOLAS J. SACCO  
CHRISTOPHER "KIP" BATEMAN  
JAMES W. HOLZAPFEL

WENDY S. WHITBECK  
Office of Legislative Services  
Committee Aide  
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**New Jersey State Legislature**  
**SENATE LAW AND PUBLIC SAFETY COMMITTEE**  
STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

**REVISED  
COMMITTEE NOTICE**

**TO: MEMBERS OF THE SENATE LAW AND PUBLIC SAFETY COMMITTEE**

**FROM: SENATOR LINDA R. GREENSTEIN, CHAIRWOMAN**

**SUBJECT: COMMITTEE MEETING - MARCH 12, 2015**

*The public may address comments and questions to Wendy S. Whitbeck, Committee Aide, or make bill status and scheduling inquiries to Michelle L. McArthur, Secretary, at (609)847-3870, fax (609)777-2715, or e-mail: OLSAideSLP@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.*

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**The Senate Law and Public Safety Committee will meet on Thursday, March 12, 2015 at 10:30 AM in Committee Room 11, 4th Floor, State House Annex, Trenton, New Jersey.**

The following bills will be considered:

S-184 Whelan A-1338 (1R) Quijano/Cryan/Caputo	Establishes pilot program within Office of Emergency Management to provide zero-interest loans to certain gas stations that install appropriate wiring for generators.
S-2003 Pou	Makes certain reforms to juvenile justice system.
S-2334 Cunningham	Directs the collection of recidivism data for adults sentenced to a period of probation.
S-2583 Allen	Upgrades simple assault to aggravated assault if committed against certain law enforcement officers and employees because of job status.

(OVER)

Senate Law and Public Safety Committee

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March 12, 2015

- S-2735                      Permits municipality to enact ordinance allowing voluntary registration of private outdoor video surveillance cameras.  
Rice
- A-3843 (1R)  
Caputo/Giblin/Tucker/  
Johnson/Mainor/Sumter
- \*S-2787                      Establishes vocational training pilot program in DOC; provides for inmate compensation for education and workforce training participation.  
Sweeney

FOR DISCUSSION ONLY:

- \*S-2718                      Requires Attorney General to appoint special prosecutor when criminal complaint is filed against law enforcement officer.  
Barnes/Rice

Issued 3/6/15

\*Revised 3/11/2015 – S-2787 added and S-2718 added FOR DISCUSSION ONLY

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website <http://www.njleg.state.nj.us> or call 800-792-8630 (toll-free in NJ) or 609-847-3905.

**SENATE, No. 2003**

**STATE OF NEW JERSEY**

**216th LEGISLATURE**

INTRODUCED APRIL 28, 2014

**Sponsored by:**

**Senator NELLIE POU**

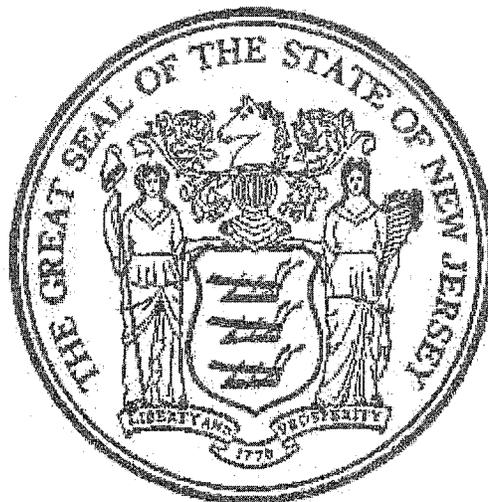
**District 35 (Bergen and Passaic)**

**SYNOPSIS**

Makes certain reforms to juvenile justice system.

**CURRENT VERSION OF TEXT**

As introduced.



S2003 POU

2

1 AN ACT concerning juvenile justice and amending and  
2 supplementing various parts of the statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. Section 7 of P.L.1982, c.77 (C.2A:4A-26) is amended to read  
8 as follows:

9 7. a. On motion of the prosecutor, the court shall, without the  
10 consent of the juvenile, waive jurisdiction over a case and refer that  
11 case from the Superior Court, Chancery Division, Family Part to the  
12 appropriate court and prosecuting authority having jurisdiction if it  
13 finds, after hearing, that:

14 (1) The juvenile was **[14]** 16 years of age or older at the time of  
15 the charged delinquent act; and

16 (2) There is probable cause to believe that the juvenile  
17 committed a delinquent act or acts which if committed by an adult  
18 would constitute:

19 (a) Criminal homicide other than death by auto, strict liability  
20 for drug induced deaths, pursuant to N.J.S.2C:35-9, robbery which  
21 would constitute a crime of the first degree, carjacking, aggravated  
22 sexual assault, sexual assault, aggravated assault which would  
23 constitute a crime of the second degree, kidnapping, aggravated  
24 arson, or gang criminality pursuant to section 1 of P.L.2007, c.341  
25 (C.2C:33-29) where the underlying crime is enumerated in this  
26 subparagraph or promotion of organized street crime pursuant to  
27 section 2 of P.L.2007, c.341 (C.2C:33-30) which would constitute a  
28 crime of the first or second degree which is enumerated in this  
29 subparagraph; or

30 (b) A crime committed at a time when the juvenile had  
31 previously been adjudicated delinquent, or convicted, on the basis  
32 of any of the offenses enumerated in subsection a.(2)(a); or

33 (c) A crime committed at a time when the juvenile had  
34 previously been sentenced and confined in an adult penal  
35 institution; or

36 (d) An offense against a person committed in an aggressive,  
37 violent and willful manner, other than an offense enumerated in  
38 subsection a.(2)(a) of this section, or the unlawful possession of a  
39 firearm, destructive device or other prohibited weapon, arson or  
40 death by auto if the juvenile was operating the vehicle under the  
41 influence of an intoxicating liquor, narcotic, hallucinogenic or habit  
42 producing drug; or

43 (e) A violation of N.J.S.2C:35-3, N.J.S.2C:35-4, or  
44 N.J.S.2C:35-5; or

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

S2003 POU

1 (f) Crimes which are a part of a continuing criminal activity in  
2 concert with two or more persons and the circumstances of the  
3 crimes show the juvenile has knowingly devoted himself to criminal  
4 activity as a source of livelihood; or  
5 (g) An attempt or conspiracy to commit any of the acts  
6 enumerated in paragraph (a), (d) or (e) of this subsection; or  
7 (h) Theft of an automobile pursuant to chapter 20 of Title 2C of  
8 the New Jersey Statutes; or  
9 (i) Possession of a firearm with a purpose to use it unlawfully  
10 against the person of another under subsection a. of N.J.S.2C:39-4,  
11 or the crime of aggravated assault, aggravated criminal sexual  
12 contact, burglary or escape if, while in the course of committing or  
13 attempting to commit the crime including the immediate flight  
14 therefrom, the juvenile possessed a firearm; or  
15 (j) Computer criminal activity which would be a crime of the  
16 first or second degree pursuant to section 4 or section 10 of  
17 P.L.1984. c.184 (C.2C:20-25 or C.2C:20-31); and  
18 (3) Except with respect to any of the acts enumerated in  
19 subparagraph (a), (i) or (j) of paragraph (2) of subsection a. of this  
20 section, or with respect to any acts enumerated in subparagraph (e)  
21 of paragraph (2) of subsection a. of this section which involve the  
22 distribution for pecuniary gain of any controlled dangerous  
23 substance or controlled substance analog while on any property  
24 used for school purposes which is owned by or leased to any school  
25 or school board, or within 1,000 feet of such school property or  
26 while on any school bus, or any attempt or conspiracy to commit  
27 any of those acts, the State has shown that the nature and  
28 circumstances of the charge or the prior record of the juvenile are  
29 sufficiently serious that the interests of the public require waiver.  
30 b. (Deleted by amendment, P.L.1999, c.373).  
31 c. An order referring a case shall incorporate therein not only  
32 the alleged act or acts upon which the referral is premised, but also  
33 all other delinquent acts arising out of or related to the same  
34 transaction.  
35 d. A motion seeking waiver shall be filed by the prosecutor  
36 within **[30] 60** days of receipt of the complaint. This time limit  
37 shall not, except for good cause shown, be extended.  
38 e. **[If the juvenile can show that the probability of his**  
39 **rehabilitation by the use of the procedures, services and facilities**  
40 **available to the court prior to the juvenile reaching the age of 19**  
41 **substantially outweighs the reasons for waiver, waiver shall not be**  
42 **granted] A motion for waiver shall not be granted unless the**  
43 **prosecution proves, by clear and convincing evidence, that the**  
44 **reasons for waiver outweigh the probability of the juvenile's**  
45 **rehabilitation by the use of the procedures, services and facilities**  
46 **available to the court prior to the juvenile reaching the age of 26.**  
47 This subsection shall not apply with respect to a juvenile 16 years  
48 of age or older who is charged with committing any of the acts

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1 enumerated in subparagraph (a), (i) or (j) of paragraph (2) of  
2 subsection a. of this section or with respect to a violation of  
3 N.J.S.2C:35-3, N.J.S.2C:35-4 or section 1 of P.L.1998, c.26  
4 (C.2C:39-4.1).

5 f. The Attorney General shall develop for dissemination to the  
6 county prosecutors those guidelines or directives deemed necessary  
7 or appropriate to ensure the uniform application of this section  
8 throughout the State.

9 (cf: P.L.2007, c.341, s.3)

10

11 2. (New section) When the court imposes a term of incarceration  
12 pursuant to section 25 of P.L.1982, c.77 (C.2A:4A-44), it shall  
13 consider the rehabilitative, treatment, and educational needs of the  
14 juvenile and may order the Juvenile Justice Commission to provide  
15 the juvenile with the following services and assistance to address  
16 these needs:

17 a. Academic instruction and academic counseling, consistent  
18 with State and federal law;

19 b. Vocational education and training;

20 c. Post-secondary educational opportunities, including but not  
21 limited to enrollment assistance and college-level instruction;

22 d. A suitable program for the treatment of alcohol or narcotic  
23 abuse, provided that the juvenile has been determined to be in need  
24 of such services;

25 e. Mental health treatment or counseling;

26 f. Medical and dental care and treatment;

27 g. Regular contact through telephone calls and in-person visits  
28 with the juvenile's parents, guardians, and other family members,  
29 including transportation assistance upon showing a demonstrated  
30 need for this assistance;

31 h. Work programs that are designed to provide job skills and  
32 specific employment training to enhance the employment readiness  
33 of the juvenile;

34 i. Re-entry services to assist the juvenile in returning to the  
35 community; and

36 j. Any other services or assistance reasonably related to the  
37 rehabilitation of the juvenile.

38

39 3. Section 26 of P.L.1982, c.77 (C.2A:4A-45) is amended to  
40 read as follows:

41 26. Retention of jurisdiction.

42 a. The court shall retain jurisdiction over any case in which it  
43 has entered a disposition under paragraph 7 of subsection b. or  
44 subsection c. of section 24 of P.L.1982, c.77 (C.2A:4A-43) or under  
45 section 25 of P.L.1982, c.77 (C.2A:4A-44) for the duration of that  
46 disposition of commitment or incarceration and may substitute any  
47 disposition otherwise available to it under section 24 of P.L.1982,  
48 c.77 (C.2A:4A-43) other than incarceration.

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1 b. Except as provided for in subsection a., the court shall retain  
2 jurisdiction over any case in which it has entered a disposition  
3 under section 24 of P.L.1982, c.77 (C.2A:4A-43) and may at any  
4 time for the duration of that disposition, if after hearing, and notice  
5 to the prosecuting attorney, it finds violation of the conditions of  
6 the order of disposition, substitute any other disposition which it  
7 might have made originally.

8 c. The court may by its order retain jurisdiction in any other  
9 case.

10 d. Notwithstanding the administrative grievance procedure set  
11 forth in regulations promulgated by the Executive Director of the  
12 Juvenile Justice Commission, the juvenile may petition the court for  
13 modification of the disposition pursuant to this section or to compel  
14 the Juvenile Justice Commission to comply with the terms and  
15 conditions of that disposition.

16 (cf: P.L.1995, c.280,s.13)

17

18 4. Section 7 of P.L.1995, c.284 (C.52:17B-175) is amended to  
19 read as follows:

20 7. a. Notwithstanding the Juvenile Justice Commission's  
21 responsibility for State secure juvenile facilities and State juvenile  
22 facilities and programs, the Department of Corrections, through  
23 agreement with the commission, shall provide central  
24 transportation, communication and other services required by the  
25 commission in connection with the operation of these facilities and  
26 the custody and care of juveniles confined in the facilities.

27 b. Notwithstanding the commission's responsibility for State  
28 secure juvenile facilities and State juvenile facilities, the  
29 Department of Children and Families shall provide care and  
30 custody for juveniles placed under the care and custody or  
31 committed to the department pursuant to paragraphs (5), (6) and (7)  
32 of subsection b. of section 24 of P.L.1982, c.77 (C.2A:4A-43).

33 c. The commission and the Commissioner of Children and  
34 Families shall formulate a plan to provide adequate and appropriate  
35 mental health services to juveniles in secure juvenile facilities and  
36 juvenile facilities operated by the commission. The commission  
37 and the Commissioner of Children and Families shall jointly adopt  
38 regulations pursuant to the "Administrative Procedure Act,"  
39 P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the procedures  
40 included in the plan. The plan shall include the following:

41 (1) Procedures for identifying juveniles in need of such services  
42 upon admission to and while in a facility, including procedures for  
43 evaluation;

44 (2) Procedures for providing appropriate and adequate treatment  
45 and for terminating treatment when it is no longer needed;

46 (3) Procedures for ensuring cooperation between employees of  
47 the commission and the Department of Children and Families; and

48 (4) Procedures for review and revision of the plan.

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1 d. The commission, through agreement with the Attorney  
2 General, the Commissioner of Corrections or the Commissioner of  
3 Children and Families as appropriate, shall arrange to provide such  
4 other services as may be required by the commission and may enter  
5 into other agreements as authorized pursuant to R.S.52:14-1 et seq.  
6 or any other law of this State.

7 e. The commission and the Commissioner of [the Department  
8 of] Corrections shall, consistent with applicable State and federal  
9 standards, formulate a plan setting forth procedures for transferring  
10 custody of any juvenile incarcerated in a juvenile facility who has  
11 reached the age of [16] 18 during confinement and whose  
12 continued presence in the juvenile facility threatens the public  
13 safety, the safety of juvenile offenders, or the ability of the  
14 commission to operate the program in the manner intended. The  
15 commission and the Commissioner of [the Department of]  
16 Corrections shall jointly adopt regulations pursuant to the  
17 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
18 seq.), establishing the procedures included in the plan. At a  
19 minimum, the plan shall require that:

20 (1) the juvenile be notified, in writing, of the proposed transfer  
21 and the factual basis supporting the transfer;

22 (2) the juvenile be provided with the opportunity to be heard and  
23 to present opposition;

24 (3) the juvenile be represented by counsel;

25 (4) the decision to proceed with the transfer be made by an  
26 impartial person; and

27 (5) written findings of the facts supporting the decision to  
28 proceed with the transfer accompany the decision.

29 (cf: P.L.2006, c.47, s.193)

30

31 5. (New section) a. A juvenile detained in, or sentenced to, a  
32 State juvenile correctional facility or county juvenile detention  
33 center shall not be subject to solitary confinement unless the  
34 juvenile poses an immediate and substantial risk of harm to others  
35 or to the security of the facility, and all other less-restrictive options  
36 have been exhausted.

37 b. A juvenile may be subject to solitary confinement only for the  
38 minimum time required to address the safety risk and for a period  
39 that does not compromise the mental and physical health of the  
40 juvenile, but in no case shall a juvenile be held in solitary  
41 confinement for more than eight consecutive waking hours without  
42 being released for at least two hours for recreation and exercise.

43 c. A juvenile who is 15 years of age or younger shall not be held  
44 in solitary confinement for more than two consecutive days. A  
45 juvenile who is 16 years of age or older but younger than 18 years  
46 of age shall not be held in solitary confinement for more than three  
47 consecutive days. A juvenile who is 18 years of age or older shall  
48 not be held in solitary confinement for more than five consecutive

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1 days. A juvenile shall not be held in solitary confinement for more  
2 than 10 total days in a calendar month.

3 d. Juveniles subject to solitary confinement shall continue to  
4 receive health, mental health, and educational services.

5 e. Each State correctional facility or county juvenile detention  
6 facility shall document, in aggregate, the use of solitary  
7 confinement, including the dates and duration of each occurrence,  
8 the reason for placement in solitary confinement, and the race, age,  
9 and gender of the juvenile placed in solitary confinement. If any  
10 health or mental health clinical evaluations were performed, it shall  
11 be affirmatively certified that the results of those evaluations were  
12 considered in any decision to place the juvenile in solitary  
13 confinement or to continue solitary confinement.

14 The aggregate data compiled pursuant to this subsection shall be:

15 (1) made available for public inspection pursuant to P.L.1963,  
16 c.73 (C.47:1A-1 et seq.), commonly known as the open public  
17 records act; and

18 (2) published on the official Internet website of the Juvenile  
19 Justice Commission.

20 f. This section shall not prohibit the use of single-person  
21 rooms or cells for the housing of juveniles in State correctional or  
22 county juvenile detention centers.

23 g. This section does not apply to juveniles in court holding  
24 facilities or adult facilities.

25 h. Nothing in this section shall be construed to conflict with  
26 any law providing greater or additional protections to juveniles.

27 i. For the purposes of this section, "solitary confinement" shall  
28 mean the placement of a juvenile in a State correctional facility or  
29 county juvenile detention center in a locked room or cell, alone or  
30 with one other person, for 22 to 24 hours per day. Solitary  
31 confinement shall not include confinement of a juvenile in a single-  
32 person room or cell for brief periods of locked-room confinement  
33 necessary for institutional operations, including, but not limited to,  
34 shift changes, showering, and unit movements.

35  
36 6. This act shall take effect on the first day of the seventh  
37 month following enactment.

38

39

40

STATEMENT

41

42 This bill makes various changes to this State's juvenile justice  
43 system. Specifically, the bill revises the State's law governing  
44 waiver; expands the jurisdiction of the family court over juveniles  
45 placed in correctional facilities; requires due process before a  
46 juvenile can be transferred to an adult correctional facility; and  
47 imposes restrictions on the use of solitary confinement of juveniles.

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1 Under the current juvenile waiver law, the Family Part of the  
2 Chancery Division of the Superior Court, upon motion of the  
3 prosecutor, must waive jurisdiction over a juvenile's case and refer  
4 that case to the appropriate adult court and prosecuting authority,  
5 without the juvenile's consent, if the following conditions are met:

- 6 (1) the juvenile is 14 years of age or older; and  
7 (2) there is probable cause that the juvenile committed a  
8 delinquent act which, if committed by an adult, would constitute  
9 one of the crimes enumerated in the juvenile waiver statute; and  
10 (3) the State establishes that the nature of the charge against the  
11 juvenile or the juvenile's prior record is sufficiently serious that  
12 waiver is in the public interest.

13 In accordance with these conditions, the court has discretion in  
14 determining whether the State has met its burden of proving that  
15 waiver of the juvenile to adult criminal court is in the public  
16 interest. Waiver will not be granted by the court if a juvenile can  
17 show that the probability of rehabilitation through the use of court  
18 services by the time he or she is 19 years old outweighs the reasons  
19 for waiver.

20 Under the bill, the age requirement for a juvenile case to be  
21 transferred from family court to adult criminal court is raised from  
22 14 years of age or older to 16 years of age or older. This is based  
23 on new research on adolescent brain development disproving the  
24 presumption that juveniles who commit crimes think like adults and  
25 cannot be rehabilitated.

26 The bill also raises the age by which the juvenile can be  
27 rehabilitated from 19 to 26. Also under the bill, the burden of proof  
28 would shift to the prosecution to prove, by clear and convincing  
29 evidence, that the reasons for waiver outweigh the probability of  
30 rehabilitation by age 26.

31 The bill increases the time allotted to file a waiver motion from  
32 30 to 60 days after receiving the complaint to allow adequate time  
33 for investigation.

34 Current law requires the Juvenile Justice Commission (JJC) and  
35 the Department of Corrections to formulate a plan setting forth  
36 procedures for transferring juveniles from a juvenile facility to an  
37 adult correctional facility upon reaching the age of 18 if the juvenile  
38 poses a threat to the public safety or the safety of other juvenile  
39 offenders, or impedes JJC operations. This bill requires that plan to  
40 include specific provisions to ensure that: (1) the juvenile is  
41 notified, in writing, of the proposed transfer and the factual basis  
42 supporting the transfer; (2) the juvenile is provided with the  
43 opportunity to be heard and to present opposition; (3) the juvenile  
44 be represented by counsel; (4) the decision to proceed with the  
45 transfer is made by an impartial person; and (5) written findings of  
46 the facts supporting the decision to proceed with the transfer  
47 accompany the decision.

48 The bill also expands the jurisdiction of the family court over

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1 juvenile cases. Under the bill, a court that imposes a term of  
2 incarceration is required to consider the rehabilitative, treatment,  
3 and educational needs of the juvenile. The bill gives the court  
4 discretion to order the JJC to provide the juvenile services and  
5 assistance, such as (1) academic instruction and academic  
6 counseling, consistent with State and federal law; (2) vocational  
7 education and training; (3) post-secondary educational  
8 opportunities, including but not limited to enrollment assistance and  
9 college-level instruction; (4) a suitable program for the treatment of  
10 alcohol or narcotic abuse if the juvenile has been determined to be  
11 in need of these services; (5) mental health treatment or counseling;  
12 (6) medical and dental care and treatment; (7) regular contact  
13 through telephone calls and in-person visits with the juvenile's  
14 parents, guardians, and other family members, including  
15 transportation assistance upon showing a demonstrated need for this  
16 assistance; (8) work programs that are designed to provide job skills  
17 and specific employment training to enhance the employment  
18 readiness of the juvenile; (9) re-entry services to assist the juvenile  
19 in returning to the community; and (10) any other services or  
20 assistance reasonably related to the rehabilitation of the juvenile.  
21 The bill also authorizes the juvenile to petition the court for  
22 modification of the disposition or to compel the Juvenile Justice  
23 Commission to comply with the terms and conditions of that  
24 disposition.

25 Finally, the bill places restrictions on the use of solitary  
26 confinement in State correctional facilities and juvenile detention  
27 centers. The bill prohibits a juvenile from being held in solitary  
28 confinement, unless the juvenile poses an immediate and substantial  
29 risk of harm to others or to the security of the facility, and all other  
30 less-restrictive options have been exhausted.

31 The bill specifically prohibits a juvenile from being held in  
32 solitary confinement for more than eight consecutive waking hours  
33 without being released for at least two hours for recreation and  
34 exercise. Under the bill, 14 and 15 year old juveniles are prohibited  
35 from being held in solitary confinement for more than two  
36 consecutive days; 16 and 17 year olds are prohibited from being  
37 held in solitary confinement for more than three consecutive days;  
38 and juveniles 18 years of age or older are prohibited from being  
39 held in solitary confinement for more than five consecutive days.  
40 Juveniles, regardless of their age, may not be held in solitary  
41 confinement under the bill for more than 10 total days in a calendar  
42 month. Juveniles are to continue to receive health, mental health,  
43 and educational services when being held in solitary confinement.

44 The bill requires that the use of solitary confinement be  
45 documented by the facility or center. The information is to include  
46 the dates and duration of each occurrence, the reason for the  
47 placement, race, age, and gender of the juvenile, and if any health  
48 or mental health clinical evaluations were performed, that the

**S2003 POU**

10

1 results were considered in the decision to place the juvenile in  
2 confinement. The aggregate data is to be made available to the  
3 public under the State's Open Public Records Act. The Juvenile  
4 Justice Commission also is required to publish the aggregate data  
5 on its website.

## SENATE, No. 2718

# STATE OF NEW JERSEY

## 216th LEGISLATURE

INTRODUCED FEBRUARY 5, 2015

**Sponsored by:**

**Senator PETER J. BARNES, III**

**District 18 (Middlesex)**

**Senator RONALD L. RICE**

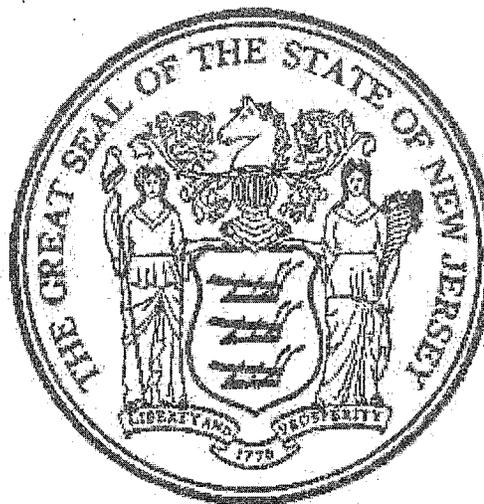
**District 28 (Essex)**

**SYNOPSIS**

Requires Attorney General to appoint special prosecutor when criminal complaint is filed against law enforcement officer.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 2/6/2015)

S2718 P.BARNES, III, RICE

2

1 AN ACT concerning law enforcement officer misconduct and  
2 supplementing Title 52 of the Revised Statutes.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. a. For the purposes of this section, a law enforcement officer  
8 means any person who is employed as a permanent full-time  
9 member of an enforcement agency, who is statutorily empowered to  
10 act for the detection, investigation, arrest, and conviction of persons  
11 violating the criminal laws of this State and statutorily required to  
12 successfully complete a training course approved by the Police  
13 Training Commission pursuant to P.L.1961, c.56 (C.52:17B-66 et  
14 seq.) or certified as being substantially equivalent to an approved  
15 course.

16 b. Whenever a criminal complaint is filed against a law  
17 enforcement officer in connection with the performance of the  
18 officer's duties, the Attorney General shall appoint a special  
19 prosecutor who shall use all reasonable and lawful diligence to  
20 investigate, and if appropriate, prosecute charges of misconduct and  
21 brutality.

22 c. A special prosecutor appointed pursuant to this section shall  
23 have all the power and authority of the county prosecutor, including  
24 the investigation of alleged crimes, the attendance before the  
25 criminal courts and grand juries of the county, the preparation and  
26 trial of indictments for crimes, the representation of the State in all  
27 proceedings in criminal cases on appeal or otherwise in the courts  
28 of this State. In addition, the special prosecutor shall have the  
29 power to appoint such temporary assistants, aides, investigators or  
30 other personnel and incur expenses as he shall deem necessary.

31  
32 2. This act shall take effect on the first day of the fourth month  
33 following enactment.

34

35

36

STATEMENT

37

38 This bill requires the Attorney General to appoint a special  
39 prosecutor to investigate law enforcement officers against whom a  
40 criminal complaint has been filed in connection with the  
41 performance of the officer's duties and prosecute charges of  
42 misconduct and brutality.

43 A special prosecutor appointed under the provisions of the bill  
44 would have all the power and authority of the county prosecutor.  
45 The special prosecutor is authorized to investigate the alleged  
46 crimes, appear before the county criminal courts and grand juries,  
47 prepare and try indictments, and represent the State in appeals of  
48 the criminal cases in State courts. The special prosecutor also may

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3

1 appoint temporary assistants, aides, investigators, or other personnel  
2 and incur any necessary expenses.

3 According to the sponsor, this bill is intended to address the  
4 perception of bias in police misconduct investigations. Because of  
5 recent high-profile decisions by grand juries not to charge police  
6 officers in cases of police-involved fatalities, the public does not  
7 trust county prosecutors to investigate the local police officers with  
8 whom they regularly work and rely upon to prepare cases and serve  
9 as witnesses. Under the bill, these cases would be handled by a  
10 special prosecutor.

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**(This is an excerpt of the Senate Law and Public Safety Committee Meeting held March 12, 2015, regarding the discussion of Senate Bill No. 2003 and Senate Bill No. 2718.)**

**SENATOR LINDA R. GREENSTEIN (Chair):** Now, we have one bill here for discussion only, and that's S-2718 -- Senator Barnes, Senator Rice.

And Senator Barnes, why don't you tell us about the bill.

**SENATOR PETER J. BARNES III (Vice Chair):** Yes, Madam Chair.

First of all, thank you for posting the bill for discussion purposes only.

I'm very proud to have Senator Rice as a co-sponsor, and also former Speaker Sheila Oliver as a prime sponsor in the Assembly.

The bill requires the Attorney General to appoint a special prosecutor when a criminal complaint is filed against law enforcement officers. And I'd like to talk about some premises and themes, first, before I get into the guts of the bill.

Obviously, the thoughts behind the bill stem from things that have gone on in the last year or so in Ferguson, Staten Island, and, historically, Los Angeles. I believe -- and I think many of my colleagues believe -- that there's an inherent conflict of interest when a local prosecutor or local county prosecutor has to get involved in charge, and present a case to the Grand Jury, and potentially try a case against an officer who is from the same county.

Now, I'm not going to mention any specific counties in particular, because I've learned a long time ago you never mention any towns, or counties, or even states. But imagine a situation where, in a local city or town in New Jersey, where an officer perhaps is a detective, or the officer has worked his or her way up through the ranks and works very closely with the local county prosecutor's office. And there's a relationship there that goes back many, many years. And that officer interacts with the local county investigators and has a long-standing relationship with the prosecutor and all the prosecutors who come in.

And now imagine that that officer, later in his or her career, is charged with a crime. That local prosecutor now is faced with, I believe, a dilemma where they have to prosecute -- present a case, gather evidence, present it to the Grand Jury, try the case against a fellow officer -- fellow law enforcement personnel. And I think this creates an inherent conflict of interest. I've always believed that it creates an inherent conflict.

And I want to make sure that we understand that we're talking about criminal complaints. We're not talking about civil complaints or excessive force. We're talking about behavior that rises to the level of criminal behavior.

Now, I know my good friend Steve Finkel is out there -- or somebody from the Attorney General is out there. And I know that potentially if the bill would ever pass and be signed into law that this potentially creates more work for the Attorney General's Office. And I'm not trying to create more work for that agency, but I do believe that the way that things are handled now is not the right way.

The bill I think needs some amendments; it needs some specific language in the following ways: I want to be very clear that my bill is intended to create a State Grand Jury -- not a local county Grand Jury. That when an officer is charged with a crime, at the very beginning, at the preliminary stage -- preliminary hearing stage, or entry of the charge stage -- immediately that case goes up to the State Grand Jury, not the county Grand Jury. So to the extent that the bill does not specify that, it needs to be cleaned up.

I also want to specify that if the bill were to be signed into law, that the special prosecutor would present the case to the State Grand Jury, not the local county Grand Jury, obviously, for reasons I just explained a minute ago. That essentially, once an officer is charged with a crime at the local level, immediately the case is transferred to the special prosecutor and is removed from the local entity -- the local agency.

People who I have great respect for -- whose names I won't mention right now, because I wouldn't think they would want me to -- any time I have these kind of bills, I go out and I ask people who I've worked with for years about what they think. One more amendment that I've been told the bill needs -- it's not my idea, so I don't want to claim credit -- but where a case is no-billed -- the case is presented to the State Grand Jury and there's no indictment -- that we do what New York has recommended; and that is that, upon motion, the Grand Jury transcript is immediately sent to any citizen who requests it and follows the proper procedures. Because in New York there's a concern -- I won't say in New Jersey, but in New York there's a concern that when a local officer is charged by the local prosecutor, sometimes the local prosecutor doesn't do the best job that they can and

doesn't really put their heart into the work. And if the case is no-billed, the citizens of the state need to be aware of that. And I think I would be willing to put that amendment into the bill.

I believe, and many of my fellow citizens believe-- In my hometown I've been approached by different ethnic groups -- African American, NAACP, local groups that represent my fellow Asian citizens -- and they've always felt that many times their complaints are not heard. And I've spoken about this already with my internal affairs bill. One of the primary concerns in Ferguson -- we've seen it this last week with the stories that have been breaking -- is that the local citizens feel -- it may be justified, it may not be justified -- but they feel that their complaints, for years, and years, and years, have gone unheeded, and that the local agency does not properly handle and address the concerns. And that is the reason for a lot of the things that have gone on since last July and August.

So I'm hoping that this bill would be strongly considered. I think we need it. I'm glad that Sheila Oliver and Ron Rice have signed on. I hope I can get some more of my colleagues to sign on.

Madam Chair, thank you for giving me the time to make a presentation.

SENATOR GREENSTEIN: Thank you, thank you.

Any members want to say anything? I have a few speakers--

SENATOR HOLZAPFEL: Oh.

SENATOR GREENSTEIN: Do you want to wait for them?  
Go ahead.

SENATOR HOLZAPFEL: Two issues that I -- obviously come to mind is why not just, with a legislative-- Let me date myself. I can

remember when the AG used to prosecute all State Police drunk driving cases in municipal court. Why not just tell the AG that they're responsible to do the job, without calling in a special prosecutor? Just turn it over to the Attorney General's Office? They have plenty of help and investigators, etc. Why do we need a special prosecutor?

SENATOR BARNES: Well, I'd be willing to consider that with you, sir. My main concern is to remove it from the county agencies. So as long as it gets removed from the county agencies and it goes to the State Grand Jury, I suppose we wouldn't need a special prosecutor.

SENATOR HOLZAPFEL: Because right now, unless things have changed, the Attorney General can supersede local county prosecutors. And, by the way, I have complete faith in the county prosecutor system. I think it works well. New Jersey is in the forefront when it comes to law enforcement because of the integration of investigative and prosecutorial all in one office. But at the end of the day, I think the Attorney General's Office could, as they do in other high-profile cases -- where, for example, prosecutors and investigators may be involved -- they just take the case over; they have the investigative staff, they're ready to rumble, so to speak, and take the case from day one.

SENATOR BARNES: Madam Chair, through you, my colleague, who I've known for many, many years and I have a lot of respect for, is a former prosecutor in Ocean County. Is that right, Senator?

SENATOR HOLZAPFEL: Guilty. (laughter)

SENATOR BARNES: Well, let me ask you an honest, respectful question. And it's a rhetorical question; you don't need to give an answer.

SENATOR HOLZAPFEL: All right, go ahead.

SENATOR BARNES: Based upon your experience when you were the County Prosecutor, can you see -- or, at least, intuitively recognize -- that, maybe not in most counties -- certainly not in Ocean when you were there, because I know your great reputation -- but can you see how citizens might say that there's an inherent conflict where a local prosecutor's office, with a full panoply of investigators and assistant prosecutors who worked with the local town-- Can you see how a local citizen who might not understand the system might feel that there's a conflict? Not just in the way it's prosecuted, but even when it's presented to the Grand Jury. Because on that Grand Jury, you might have local family members from police officers; you might have people who live in the town where the officer works. Can you at least see the potential conflict, whether you would agree with the bill or not?

SENATOR HOLZAPFEL: I absolutely can see it. And it always comes back to mind the prosecutor in New Jersey is the chief law enforcement officer in a county. He supersedes everyone else -- chiefs of police, sheriffs, etc. Theoretically, therefore, he would be considered-- And he's not the employer, obviously, of the local police, but he has control over the local police even though he's not, say, the chief in that particular town. Under the law he's the chief law enforcement officer. Therefore, I absolutely can see that, and I absolutely think -- I can't speak, obviously, for the prosecutors -- that having the ability to send something to the Attorney General's Office -- if they establish an efficient way of handling these matters so that it's not just sent to a black hole and forgotten about; but in reality when there is something that takes place, that there's a liaison so you

immediately get people on scene who can do the work that has to be done from the get-go. I mean, at the end of the day, the practical approach to this is if we've had some kind of improper shooting, or whatever it might be, how quickly do we get people on the scene who are "not tainted," so to speak -- meaning that they're locals. How quick can the Attorney General's Office put people on the street to gather the information that they're going to need to prosecute or not prosecute the case?

And I think the thought behind it is absolutely on the mark, but I don't think it's just a case of saying, "We want a special prosecutor." I think it has to be the superstructure; that the appropriate people -- the criminal investigation people from say, in my county, where it's the Sheriff -- well, if they're part of the process, are they out of it? Who's going to do the criminal investigation on site? Who's going to do the ballistics, who's going to do -- whatever. There has to be a superstructure established so that when this kind of a problem does arise, I suspect that there's a-- And I could equate it to years ago when the AG use to have -- I don't even know if they still have it -- they had an environmental unit. When we had an environmental problem, especially in some of the smaller counties, they didn't have anybody so they would call the Attorney General. They would have the equipment -- the trucks, etc. -- that would come down and take the site over and immediately investigate. So that kind of an approach, I think, might be successful.

I have to say -- and then I'll shut up -- the issue with the Grand Jury I have a problem with. Because the Grand Jury system is a secret-- It's meant to be secret so that people feel that they can testify, and testify without necessarily knowing that their names are going to be back out on

the street when transcripts are released. So I have a problem with that, that I think would probably require a lot more thought as to the consequences of just releasing transcripts.

But with that said, that's my two cents. Thank you.

SENATOR GREENSTEIN: I'm actually hearing, like, this could develop into something here. It sounds like there are some good ideas on both sides, so that's good.

We have Rob Nixon--

Oh, yes. Senator Sacco.

SENATOR SACCO: I don't see, in my experience, that the Attorney General is any more capable than a local prosecutor, and that you find bias on every level -- all the way down from the Federal down to the local. So you just don't know exactly where you're going to get your fairest hearing.

Second is, where's the threshold? Any police officer can get charged at any time from anyone and they're going to have to face some sort of a Grand Jury on a State level every time-- You know, any time they make an arrest, so many of them get charged. We're always paying out lawsuits, you know? So I really wonder how efficient this would be, or how more effective it would be. I could understand some high-level cases maybe shouldn't be handled on a local level. But they would have to be, to me, a very high threshold.

Thank you.

SENATOR GREENSTEIN: We have Rob Nixon, New Jersey State PBA, opposed.

ROBERT A. NIXON: Good morning, again.

For the benefit of the Committee, Senator Barnes and I had an opportunity to speak before the Committee meeting started. And I intend to continue the conversation today. Because the bill was added last night, I don't have the benefit of having the facts and figures; I think it would benefit the Committee, so I'm going to just speak generally today and do whatever follow-up the sponsor requests of us.

I think Senator Sacco and Senator Holzapfel mentioned a few of the concerns that we would (indiscernible). But I would say, generally speaking, that law enforcement, to someone who is watching it and who is not a participant in the process -- is sometimes what you see on the street looks ugly and unpleasant, but it certainly doesn't rise to the level of criminality. But that doesn't prevent a person from filing a criminal charge against an officer. And as Senator Sacco mentioned, it is, in some ways -- I wouldn't call it *routine* -- but it is a strategy in some cases to have things dismissed, or in another area you will have -- and I can speak from my experience in the PBA -- prosecutors aren't afraid to indict a cop. Even when all the evidence seems to point in the other direction, indictments happen. And you do find officers facing trial, and some of them are found guilty, and many are found innocent in those cases. But the process is there, it works.

The bill, as it stands right now, is repetitive of that process. We don't find a problem of collusion between the county prosecutor and the local law enforcement agency. And if a prosecutor felt that there was a problem, or things were a little too close -- you had a drunk driving task force and people were working well together, and somebody gets involved in an accident -- "Well, geez, you guys worked a little too closely" -- they can

farm that out as it is right now. I think the mechanism exists today to prevent that kind of collusion that the sponsor spoke of.

And as it relates to community issues -- you know, thankfully we haven't had a real hot-button, CNN, Fox News sitting in everybody's backyard type of issue here in the state, and God willing, we won't. But I think that when community relation issues come up, that's an obligation that every municipality, every law enforcement agency has when they have a diverse community, or you have a law enforcement agency that has a lot responsibility in a municipality -- to really do a better job in community relations. We talk about that all the time. There are number of special instances I know where the PBA, as an organization -- not necessarily as a police department, but as the PBA -- does a lot of community work in many, many towns around the state to try and build those relationships. Because they know that everybody is better off when you look at a police officer in a positive light than you do in a suspicious light. It is certainly in all of our best interests to make sure that happens.

So as the bill reads right now, certainly we have a number of practical concerns. Certainly, in terms of the numbers of people who would do this, and cost attached to it that would do this, and having officers who now have to wade through a process that has to go through the State. And if they're understaffed, that delay means an officer is out of work -- suspended without pay for a longer period of time.

There are a lot of different things that are attached to the back of this that we'll be examining. But Senator Barnes knows, as a long-time friend to the PBA, that there's -- we're always a phone call away and we'll be following up on this with him.

SENATOR GREENSTEIN: Great, thank you.

Any questions? (no response)

MR. NIXON: Thank you.

SENATOR GREENSTEIN: And we also have Alexander Shalom, American Civil Liberties Union of New Jersey, in favor.

ALEXANDER SHALOM, Esq.: Thank you, Chairwoman Greenstein, members of the Committee. Senator Barnes, thank you for this bill.

I'm here on behalf of the ACLU to speak in support of this bill. And I think it's important to conceptualize the benefits of this bill in two very related, but yet distinct camps. One is, is that it prevents actual conflicts -- the conflicts about which Senator Barnes was speaking. But perhaps more importantly is, it prevents the appearance of a conflicts. It gives the perception of legitimacy. Even if the former process was legitimate, we know the communities do not always think so.

And as my friend Mr. Nixon was talking about, everyone benefits when communities believe that police officers are acting legitimately. When they think that the investigation of a police officer's conduct is being done in a robust way that makes victims more likely to come forward, witnesses more likely to come forward. The cooperation aids public safety, simply.

This is-- The idea of bringing independent prosecutors when police are involved in potentially criminal activity is a best practice. It is exactly what was recommended by the recent report of the President's Task Force on 21st Century Policing, and that's both because it's the right thing to do, and because it's perceived as the right thing to do.

We need to be clear on a couple of things: This bill does not strip police officers of any of the due process protections that they are entitled to under the Constitution, for which we fight. They are still not going to be indicted until a Grand Jury -- often called the *conscience of the community* -- decides that there's probable cause to believe that they have committed a criminal offense. Were those protections removed from police officers, we couldn't support this bill; but they're still entitled to the same protections. We just ensure that the people bringing the case to the Grand Jury -- and, ultimately, if the Grand Jury indicts, prosecuting this case -- are sufficiently removed from them to have both actual independence and the perception of independence.

And for that reason, we urge this Committee, when the time comes, to support the bill.

SENATOR GREENSTEIN: Thank you.

Any questions or comments? (no response)

Okay, thank you very much.

SENATOR SACCO: I do have something to say.

SENATOR GREENSTEIN: Sorry? Oh, I'm sorry; I didn't see. Sorry.

SENATOR SACCO: If a Grand Jury wanted to indict you right this second, they could do it, and you've done nothing but speak here. That's how it operates; we know and we've always heard a prosecutor say, "I could indict a ham sandwich." So the safety of a Grand Jury isn't really as sacrosanct as you're making it sound. To strip all police of their powers, to make them afraid to act on behalf of public safety, could be the bad side of this bill. So I look at this and see it as a very flawed situation right now;

I believe it needs a lot of work. I believe it needs a high threshold. I think there are some cases that should be heard outside of the county; but they should be rare and we should not have our police crippled so that they can't respond -- they're concerned about whether they're going before some Grand Jury up on the State level every time a citizen feels they were wronged.

Thank you.

MR. SHALOM: If I might, briefly-- For example, the President's Task Force on 21st Century Policing -- they call for the independent prosecutors whenever there's a police-involved shooting, a death in custody, and in a couple of other instance. Not every criminal complaint, so that's something that could be considered.

And I agree, right, that the ham sandwich analogy -- which is often referenced -- is a true one. But I think there's an inherent conflict in something you're saying, Senator Sacco, most respectfully, which is: if the fear is that when we have an independent prosecutor, police will be hamstrung and unwilling to do their jobs, that suggests that they believe that there's a protection in the current system that's preventing them from being prosecuted when they commit actual wrongdoing. And so it can't be both ways; it has to either be the system is actually working or it's not. And I think we've seen enough references in the last year to show that police nationally -- the system is not working.

SENATOR SACCO: There are so many arrests that take place; so many instances that take place nationwide. We're looking at a field. And that's what I'm saying: a high threshold is necessary.

That's all; thank you.

SENATOR BARNES: Madam Chair, just to be clear. I would never bring this bill if I didn't think there was a problem. There is definitely an inherent conflict. The system as it is, is not a good system. If I didn't believe that, I wouldn't be here addressing the bill.

I want to work with Senator Sacco, and certainly Senator Holzapfel and Mr. Nixon -- he was kind enough to come up before. So I have no problem at all meeting with all three, and any other group that would like to discuss the bill. But I think it's time for New Jersey to recognize the conflict; that it's been there for a long time. And whatever we need to do to move forward with the bill I'm willing to do.

SENATOR GREENSTEIN: Although we're not voting, I just want to sum up my feelings at this stage.

While I'm very glad that Senator Barnes will continue to work on it with all different sides -- which is always a good thing -- I think you made a very good point, Mr. Shalom, about the difference between perception and reality. There's no question that apparently in some of the communities in New Jersey there may be a perception. You've described some in your own community. Whether it's the reality, whether there's actually a conflict when it comes to the local prosecutors -- I'm not sure how great that is. But certainly, in some communities, there is a perception. Thank God we haven't had Ferguson and that type of situation here. It could happen, I suppose, but we haven't had that. So we have to look at the conditions in our state and decide whether this is something that we need. I do agree very much with Senator Sacco that it should be a limited situation. It should happen in a few cases; maybe the most

egregious. I'm not sure whether it should happen every time, but I look forward to getting more information as you continue your quest.

Any other comments or questions? (no response)

Okay, thank you very much. I appreciate it.

And, last but not least, we will look at the Juvenile Justice system reform bill.

Senator Pou will be our first, and probably our most extensive, vic -- witness because she-- I was going to say *victim* (laughter); definitely not victim. We don't do victims in here. But *witness* because I know how long and hard she's worked on this and how much she knows about it.

So we will start with the sponsor of the bill, Senator Pou.

**SENATOR NELLIE POU:** Thank you so very much. Thank you, Madam Chair, first, and to all the members of the Committee -- once again, thank you for allowing me to testify on this very important piece of legislation.

The bill that's before you calls for reform to improve New Jersey's Juvenile Justice System. This legislation builds on previous efforts to reform the system with a focus on helping to rehabilitate juveniles to make our communities safer.

Our system has improved significantly in the last decade thanks to the implementation of the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, and has been looked upon as a model in reforming juvenile detention programs. But there's still so much more to do.

Before I get into the details of the bill, let me give you some background on the work on this legislation. This issue came to my

attention during a budget hearing discussion regarding a lawsuit against the State for solitary confinement violations back last year, when we were discussing that during the Appropriations Committee meetings.

Since then I have spoken with parents of juveniles in the criminal justice system. I've held a roundtable discussion and have solicited feedback from stakeholders, including the Office of the Attorney General, the Juvenile Justice Commission, the Public Defenders Office, the prosecutors, the New Jersey Institute on Social Justice, retired judges, the Administrative Office of the Court, the American Civil Liberties Union, the New Jersey State Bar Association, Rutgers School of Law, Advocates for Children of New Jersey, and so many others. I have visited juvenile detention facilities in Jamesburg, for example, and also made sure to visit a different type of juvenile detention facility -- that being the Essex County Juvenile Detention Facility -- just to have a clear distinction in the difference between the two.

Through my work I have found that for far too long, the system has relied on loose policies and regulations when disciplining and treating children and adolescents in detention facilities. It has become clear that there's a lack of cohesive standards in the system. While there have been many changes recently through JJC's administrative code -- which I am really very happy about -- it is still not standardized throughout all of the facilities. And I think that is what this bill tends to try to bring some attention to.

We must take into account that the young people who are in correctional facilities are also in need of help. They are there to be rehabilitated, not just strictly a punitive or punishment type of approach.

This legislation aims to address this issue by providing changes in the process used to transfer youth from a juvenile system to the adult system, and by addressing confinement conditions in the facilities. First, the bill would require the minimum age for waiving a juvenile to the adult court system be raised from 14 to 15. However, it permits juveniles over the age of 15 to be waived to adult court for serious offenses such as murder, robbery, and kidnapping. Children should not be placed in the adult court system unless absolutely necessary.

There has been no evidence to support that waiving youth reduces juvenile crimes. In fact, studies have shown that young individuals who are waived to the adult system are more likely to recidivate. According to statistics, 16- and 17-year-olds in the correctional facilities are also at greater risk for victimization in adult correctional centers. Studies have shown that juveniles who went to adult prison -- waived, in other words -- became career criminals and committed more crimes more frequently.

In addition, the bill would require prosecution to review a juvenile's prior criminal record before considering a waiver.

The adolescent or child may also serve his or her sentence up to the age of 21 in a juvenile facility, and may continue after the age limit if it is beneficial for their rehabilitation. This aspect is important for reducing recidivism.

By working within the system to allow children and adolescents the time to be evaluated and extend their treatment, especially for those who are low-risk, they will be less likely to reoffend and return after their release.

The second part of the bill focuses on raising the age for transferring young people from juvenile detention centers to adult facilities from 16 to 18 years of age. It is imperative that we provide youths with the opportunity to rehabilitate. Young individuals who are sent to the adult system reoffend at a much-higher rate, committing violent crimes more often than their counterparts detained at a juvenile detention facility.

Even more alarming is the risk children face in adult correctional facilities including, as I've mentioned before, victimization and suicide. Not to mention, it is less likely that juveniles will receive the educational services and mental health treatment needed in the adult facilities.

The plan would include notifying the individuals about the transfer, and providing the reason behind it in writing. The juvenile would also have the opportunity to be represented and heard if they have objections to the decision. In addition, during trial hearings and before sentencing, individuals must remain in a juvenile detention facility.

To address a juvenile's physical and mental health, the third piece of this legislation would set limits to keeping children in solitary confinement, known in the juvenile system today as *room restriction*. The bill would require the individual only be confined as a last resort, and incorporate a minimum time, according to age.

A juvenile facility would also be required to continue to provide health and educational services during this restriction. This is supposed to take place, but we have heard reports that services may not be provided on a consistent basis in all facilities. This part of the bill is crucial to providing a healthier alternative for troubled children in the facility.

We also have to be incredibly careful about how these restrictions are used in the juvenile system. Experts have indicated that young people are psychologically unable to handle solitary confinement, unlike adults. Subjecting an adolescent or a child to this kind of treatment for a prolonged period is not only wrong, but also physically harmful to their health and well being.

The fourth aspect of the bill would allow prosecutors to extend an individual's sentence at a juvenile detention center, if requested, for up to three years.

And, in conclusion, Madam Chair, these are-- Let me just say that these are important changes that will advance our reform efforts, and better ensure children in the system have the tools to set them on the right path to becoming contributing members of society. Young people in correctional facilities deserve a second chance to improve their lives. Through this bill we aim to rehabilitate them and break the cycle of crime and imprisonment that we see far too often in our communities. I can't stress enough the importance of reemphasizing that what we're aiming to do here is to really rehabilitate them and help to create -- break the cycle of crime during that imprisonment. I just think that that's an important thing for us to consider today, and talk about as we deliberate this bill.

We must be mindful of crime victims and their families, and ensure that those who commit crimes and endanger our residents are held accountable. We understand that; we want to make sure to protect those victims. We also must ensure that young people receive, however, the services and support necessary to allow them to become productive members of society.

Juveniles who go into the adult prison system join gangs and learn the ways of career criminals. When they are released, they influence and then recruit other juveniles, increasing crime on our streets and the population of offenders. It makes the most sense, from a safety, financial, and public policy standpoint to deal with the issue now, and not for the next 40 years.

Today's hearing is the first step in the process. Madam Chair, and to the members of this Committee, I want to thank you all, and thank all of the stakeholders who have provided feedback on this legislation. We have addressed a number of concerns that were expressed to us by these individual parties -- by all of them. I look forward to a continued discussion on how to improve the system and make our communities safer. And I am absolutely open to further dialogue on this issue, but I also want to stress the fact that we need to be able to do this with a great deal of information, and much of that needs to be also based on facts surrounding this issue.

Once again, Madam Chair, thank you so very much for posting my bill and having a discussion on this bill.

Thank you.

SENATOR GREENSTEIN: Thank you, Senator. And I know how hard you've worked on this, and I want to commend you. I know you've put in much more than the average legislator in terms of all the work, so that's very commendable.

I want to start with-- The two main parts of the bill of interest are the waiver section; and then the part about the room restriction, or solitary confinement.

Now, I was reading something here from, I think, the courts that the juvenile waivers represent a very small portion -- even now, a small portion of the juvenile delinquency caseload. I've heard numbers like -- I think in Mercer County, a little over 100 out of about 3,000 cases; obviously, a couple of hundred when you take all the counties together. But it's a relatively small number.

Is your goal here to decrease the numbers that get waived, which is already a small number? Or is it really the idea-- My sense is, the way that this would work is that the courts would have more of a role, and perhaps the prosecutors would have less of a role in waiver. And if that is your goal, why do you think that would work better?

SENATOR POU: Thank you, Madam Chair, for your question.

First, let me just say that I appreciate the information that you've mentioned with regards to the figures. It's my understanding -- and the data information was just recently made available to us. It's my information that the overall, statewide -- the numbers are actually, in total, it's 102 juveniles who have actually been waived.

SENATOR GREENSTEIN: For the state?

SENATOR POU: And I know you used a figure for your particular county, but actually that figure is 102 for the entire state. And only two of them are within the age of 14. So I recognize the fact that we're not talking about a lot of people -- a lot of individuals, let me just say, juveniles in particular. But that also bears the argument that if we do not have such a large population that is, indeed, being waived, the question is: Why are we then-- It can be both ways; the argument can go both ways.

We can make the argument then, why waive them in the first place; and why not utilize a system that we currently have in place -- that being through the courts and the juvenile justice system -- for us to ensure that they be given the opportunity for the purpose of rehabilitation, especially at that very prime stage of their life -- let me just that. And it's especially during those developmental years of their lives.

One other factor that I would say to all the members is that, while it is true that we think it's important for those arguments to be placed before the courts, and that as much -- that a lot of that information is given to the judge at the time that they are hearing those cases, that that is, indeed, being made part of that deliberation, for that decision, before that child gets waived. I recognize the fact that there are small numbers, but then I would argue why, then, not give the opportunity, in those cases -- short of those particular cases that call for -- those incredible heinous crimes -- for us to look at? I am open for further conversation on a number of different issues, but I also think that there is so much more that ought to be taken into account when looking at these waiver levels.

SENATOR GREENSTEIN: Questions?

SENATOR SACCO: Do you have anything more to say?

SENATOR GREENSTEIN: At the moment, no.

SENATOR SACCO: Okay.

First, you've done a phenomenal job. You worked really hard on this, and I appreciate the fact that it's up for discussion only today, because I think there's one issue with the prosecutors that you've been working on.

SENATOR POU: Actually--

SENATOR HOLZAPFEL: No, it's up for a vote.

SENATOR BATEMAN: I think it's up for a vote, Senator.

SENATOR POU: It's up for--

SENATOR SACCO: It's up for a vote today? I thought it was up for the-- Okay. I'm sorry. I thought it was discussion only.

SENATOR POU: It's okay.

SENATOR SACCO: But, okay, thank you for not putting it up. (laughter)

SENATOR POU: Thank you for what? I'm sorry?

SENATOR SACCO: Okay, no -- here it is.

There is still, I think, a few rough points on the bill. And I know the prosecutors -- they sent me letters; they've been in contact with me. So I think there's still a little bit of work left.

SENATOR POU: Sure.

SENATOR SACCO: I know you're right on the cusp of having a phenomenally good bill. And I'm going to support it for vote, but without recommendation today -- only because there's just this one aspect with the prosecutors. I'd like, at least, the sponsor to take another hard look at it, along with the Senate President and a few other people who expressed the same concern. So that's how I feel about it, but I do say you're really just on the cusp of having a phenomenal bill.

SENATOR POU: Thank you.

And, Senator, I appreciate your comments; thank you very much for your words.

Let me just say I look forward to an ongoing conversation with the prosecutors. I know that-- Just to make the point: When I raised --

when I started looking into this, my very first intention, and my intention all along-- And we did, indeed, include and invite all different stakeholders, including the prosecutors, who, in fact-- If I may; I hope the one prosecutor, who certainly immediately responded to me -- was the Bergen County Prosecutor. And there were some very pointed -- he was speaking personally, not on behalf of the entire New Jersey Association of Prosecutors. But I just say that, for the purpose of saying that we have absolutely recognized, and continue to look forward to ongoing conversations and discussion on this part. In fact, this bill has, since then, changed tremendously from the time of when it was first introduced, to the amendments that I am asking for your consideration and support today.

But thank you very much for your comment, and I am open for further dialogue.

SENATOR BARNES: Senator, congratulations on a great bill.

The thing that first struck me was how comprehensive this bill is. There are a lot of different components to it.

I know that the bill doesn't focus strictly on waiver, but I think you're on to something with waiver. And any criminal defense lawyer knows that, on occasion, the county prosecutor will use the waiver threat for leverage. And to me, that is not the right way to proceed. I think we have a separate system for juvenile justice; anybody who is a lawyer knows that there's one system for the juvenile, there's a separate section for the adult. And I think that sometimes -- it's infrequent, but sometimes you do run into a case where you have a 16-year-old or 17-year-old and the prosecutor will try to waive them up. And I think a lot of times it's not appropriate.

I'm also pleased to see that you've included the isolation component, because while I understand the need, on occasion, I think it's a concern when you start putting young men and women in isolated confinement.

So your bill really is comprehensive, and I want to join Senator Sacco in congratulating you.

SENATOR POU: Thank you, Senator.

SENATOR BATEMAN: Madam Chair, let me just add my two cents worth, too.

First of all, Senator, thank you. I know you've worked hard on this; I appreciate the call, the head's up, you gave me before the Committee meeting.

I do have concerns about the waiver provision. I know the county prosecutors are really in the trenches when it comes to dealing with juveniles. I think the system is not perfect, but I think it's worked pretty well. But I still think it needs some work. I think the concept is a good one, but I still think it needs to be tweaked a little bit.

SENATOR POU: Okay.

SENATOR GREENSTEIN: Did you want to say anything?

SENATOR HOLZAPFEL: Are you going to hear from anyone?

SENATOR GREENSTEIN: We do have many--

SENATOR HOLZAPFEL: I think the Prosecutors' Association--

SENATOR GREENSTEIN: Yes, we have many people.

SENATOR HOLZAPFEL: I'd like to hear what they have to say.

SENATOR GREENSTEIN: I did want to ask one other question, and then we can always get back, because I know the sponsor will be here.

On this issue of solitary-- And, you know, a couple of weeks ago we did a hearing on solitary in the adult prisons, so we've been hearing quite a bit about the topic.

I always feel like the very first question that needs to be asked -- and I was actually going to also ask the corrections officers who are going to testify -- what exactly is solitary in the juvenile prisons? When I sat and talked to them recently, my sense is that it's not, kind of, the image that we have of it: people being put into a dark hole and not heard from. In fact, under the Federal guidelines right now, under current law, I think it's only five days that they're allowed to be in a room -- and it is a room; it's a room with some facilities in it. They have contact with other human beings -- doctors and others come in. And I'll ask them more, because I'm interested in hearing their perspective on it. But my sense, after talking with them, is that the room wasn't quite as isolated as I think our own images are from reading books and watching TV. And I know you have visited and have actually seen what goes on at the JJC, for example.

SENATOR POU: Right.

SENATOR GREENSTEIN: So I know that one of the parts of your bill is to lower the amount of days, from five days to two or three days -- which isn't that different. It could be, perhaps, if somebody is a very dangerous person who's there, which would be extremely rare. But this probably doesn't happen in many cases; it probably is rare. You wanted to make it rarer, and I understand that's one of the purposes here.

But I just wondered -- when you visited the various prisons, did you get to see how they did room restriction, what types of rooms, and what did it seem like to you? Because I haven't really looked at those myself; I've only heard about them.

SENATOR POU: Okay. Thank you, again, for that question.

Let me just step back for just a moment and just kind of reiterate something that I said in the very beginning of my opening remarks. And that was that what led me to even think about this was the fact that there was some discussion with regards to a lawsuit that occurred during what was then often referred to-- And today the name has entirely changed, even from a public perspective, and even from a psychological thinking if it. It's no longer referred to in the system as *solitary confinement*. It is so important for these correctional institutions to begin to talk about *room restriction*. That, in itself, is an entire change in the culture itself. However, that's what it got started. And remember, some of these administrative changes that have been put in place, and mostly done through regulation in these facilities -- it has not been codified in the law, so the statute doesn't necessarily reflect all of these types of regulations or administrative changes that have occurred. And I commend, I really do-- And learned more about this when I visited Jamesburg and when we talked about and toured those facilities.

And yes, I did go into these rooms that -- or these cells or *location rooms*, as they're called -- that are referred to as *room restriction* or *solitary confinement*, however you want to refer to it. And yes, it has all the very same makings of a room by itself. I know that today some of those changes are where they now try to put two residents-- They call them

*residents*; not *inmates*. Let me just-- We've all learned these new changes, in terms of this. So these residents are now-- They try to do two-- But remember, it is also about the safety of the resident ,s well as the safety of the staff or the personnel there as well. And oftentimes -- and I learned a great deal -- some of them are also placed in these rooms for their very own safety upon their own request. Some of it is not so much from things that they do wrong; but things that they want to be removed from, from the total and general population.

While all of that is good, the reality is that we're still dealing with a sensitive, young mind that is still in very developmental stages of their process -- developmental process. Any time you maintain that child in that room for up to 19 hours -- because for 19 hours, they're in that -- they can very well-- They come out for 2 hours, and they come out for those 2 hours for any number of things, as it was pointed out before. It's either to be outside of that particular situation; they can either be looking at television for about an hour, or for any one of those other kinds of -- medical attention that they may need, or for reading a book, or going to a particular -- transferring them from one location to another for their hygiene purpose. Any one of those situations.

But we're still talking about a room that they are in for a very long, extended period of time. And while the Federal standard does call for 5 days-- And you'll hear from experts who know more about this than I do; I am not the expert in this field. There are so many other folks who are going to be speaking about this who are-- Whether they are the prosecutors, whether they are the public defenders, whether they are all of the advocates who are here, as well as the folks who are providing this

(indiscernible). You're going to hear from them, and you're going to see the difference between them.

At the end of the day we're talking about trying to make something better. The Federal standards is what got us here to begin with, because those Federal standards, in some cases, were being violated. That is really what got us to this point.

And Madam Chair, I would be remiss if I didn't take a moment just to recognize the incredible long and hard work of the people who helped in the drafting of this legislation. And I want to personally thank the Office of Legislative Services -- Wendy and Amanda -- who have spent so much time; our staff, Carrie and Lisa Velasquez; and so many others who really took the time -- from our Senate staff, and OLS, as well as all the other folks involved.

Thank you very much.

SENATOR GREENSTEIN: Thank you.

Okay, I'll start calling the witnesses.

Thank you, thank you very much.

SENATOR POU: I don't want to-- I also want to say thank you to Frank Dominguez for really listening to me, and helping me in this discussion. Thank you so very much.

SENATOR GREENSTEIN: Thank you.

The first person I'll call is Craig Levine, New Jersey Juvenile Justice Reform Coalition, in favor.

**C R A I G L E V I N E, Esq.:** Madam Chairperson, Senators, thank you for the privilege of appearing before you today on this important matter.

My name is Craig Levine; as the Chair mentioned, I am Senior Counsel and Policy Director at the New Jersey Institute for Social Justice. I appear here today on behalf of the New Jersey Juvenile Justice Reform Coalition, a statewide group of 24 organizations dedicated to seeing our State's juvenile justice system achieve its purpose and achieve its promise.

The Coalition strongly supports the bill; strongly applauds Senator Pou's leadership, and perseverance, and dedication to this cause; and urges the Committee to pass the bill out so the process, that has been alluded to repeatedly already by the sponsor -- and I'm sure will be by others -- may continue; a process in which our Coalition looks forward to remaining engaged.

We have thoughts around the edges on just about every element of the bill, but in the aggregate are strongly supportive of it moving forward, and grateful to Senator Pou for taking upon these all-important issues.

You will hear, in due course, from two other members of our Coalition -- Sandra Simkins from the Rutgers-Camden Law School; and Alex Shalom, who has already spoken here this morning on other matters. My detailed comments will be limited to the issue of waiver.

Our Coalition opposes waiver -- period, full stop. Waiver emerged in New Jersey and in the United States in response to a predicated wave of sociopathic super predators -- kids with no conscience, irredeemably bad, who need to just be locked up for a long period of time to be taught a lesson so they can learn the right way and not recidivate -- for the benefit of public safety and all of our neighborhoods.

We now have over a generation of hindsight. So this is no longer hypothesis; this is evidence and social science. And what do we know about waiver? We know not only that it is not productive, in that it does not reduce recidivism; we know that it is frequently counterproductive in that, if you take two groups of kids, hold all else equal except one group is processed in the juvenile system and the other waived to the adult system, the latter group frequently recidivates more. There are multiple studies showing this fact; the most prominent academic who has looked at this multiple times is named Jeff Fagan; he's a Professor at the schools of Law and Public Health at Columbia University. And his research has covered multiple jurisdictions, including, in particular, New Jersey.

What have we learned about adolescent neurology -- the physicality of young people's brains -- since waiver came onto the scene? We've learned the following: We've learned that the brain is a physical organ; it does not stop developing until age 25 -- well into adulthood. And that the part that develops last is the part that we need most in making sound judgments; as a result of which, the Supreme Court of the United States has now three times, based squarely on this body of research, said that children are different. They need to be treated differently -- all of them -- and the way that we think about them and the way that we treat them needs to reflect that reality.

We oppose waiver also because it has been wildly uneven in its application in New Jersey. One of the threshold challenges here is that there is limited data available. But based on the data that had been provided and is available, we know the following.

First, there are very substantial geographic disparities. Now, we're not looking for rates to be absolutely the same in every county. There's individual prosecutorial discretion; there are local predilections, of course. There is a place for that. There is not a place for the following: If you look at the number of arrests for violent crimes in a county, and you look at the percentage of those cases that are waived, that percentage ranges in New Jersey from less than 1 percent to, in two counties, 68 percent. That's too much variability to particularize.

Cape May County had, in one recent year, 43 violent crime arrests of which 29 of the cases were waived. The totality of Essex, Union, Passaic, and Bergen counties waived 27 kids, two fewer than did Cape May alone. Those four counties in total had 1,144 violent crime arrests. You can see the geographic point.

There is also a disquieting racial disparity. Now, please, with respect, hear me clearly. I did not use the word *discrimination*. Neither I individually, nor our Coalition is saying that, or accusing anyone of that. There is not nearly the data available to control for all the variables one would need to control before getting anywhere near that word. Notwithstanding that fact, the disparities remain disquieting.

In a recent year, in which 18 percent of the kids in our state were African American, 77 percent of the kids who were waived were African American. That's a difference of a factor of 4.5; it ought to give us pause.

The underlying truth here is that just about everyone -- irrespective of whether or not they are waived -- outgrows criminality by around age 25; not coincidentally, I would assert, when we now know from

the neuroscience that you are fully developed. Waiver has nothing to do with that, and there is no evidence that it has any effect on that. While this bill does not, obviously, eliminate waiver -- which is the position of our Coalition -- it would affect several modest but important reforms. It would eliminate the eligibility of 14-year-olds for waiver. They are waived extremely rarely in any event, but a 14-year-old is really a little kid.

It would remove some of the nonviolent crimes from waiver eligibility, leaving a serious list of crimes for which one is subject, potentially, to waiver.

It would do a couple of things in the processing of cases -- one at the front end: Right now, the prosecutor has to file a motion for waiver within 30 days of the start of the case. We think that's too short. Sometimes prosecutors -- and I can understand this -- might file a prophylactic waiver motion. They're not really sure if the case warrants it, but to preserve their rights they file the motion and then momentum takes over. Let's double the time so the police and investigators can find the witnesses, get the statements, and the prosecutors can have a fuller picture of what is actually going on before making the momentous decision whether or not to attempt to waive a child to the adult system.

The bill includes what is known as *reverse waiver*. Even if the initial time was doubled from 30 to 60 days, that's still, in the life of a criminal case -- which is what it is, in the instance of waiver, in the event of waiver -- is a nanosecond. By the time the case moves through the criminal justice process, the court knows infinitely more about the circumstances, about the defendant, about the role of the defendant in the alleged crime. You know, was he the mastermind? Was he just some kid told to be a

lookout on a corner? Was it a felony murder sort of situation in which the liability is arguably attenuated -- and on, and on, and on -- knows about the family circumstance of the defendant. Reverse waiver allows -- would allow under this bill, for the first time in New Jersey's history, a procedural vehicle by which the court could say, "You know something? We think that initial decision, while perhaps wise when it was made, based on the information then available, was mistaken based on what we now know." And there would be a procedural vehicle to send the case back.

We note that there's been talk about the scope of waiver. First, as Senator Pou mentioned, not nearly all of the use of waiver appears in the waiver statistics for the reason that the Senator mentioned. Waiver is often frequently used to elicit pleas. We will hear from the public defenders who know this best. Respectfully, I don't think that that is appropriate. This is a threshold jurisdictional question about which system -- if waivers are going to be permitted at all -- which system is best suited to this child? It shouldn't be held like a knife over the child, and say, "Plead to *X* or we're going to waive you."

As regards the numbers: For every child who is waived, that may be the most momentous thing that happens to them in the entirety of their life for the following reason-- Not just the reasons we've heard about already from the sponsor of this bill: the dangers of being comingled with adults, the potential vulnerability of being in other adult institutions, the potentially longer sentences -- though I would say that one can get 20 years in the juvenile system in New Jersey; one can get multiple 20-year sentences to be served consecutively. It happened recently in Essex.

Not only that, it is the most momentous thing that happens to almost everyone to whom it happens at all, for the following additional reason: The hundreds, and hundreds, and hundreds -- well over a thousand, last time we counted -- of State and Federal collateral consequences of conviction. These are things that limit your life, often for the rest of your life, in crucial areas ranging from housing, to education, to employment if you have a criminal conviction -- frequently a criminal conviction of any sort. And those things almost always do not apply if you have an adjudication of delinquency. That is a monumental difference, perhaps exemplified by a client I worked with several years ago. His entire criminal record -- the entirety of his criminal record was a disorderly persons offense from municipal court in 1971. He's 65 years old, work history uninterrupted, pillar of his community, in danger of losing his livelihood because of that conviction. Governor Christie courageously pardoned him, seeing the injustice of that circumstance, but we serve countless people trying to get work, trying to get work and do right and pay taxes, and pay child support, and support their children, and support their communities. And they can't, because they have a criminal record. That difference applies if you are waived, and is monumentally important. And I would urge the Committee to bear that in mind as you consider this issue.

The final issue, and I think the one on which you are likely to hear at some length: This bill would not eliminate waiver. What it would do, in addition to the points I've already mentioned, is bring the judiciary meaningfully into the process. Right now, for 16- and 17-year-olds, who constitute the overwhelming majority of waivers, our courts are reduced, in effect, to serving the role of a rubber stamp. If probable cause can be shown

-- and if probable cause cannot be shown, the case really shouldn't be there at all, it was probably a bad indictment -- so if probable cause can be shown, the prosecutor gets to decide whether to waive the kid. Formally, the prosecutor has to file a motion; but under current law, the court must -- not may -- must grant that motion if probable cause is found. That's the sum and substance and the entirety of the inquiry -- other than the empirical stuff: Is the kid of the right age and charged with an eligible offense? We trust the judiciary in this State with making all manner of momentous decisions to protect the public interest. We are right to do that; we would be right to do that in this context as well.

Thank you very much.

SENATOR GREENSTEIN: Thank you; very enlightening.

I just-- Something I'm confused about, that I've heard in the testimony so far. One comment which I think you made is that by the age of 25, children grow out of criminality. But I think I also heard a comment somewhere along the line that by being exposed to the adult court, if they're waived, or being in the adult system -- that they become "more criminal." Is that contradictory, or am I not picking up the issue?

MR. LEVINE: No. Let me try to clarify. Many people who are waived are still released. Say you're 15 or 16; you're waived, you're convicted. You go and you serve a couple of years. One of the ironies actually of waiver is that what is perceived to be a relatively serious offense in the juvenile system is, upon waiver, not as serious in the context of an adult docket. And sentencing often can reflect that. So there is an unintended result at the sentencing. But a lot of people come out and they're still, after waiver, they are still well before age 25. And people-- I

mentioned Professor Fagan; we'd be happy to submit his studies along these lines -- show that those people recidivate at a higher rate than do similarly situated young people who remain in the juvenile system. But everybody, irrespective of the system in which their case is processed, grows out of it by the time they are 25.

You know, look -- it's a developmental thing; it's a maturation thing. One hears the phrase once in a while, "When you can no longer outrun the cops, you start making different judgments." I don't know; I'm not a criminologist. But I know that the numbers establish that by your mid-20s, people move on.

SENATOR GREENSTEIN: Thank you.

Questions?

SENATOR HOLZAPFEL: I have one question.

SENATOR GREENSTEIN: Yes.

SENATOR HOLZAPFEL: At the beginning of your statement, you said you're opposed. You don't believe there should be any waiver? Is that correct?

MR. LEVINE: That's correct. We think it is not necessary to public safety, and with about 30 years' history to look at nationally,--

SENATOR HOLZAPFEL: So--

MR. LEVINE: But we support this bill strongly, notwithstanding--

SENATOR HOLZAPFEL: I understand.

MR. LEVINE: --that it doesn't go nearly that far.

SENATOR HOLZAPFEL: So I have a 14-year-old who kills 5 of his classmates. What happens to him?

MR. LEVINE: I would respectfully say, Senator, that we start with the first part of the sentence: that he's a 14-year-old. And the evidence shows--

SENATOR HOLZAPFEL: Well, make it 15, 16, 17 -- it doesn't matter.

MR. LEVINE: Right. So first, if it's an intentional crime, he's subject to a 20-year year sentence for each of those killings. And I believe the hypothetical was 5, so he could, in theory, be sentenced to -- in the juvenile court -- to 100 years. So the notion that this is-- Not in New Jersey, but I've heard in national circles -- sometimes say -- some say the juvenile system is *kiddie court*; all you can get is a slap on the wrist. That is decidedly not the case in New Jersey, but that child should receive an appropriate sentence, and should be remanded to the custody of the Juvenile Justice Commission, the responsibility of which is to rehabilitate that person. And the evidence shows that the ability to rehabilitate someone is not a function of what they are alleged or, even upon conviction or adjudication, proved to have done. It's a counterintuitive point, but it's well established, Senator.

SENATOR HOLZAPFEL: Yes. Do you also recognize that when you're dealing with someone like that, that there's also an issue-- And I know when you get into juveniles we talk about rehabilitation. But there are some juveniles out there that the question becomes one of deterrence. Is there a message sent that you're going to be able to do some heinous crimes-- I, unfortunately, had the duty of prosecuting juveniles as adults who have murdered and raped. And that they somehow or another should end up in a juvenile facility because of their chronological age -- not because

of the crimes that they committed, which were some of the more heinous crimes that I've, unfortunately, confronted-- But you believe those people should stay in the juvenile system?

MR. LEVINE: I believe a couple of things, Senator -- if I may.

SENATOR HOLZAPFEL: Go ahead.

MR. LEVINE: First, in terms of staying in the juvenile system. There are two different elements here: one is sort of the judicial system and the courtroom in which one's case is handled. And the other is where one goes physically if either a convicted or adjudicated delinquent. Senator Pou spoke of another element of this bill, which refers to transfer from a juvenile system to an adult system. If someone gets a 20-year sentence, or multiple 20-year sentences to be served consecutively, at some point even if one receives that sentence in the juvenile justice system, at some point one is going to outgrow the confinement capacity of the juvenile justice system and should be transferred to a prison. Nobody's arguing about that. A different element or aspect of this bill talks about the age at which you should be eligible for that; then there's talk about due process protections. But you should ultimately go to a prison. We don't want 35-year-olds in Jamesburg; and secondly, Jamesburg is not a lightweight sort of institution. And thirdly, in terms of the general deterrence point, Senator: Do we want kids to know that they could get away with serious crimes -- I would respectfully submit two points; first, under current law, they cannot. They can get--

SENATOR GREENSTEIN: Mr. Levine, I'm just going to ask if you could wrap up--

MR. LEVINE: I'm sorry.

SENATOR GREENSTEIN: --only because we have so many speakers.

MR. LEVINE: I understand that. I apologize.

SENATOR GREENSTEIN: And we're going to try-- From here on, we're going to limit them to 5 minutes apiece.

MR. LEVINE: Oh, so now I've spoiled it for everyone.  
(laughter)

So you can get serious sentences in the juvenile system, and there's no evidence that adolescents -- and I think this jives with all of our intuition -- are meaningfully subject to general deterrence. They don't think about consequences in any aspect of their life, often.

SENATOR GREENSTEIN: Okay.

Any other questions? (no response)

Okay, thank you very much.

MR. LEVINE: Thank you all.

SENATOR GREENSTEIN: Next, I'm going to call Robert Bernardi, County Prosecutors Association, and anyone else who you would want to come up with you. I don't know if any of these slips are for other people.

Steve Finkel, Attorney General's Office; I believe Denyse Galda, Senior Assistant Prosecutor, Bergen County Prosecutor's Office; and is another person Anthony Pierro, Supervising Assistant Prosecutor, Ocean County Prosecutor's Office? Have I gotten everybody?

And all of you, if you would just say your names. And I'm going to limit it. I don't know how many of you are planning to speak, but

we're going to have a timer up here. I'm going to limit it to 5 minutes a person. So please, when you hear it, wrap the sentence up.

Thank you.

**B. STEPHEN FINKEL, Esq.:** Thank you, Chairwoman. Steve Finkel from the Attorney General's Office.

With me are Robert Bernardi, who is the Burlington County Prosecutor; also Denyse Galda, who is from -- who handles supervising Juvenile -- Assistant Prosecutor from Bergen County; and Anthony Pierro, Ocean County Senior Supervising Assistant Prosecutor for juvenile matters.

I also will commend Senator Pou for her hard work. She has been a bulldog on this issue. She is committed to it, and I know that there are a lot of very important, critical public issues implicated. Given that we have a short timeframe, I'm going to say the JJC has reviewed-- This bill really has two parts: the juvenile waiver part, which I'm going to defer to the prosecutors on, and the juvenile justice custodial portion.

By and large we are okay with those portions. JJC has reviewed it; has provided input. There are a couple of issues that we think still need to be ironed out. But, for the most part, they're either reforms that JJC has contemplated -- they may not be exactly as we would have done them, but I think it's certainly -- we're close, and we can reach a point of agreement. And so we look forward to working with the Senator on that issue.

We also look forward to working with the Senator on the juvenile waiver issue which, as you heard, certainly is a complex issue.

And now I will turn it over to the prosecutors who have true insight into this process from a different perspective.

**SENATOR GREENSTEIN:** Thank you.

**R O B E R T D. B E R N A R D I, Esq.:** Good morning, Madam Chairman and members of the Committee.

It's my privilege to appear on behalf of the County Prosecutors Association of New Jersey to comment on Senate Bill 2003, which would radically change the landscape -- the present landscape of the juvenile waiver prosecutions.

It is our position that the law, as presently written, provides more than adequate protection for the interest of juveniles while, at the same time, protecting members of our communities from violently aggressive juveniles.

We start with the proposition that juvenile waivers are reserved for the extreme cases of criminal activity -- where the juvenile has committed a crime that is so heinous, or has proved so resistant to rehabilitation and services, that disposition within the adult system is appropriate. Such waivers are also appropriate in recognition of the rights of those who are the targets of their heinous offenses -- the victims -- often left behind in the criminal justice system.

As you are aware, the present juvenile waiver system permits a county prosecutor to, as we call it, involuntarily waive a juvenile, age 16 or older -- 16 or older -- if, and only if, the prosecution can articulate numerous factors pursuant to the Attorney General's guidelines on juvenile waiver prosecutions. Those factors must be presented in written format to the Family Court judge, and only if there has been an initial finding that there has been probable cause that a crime has, in fact, been committed. Once the probable cause determination has been made, the court -- the trial court then reviews the evaluation made by the county prosecutor to

determine whether or not the county prosecutor has abused his or her discretion in the waiver decision. So that's the fundamental starting point.

Accordingly, the present statute, which was approved by this Legislature in 2000 -- we're 14 years into the project now; in fact, Senator Sacco voted in favor of the bill, back in 2000, as it presently is written -- would be reviewable, both at the trial level -- because, as I said before, the trial judge sees the prosecutor's decision, and if the defense feels aggrieved by that, they have a right to appeal from that decision; to an Appellate Court to determine whether or not the trial court's review of the prosecutor's review and evaluation was, in fact, an abuse of discretion. So there's a check and balance, and it's not just the prosecutor willy-nilly deciding, "Let's waive this case up." The judge has no say in it, as was indicated. That's not correct -- the judge does and can disapprove the waiver if they don't feel the prosecutor has met the statutory criteria.

Further, in 2002, our New Jersey Supreme Court upheld the present standard of review of the county prosecutor, and held that the abuse of discretion standard for review of a juvenile waiver appropriately balances the interests of the juvenile against the interests of the community in deterring criminal activity. Instead, this bill would emasculate the abuse of discretion standard, and would require the prosecution to prove by clear and convincing evidence -- a much-higher standard -- that the nature and circumstances of the charge, or the juvenile's prior record, are "sufficiently serious that the interests of the public require waiver." That's a somewhat subjective standard, as you can see.

The bill then cites 11 factors that the court, rather than the prosecutor, shall consider in determining whether the interests of the public

require waiver. These 11 factors are, in many instances, as I've said, very subjective. For instance, the maturity of the juvenile. What does that mean? It would require the State to invest substantial resources here requiring the retention of experts to make determinations on the mental capacities or cognitive development of the juveniles -- among other determinations. In turn, the defense would be required to expend resources as well in order to rebut the expert testimony presented by the State. In essence, juvenile waiver hearings would become what they used to be before year 2000: a battle of the experts, prolonging the juvenile waiver process.

As I stated earlier, since 2000 the abuse of discretion standard has already been demonstrated to be a workable and fair process. The county prosecutors have fully recognized the ramifications, as stated earlier, of a juvenile waiver and have exercised that discretion in what we believe has been an exceedingly responsible manner.

Our Association respectfully submits that the present juvenile waiver prosecution procedures are functioning well in New Jersey; and that the abuse of discretion standard being utilized by the county prosecutors -- again, subject to judicial review -- adequately protect the interests of juveniles while permitting waiver of those who have demonstrated through their actions or previous history a complete disregard for the rule of law.

In closing, the present waiver process is not broken. The abuse of discretion standard, as affirmed by our Supreme Court, provides more than adequate protection for the interests of juveniles.

Further, statistical data demonstrates that this discretion provided by the county prosecutors has not been abused, as evidenced by the extremely low number of juvenile waivers that have been filed over the

past several years when compared to the total universe of juvenile filings. I think we heard reference to 101 or 102 juvenile waivers in 2014 out of a universe of approximately 25,000 juvenile petitions that were filed. I think that demonstrates that the system is operating efficiently.

With regard to some of the other comments, I will yield to my colleagues; and I'll be happy to entertain any questions, as you wish.

SENATOR GREENSTEIN: Thank you.

MR. BERNARDI: Thank you.

SENATOR GREENSTEIN: Thank you.

Mr. Pierro.

And again, I am going to hold you to the 5 minutes, because we're trying to get through. Thanks.

**ANTHONY PIERRO, Esq.:** I have been known to speak very quickly, so-- (laughter)

SENATOR GREENSTEIN: That helps.

MR. PIERRO: Madam Chair and members of the Committee, I truly appreciate the opportunity to speak here. I have been prosecuting juvenile cases for 15 years now; I am very passionate about this topic. I also want to thank the Senator because I think any time juvenile issues are before a Committee like us, we are moving in the right direction.

I want to address a number of the criticisms of the current waiver statute, and speak about the potential solutions in this bill that, I would suggest to this Committee, actually do not create solutions, but more problems.

The first is that waivers are currently overutilized or somehow abused by prosecutors statewide. I have three years of data. In 2009 -- this

is reported data -- there were 155 waivers statewide. Of the 155, 136 of them were for homicide -- first- and second-degree violent crimes committed by juveniles. Of the universe of first-degree crimes that were committed by juveniles in 2009, only 21 percent of them were filed and petitioned for waiver. Of the second-degree crimes committed in the universe, in 2009 only 3 percent of those cases did a prosecutor file for waiver. And those numbers have gone down. In 2013 there were 114 waivers statewide; and in 2014 there were 101 waivers statewide.

The other issue is the inconsistent application across the state. This bill, unfortunately, as written would create more inconsistency across the state. Why? How would it do that? There is money for experts written into this bill. This will require expert testimony. Who has money to retain experts? Which county prosecutor's office has the resources to do that? Some do, some do not. There is an inconsistency built into the bill.

The other inconsistency in the bill is, which defendants have the ability to retain experts and which ones do not? And this is an issue that will be in these cases until the completion of the case -- which could be years, based upon the litigation that is written into this bill, as foreseen.

There are also ambiguous standards. As the Prosecutor mentioned, this bill is ripe for interpretation -- not only by prosecutors, not only by Family Court judges, but by criminal judges, by public defenders, and by the defense (indiscernible). As I read these, I don't know what it means -- the *maturity* of the juvenile. I don't know what it means -- the *morality* of the juvenile. I would ask, if we went around the Committee, we would get different answers as to what *juvenile morality* means, and what *juvenile maturity* means. Practically, boots on the ground, these issues

cannot be decided without expert testimony -- and we go back to inconsistency in application.

There will be a socioeconomic impact of this bill. Those who have, will retain the experts necessary to defeat this bill; those who do not, will not. And it's as simple as that. I think that's been borne out in current practice over the last 15 years that I've been handling juvenile cases.

I want to talk about case processing time. That's a criticism of the current system. This will extend forever the case processing time. One of the standards written into the bill is that for any reason, at any time, if there's any information -- these are the words used in the bill -- a juvenile defendant who has been waived can apply to a court -- we don't know which court; it may be the criminal court, it may be the family court -- to decide-- What does that mean? What information? "I have found God in the jail." "I have gotten my high school diploma in the jail." Any information -- there's no standard, there's no burden, there's nothing.

And as I said, and as I indicated, I am passionate about juvenile law. And I would submit that there is work to be done here. But, as written, this is a dangerous bill with these languages, because of the affect it may have on our juveniles.

The other issue I want to talk about is the victimization of juveniles. This bill, as written, allows 21-, 22-, 23-year old waived adult defendants now to remain in juvenile facilities. If there's victimization with the current standard, where a 17-year-old will go to an adult facility and be victimized by adult inmates, then isn't there victimization if we leave a waived juvenile in a juvenile facility, who is now 21 and 22 years old, so the other vulnerable juveniles, that remain in a juvenile facility -- those are the

juveniles that have been determined are appropriate for the juvenile system, and yet this bill would allow us to mix those types of populations -- despite one of the arguments being victimization of juvenile offenders.

SENATOR GREENSTEIN: Sir, could you wrap up?

MR. PIERRO: I will.

SENATOR GREENSTEIN: You have 20 seconds.

MR. PIERRO: My last point is that this bill, I believe, will stifle negotiations. This reverse waiver provision, as written, says if a prosecutor gives an offer, or this juvenile is found guilty of an offense which was not waivable, the case automatically ships back to Family Court. Why would a prosecutor, after expending thousands of dollars on experts, extend that offer to a juvenile. It will stifle negotiations.

So thank you; thank you, Madam Chair.

SENATOR GREENSTEIN: Thank you; right on the second.  
(laughter) Thank you.

Ms. Galda.

**D E N Y S E C O Y L E - G A L D A, Esq.:** Good afternoon. Thank you very much.

Denyse Coyle-Galda; I'm an Associate Prosecutor in Bergen County. I have been with the Bergen County Prosecutors Office since 1985. I have been head of the Juvenile Unit since 1998; and I am very familiar with the waiver provisions that were in effect back in 1998 and 1999 that led to our 2000 amendment.

And I recall very well, because how drawn out these waiver hearings were -- that they could go, because it turned into a battle of the experts, anywhere from a year to a year-and-a-half; sometimes they were

two years going before there was some finality to a decision as to whether or not a juvenile was waived.

The 2000 amendment was an effort to address that and, in fact, it did speed up the process tremendously for waived juveniles. It made it very clear, with the Attorney General guidelines, the factors that we had to look at -- many of these factors that appear in the bill here. The guidelines the Attorney General issued to us require us to look at the role of the juvenile therein.

I always present that to the defense attorneys: "Tell me about your client. Give me reasons why you think that this juvenile should not be waived, and I will consider those reasons." When I look back to 2014, of 1,500 juvenile cases that came through the Bergen County Courthouse, 4 of them resulted in waiver. One of those was a voluntary waiver by the juvenile, waiving themselves back to Municipal Court on a disorderly persons offense -- which those numbers are also in these statistics. That results at a 0.2666 percent of the cases coming through Bergen County that are waived.

My issue here is: If history is there for a reason -- if we don't learn from it, we're destined to repeat those same mistakes. And I fear that is where we are headed here, because this bill -- although I love the provision of the 60-day timeframe for us -- the other issues, I think, are very vague and will result in much case law having to be developed. And to make this a workable document, changes will need to be made.

I question the 26-year-old; the adolescent brain development. I have heard the experts speak on that. It is extremely interesting. But every single juvenile who exists in the State of New Jersey has that same

adolescent brain development. We are not inundated with juvenile cases; they are not all in our courts. So something else must be going on besides the lack of development if everybody else is similarly situated with the adolescent brain.

The threefold purpose of the juvenile system was to hold juveniles accountable, to protect society, and to attempt to rehabilitate. This extremely small number of juveniles who cannot be rehabilitated in the eyes of the prosecutor -- those are the ones who we file for waiver. And there's good reason for that. That's why the numbers are small. To say that they're small and, therefore, we should not be waiving them, but rehabilitating them in the juvenile court--

SENATOR GREENSTEIN: Could you wrap up? Because I think we've hit your time.

MS. COYLE-GALDA: Okay.

We cannot rehabilitate them, and that is why we are moving for waiver.

Thank you.

SENATOR GREENSTEIN: Thank you.

SENATOR SACCO: Can I say a few words?

SENATOR GREENSTEIN: Yes.

SENATOR SACCO: I'm recommending that this be moved out of Committee without recommendation. I don't know how everyone's going to vote on that, but my vote is without recommendation. If that's what the case is, all the testimony from this point on -- without recommendation means that if the bill moves forward, but it's not being

recommended to pass as it is now in its current state -- which gives everyone a chance to work with the sponsor to make it a better bill.

All right, so any testimony from this point on -- my vote is left. I know there are 1 p.m. meetings, you know? And I appreciate everyone who came, and I heard what you said. So it's going out without recommendation, as far as I'm concerned. And Senator Pou will work with everyone to try to make this the perfect bill.

I thank her for her hard work. She's been outstanding, and she worked so hard on this. I know that eventually we're going to cross the finish line.

Thank you for your testimony, on my behalf.

SENATOR GREENSTEIN: Thank you, Senator.

Yes, today we are going to vote the bill without recommendation. And that's because we're hearing that still some work needs to be done. And luckily, the sponsor is very willing to continue to work on that.

So we are going to vote the bill to move it forward; we are not going to make a recommendation. However, I'm going to stay here for all of you who want to get on the record -- just so you have a chance to get on the record. But I think there are people who may be coming and going, or leaving -- but that's fine, because I'll give you a chance to get your testimony on the record.

But I believe that the sentiment is to do this without a recommendation today. But it will move on and go through other Committees, and the sponsor will continue to work on it. So that's the plan for today.

Is there anyone else who is going to be leaving shortly?

SENATOR BATEMAN: I have to leave shortly.

SENATOR GREENSTEIN: So if you want to make a statement--

SENATOR HOLZAPFEL: Yes.

First of all, I echo comments to Senator Pou about the efforts, and I certainly understand it's a very complicated issue anytime you're dealing with criminal activities -- whatever -- it's complicated. But when you're dealing with juveniles, it even becomes more complicated, because everyone's interested in rehabilitating people who can be rehabilitated.

That said, when I first read the bill, I did not agree with removing prosecutorial waiver from the prosecutor and giving it to the judiciary. And I think, in effect, that's what this bill does. There are many issues that I have with the bill that I'm not going to belabor the time (*sic*). And, unfortunately, I understand Senator Sacco's motion -- or intent -- but I can't find myself voting for the bill, so I'll be voting no.

Thank you.

SENATOR BATEMAN: How many speakers do we have?

SENATOR GREENSTEIN: I don't know; maybe 10.

SENATOR BATEMAN: Okay. I'm going to stay for a little bit, but I have another meeting.

I'm also not ready to support the bill. I'm going to vote no in its current form. And I know the sponsor is sincere, and we can work with her in the future to try and make it better. But I don't think that the system is broken at this point. I've been educated a lot on this lately in the last 48 hours from many individuals, and I just think that the waiver is

there for a good purpose. I think it's been utilized by county prosecutors very well, so I'm going to be voting no.

SENATOR GREENSTEIN: Okay, thank you,  
Yes?

SENATOR BARNES: Madam Chair, it is usually my practice to stay and listen to all the witnesses, no matter what Committee responsibilities I have. But I have another Committee meeting in 10 minutes, so that's the reason why I'll be leaving. I will be voting yes, and I want to congratulate the sponsor on the bill.

SENATOR GREENSTEIN: Thank you.

Okay, well, does anyone have any questions of these people -- these witnesses? (no response)

All right, thank you.

MR. BERNARDI: Thank you.

MR. FINKEL: We appreciate your time today.

SENATOR GREENSTEIN: Thank you very much.

The next person to speak will be Dan Phillips, Administrative Office of the Courts. Is he here?

MS. WHITBECK (Committee Aide): Yes, he's back there.

SENATOR GREENSTEIN: Okay, Dan, in favor.

**DANIEL PHILLIPS, Esq.:** Good morning. Dan Phillips, from the Administrative Office of the Courts.

SENATOR GREENSTEIN: Dan, I just want to make a statement for the public.

All of this, of course, is being transcribed. Anybody -- these members of the Committee or anybody else will have a chance to see all of it.

MR. PHILLIPS: Anyway, Dan Phillips from the Administrative Office of the Courts. And I'll be brief; I know you have other witnesses.

We are in support of this legislation. We understand it's a work in progress. And like the long line of people before me, I would applaud Senator Pou. She's done a tremendous amount of work in raising the consciousness and awareness of this issue.

It's been 15 years since the McArthur Foundation released its research on adolescent brain development; and it's been, as Craig Levine said, referenced in three U.S. Supreme Court opinions and one New Jersey Supreme Court opinion that resulted in changes to the juvenile justice system nationally and in New Jersey.

So it's certainly time for this discussion to occur at the policy level. There have been various committees -- joint committees with the Attorney General's Office, the courts, and the advocates discussing this issue for probably a decade. So we're pleased to see it come to a head and some policy discussion. And hopefully everybody will continue to be engaged as we move forward on the bill.

We have discussed the bill in its current form with our Family presiding judges -- which many of them are juvenile judges as well. And they are supportive of the concepts in the bill -- again, understanding that there's some work to do. They actually had some good suggestions as well.

But the part of the bill that we most support is, we don't believe that waivers should be eliminated from our system. It has its place

for appropriate cases. But that's the trick in the whole thing, is determining which case is the appropriate case. And we do believe that the courts should be put in the role of determining which cases are appropriate to be waived up to the criminal courts, rather than the prosecutorial discretion. That does happen with 14- and 15-year-olds, and some 16- and 17-year-olds. But for the serious offenses, for 16- and 17-year-olds, it's pretty much a probable cause determination.

So that is something we support changing the law -- to have the judges decide, looking at the nature of the crime, the offenses, the circumstances, and the juvenile, and the juvenile's history within the Family Court -- whether that juvenile should be waived or not.

The other part of the bill we support is the concept of rehabilitation in the bill, rather than punishment. The MacArthur Foundation clearly shows overwhelmingly that brain development continues through the age of 25, and that young people can be rehabilitated. And they know from research, that included New Jersey and New York, that when we send juveniles into the adult correctional system they're going to come out and commit more offenses, more serious offenses more frequently. We know these things. And we also know that the juveniles who are sentenced through the adult system are coming out of our correctional system. They're being mixed with people who are hardened criminals, and they're going to come out of that system and they're going to go back to their communities, and they're going to influence a whole other generation of youth. And it's going to continue to expand crime.

So the goals of Senator Pou's bill are rehabilitation -- to get youth who are sentenced, whether they're sentenced in the criminal system

or the juvenile system -- to serve their sentence in the juvenile correctional facilities where they can get programs and educational opportunities to help rehabilitate them. That is really the true goal of her bill, and it's consistent with the MacArthur research, and I think that's what all the advocates know as well.

We can save lives, or we can give up on lives. They're going to get out, they're going to come back to our communities, and this is just another in the chain of smart justice that's been going on over the last decade, with drug courts and JDAI, and now we're moving to pre-trial services. It's looking at the evidence and making smart judgments on how we can rehabilitate people, rather than putting them in prisons and punishing them. And that's not to say that some people don't belong there; but we want to try to win this battle. And you win it by rehabilitating people.

So we appreciate all the work that the Senator has done, and we hope to continue the discussion with her and all the other involved parties.

SENATOR GREENSTEIN: Dan, I just have one question.

Do you feel that-- We all sort of agree it's only a small number that are waived right now. How do you feel the JJC is doing these days, in terms of -- you know, before this bill? How were they doing in terms of rehabbing children?

MR. PHILLIPS: Well, they're our partners. I think that question is better asked of the Juvenile Justice Commission -- which isn't here today -- or the Attorney General's Office, which has oversight over them. But they are our partners, and we have full faith in them. We work

very closely with them on these kinds of efforts. And they do an excellent job of rehabilitating. They're professionals in doing that, and we have full confidence in what they do.

I'm going to also add-- As you know, Senator, we have released the statistics. There was a statistical analysis of the Juvenile Justice Commission. That's been released; it was based on 2009 data, and tracked through 2010. And I would ask all the members -- that they have copies of that, to look in it and judge for themselves the true value of what waiver is. Because we have juveniles who are being waived into the adult system who come back to probation, or are given noncustodial sentences. And in some cases the sentences of those juveniles in the criminal system are less than what they would have received in the juvenile system.

So these are things we should be looking at and discussing. We have a statistical analysis. And now that it's public, we should be looking at that and continuing this discussion to make sure we're doing the right thing for public safety and for these juveniles as well.

SENATOR GREENSTEIN: Thank you very much; thank you.

MR. PHILLIPS: You're welcome.

SENATOR GREENSTEIN: Next, I'm going to call Lance Lopez and Kareem Pritchett, PBA Local 105, opposed.

**LANCE P. LOPEZ Sr.:** Good afternoon, Senator. And I thank for continuing to take testimony regarding this bill.

My name is Lance Lopez, President of PBA Local 105, which represents more than 6,000 corrections officers, Juvenile Justice, and parole officers in the State of New Jersey.

My concern with the bill is simply the interpretation of solitary confinement and the meaning that is held within solitary confinement.

One of the proudest moments that I have, outside of being a father, is that I'm a U.S. military veteran. Second to that, is that I'm a law enforcement officer in the State of New Jersey, and I represent 6,000 officers who work in the State of New Jersey in some of the roughest environments in the state.

The juvenile facilities and adult facilities are facilities for a specific reason, and that is because individuals have broken the laws and they are sentenced to a punishment. What this bill does, under the juvenile justice side, is it limits the number of days a juvenile can spend in solitary confinement under the meaning of this particular bill.

The concern is, what happens once an individual commits a crime inside the facility? Officers are assaulted every day inside our juvenile facilities. And a punishment based on the age, and not the conduct, is insulting to the members who we represent.

I don't know what kind of changes that should be made, but certainly our officers understand that we work in an environment where their safety is in jeopardy every day. They receive 70 percent of their salary when they are hurt in the line of duty. We are the only law enforcement agency in the State of New Jersey that is without 30 percent of their salary if they are assaulted by an inmate or a resident inside of these facilities.

So again, I oppose this bill. I will yield to Kareem Pritchett, to my right, who is the Vice President, overseeing the Juvenile Justice Commission.

**KAREEM PRITCHETT:** Good afternoon, Madam Chair and Committee.

My name, again, is Kareem Pritchett. And I've been with the Juvenile Justice Commission for going on 12 years now. I'm a resident from Newark, New Jersey. And dealing with juveniles means a lot to me. Just like-- I'm a father of four, grandfather of one.

One thing this bill doesn't explain is: what happens to the bad behavior? Once they are released out of room restriction, what are we doing to correct the bad behavior? Are they going back into general population? The thing with 15- and 16-year-olds only receiving two or three days' room restriction -- I don't think we're correcting the bad behavior. I don't think there are enough consequences there. I believe that we should be doing more to let them know that every action they do, there's a consequence.

So I definitely am opposed to the bill. I think that the bill needs more work. We're definitely willing to work with Senator Pou on the bill. I think we can go as far as going to the juvenile meeting facility in Bordentown. Jamesburg is a lower-level facility. There are more dorms, there is a lower level-- Juvenile *medium* is more of a maximum facility where your more hardened, more dangerous individuals are there. Any time you go to any of these facilities, the facility has a heads-up. So, of course, they're prepared to show you the good side of everything.

I see that a lot of people are talking about studies; I'm not a scientist, but I've been there, I've been working these units for the years I've been there. I hear the conversations, we see the behavior, we see the

actions. And we need help in there, because it's not as safe as people would think it is.

SENATOR GREENSTEIN: Thank you.

I think your testimony is extremely important, because you're actually in there and you see what goes on. And I'm very glad that Senator Pou will be working with you, and hopefully making some changes that may make it more palatable.

One thing I wondered is: Under the current law, with the five days -- which, years ago, was a lot more days, but it's gone down because of Federal standards -- how do you find it now -- forgetting about this bill for a second -- do you find that the way solitary is now is protective of your people? Or do you feel that you're still not able to, with the five days, still not able to protect your people and deal with the system properly? How do you feel about the current system?

MR. PRITCHETT: Well, the way it is right now, I don't think we're more concerned-- We're not saying lock these guys up and just throw away the key. But my concern is, when they come out of room restriction, what are we doing to correct the behavior? What do we teach them? Because we have a lot of young men and women who have no regard for authority. And that's what we're seeing now on the news every day. Nobody's following the laws, nobody's following the rules, and it causes more and more harm to our society.

SENATOR GREENSTEIN: Now, I would think, even under current law and current practice, that would be an issue. Whether it's two days or five days, you still have the issue of what happens when they get

out. You need programming, you need other things to make it work well. And I don't know whether that's addressed exactly in this bill or not.

I'll ask Senator Pou: Is that type of programming addressed? You can sit up there; that way I can ask you questions as we go. I don't-- That's what I've been hearing. It isn't so much the five days or three days; it's the correction when they get out of solitary.

SENATOR POU: Sure. Thank you.

First of all, let me just say that I really appreciate the remarks of these two gentlemen who are before us right now -- providing their input.

I am more than happy to take a look at some of those, because there's-- In fact, it's interesting; I'm actually hearing this for the very first time -- those particular viewpoints were not made available to us during any time in the development of this process.

But I would respond to your question, Madam Chair, this way. I know that-- And I can only-- And I look forward to, by the way, to scheduling an opportunity to go and visit Bordentown, and have the ability to do the kind of tour that was made available to me at Jamesburg so that I can, in fact, have that -- the difference between the two, as you've pointed out in your testimony.

But I would say that during my visit then, at that point, it was made clear to me, I thought, that as a result of some of the changes that JJC has put in place in terms these room restriction procedures -- they have implemented various regulations or policies that will help to address some of these concerns. So I believe that I made mention-- I know I made mention of that in my testimony. I'm happy to look to, and also memorialize, perhaps, in language that may help further clarify what some

of these additional services are that are referred to here, that are going to be needed upon the release of anyone being removed -- or released from these room restriction confinements.

So I will be looking forward to getting that kind of feedback from those experts in these facilities, like that of what you just referred to -- who are better suited to provide that kind of input -- and I'm open to that.

SENATOR GREENSTEIN: Excellent.

And just one other thing. Can I ask you, especially -- well, either Lance or Kareem -- can you describe in the various institutions what solitary looks like? What do the rooms look like, what type of social interaction do the young people have?

MR. PRITCHETT: Well, the rooms are pretty much like any room anywhere in the facility. There's no smaller window, versus bigger windows; there's the same bedding, there's the same bathroom facilities in there. They get the same meal that any other inmates in the facility receive. The only time the meals are any different is when a doctor or the medical staff prescribes a special diet. But there's no difference. The only thing that they're restricted from is, their privileges are reduced as far as TV time, as far as the length of time in the day space area.

SENATOR GREENSTEIN: What about social interaction?

MR. PRITCHETT: Well, the cells are close enough to where they can interact with other residents who are in the unit as well. They're not isolated by themselves at all. There's human contact; the officer is actually there and communicates with the residents as well. Actually, in our detention unit we actually have a radio where they listen to music, where it's not like total silence. They have music they listen to, they have

conversations, the officer talks to them. So they definitely have human contact.

SENATOR GREENSTEIN: Do they get exercise?

MR. PRITCHETT: Yes.

SENATOR GREENSTEIN: Are they allowed-- Do they go out to exercise?

MR. PRITCHETT: Yes, they get an hour a day. In Title XIII, it says five hours a week; but they normally do an hour each day, which would be seven hours a week, if the weather permits. The rec yard is outside, so if the weather permits, they will be able to go outside for an hour.

SENATOR GREENSTEIN: What's your perception in terms of people who go in there and, let's say, who don't particularly suffer from mental illness. Do you see-- I know you have psychiatrists, psychologists who are able to see them. But do you see the room restriction as pushing that in people who may not be mentally ill? I mean, do you see signs of that? Are you able to actually identify where they seem to be getting a little mentally ill from just being in that sort of a setting?

MR. PRITCHETT: No, I don't see that. Again, I'm not a doctor. But like I said, we definitely hear the conversations, we see the behaviors, we see the actions, and we don't see any sign of any mental illness or any mental defects at all.

SENATOR GREENSTEIN: As a result of being in that--

MR. PRITCHETT: As a result of being in the--

MR. LOPEZ: Senator, if I can add one more thing to it.

In some instances, some of the residents would rather be in their cell -- and that's just to avoid negative contact with other residents inside the facility who may attempt to recruit them as a gang member. So they'll do their time, isolating themselves from the other residents for those reasons.

And if I can add one more thing. Over the last two years, PBA Local 105 has been a real strong advocate of programs coming inside the facilities. We believe that if the residents inside -- not only the juveniles, but the State facilities -- receive enough programming to allow them to understand what it would feel like to become -- go back into society and become a productive citizen, we think that works. We think that will help. We just don't think that either the JJC -- or the DOC, for that matter -- has done enough to implement programming. And I commend Senator Pou, and I ask that that should be added -- language that requires them to have more and more programs inside these facilities to make sure that they don't reintegrate themselves back into the society (*sic*), or back into the correctional facilities.

I challenge you, and I challenge anyone else to come and visit our office at 42 Lafayette Street, where we put up posters and billboards around the state that say, "We put in time here," which is a display of our officers as coaches, teachers, mentors, and role models, "So they don't put in time here," which is a display of a prison cell -- letting the public know that we do care.

Our other slogan was that, "We put in time on these courts," which is a basketball court, as coaches, "So they don't end up in these

courts,” which is a courtroom. And again, these are billboards that we put up on buses--

SENATOR GREENSTEIN: Those are good ads. They sound good.

MR. LOPEZ: --and we’ve really been promoting and advocating for our youth in our communities.

And again, we commend Senator Pou for her bill, but we just -- we really feel that there’s a concern -- a really, really grave concern about the safety of our officers if they are assaultive residents coming out for longer periods of time; and there’s no compensation for our members.

SENATOR GREENSTEIN: Well, I know I appreciate your testimony, and it’s great. Senator Pou is trying to make reforms that are really important, and I’m sure she’ll address these issues as you all get to know each other.

So thank you for your testimony. We really appreciate it.

MR. PRITCHETT: Thank you.

SENATOR GREENSTEIN: Okay, the next person is Sandra Simkins--

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike) Ms. Simkins had to leave.

SENATOR GREENSTEIN: She had to leave? Okay. She’s a Professor at Rutgers Law.

How about Jean Ross, Esq., Peoples Organization for Progress.

J E A N R O S S, Esq.: I was going to say good morning, Madam Chair, but I think it’s the afternoon.

SENATOR GREENSTEIN: It’s practically night. (laughter)

MS. ROSS: I'm going to be very, very brief because of the testimony that we've heard so far.

I've come here with testimony from the People's Organization for Progress which, among other things, works with youth in anti-violence programs on the streets. And I've also brought brief testimony from the American Friends Service Committee, which their Prison Watch Program is the recipient of many letters from people within the Juvenile Justice system. And I urge you to look at the very short brochure that came with the AFSC's testimony, called *Our Children's House*, so you can hear the voices of children who are in JJC facilities.

Both of these organizations support S-2003, and I think that what we have done, in the submissions we've given you, is to express our support, to tell you the things that we like very much about the bill, and to give you some ideas about changes that we would like to see in the bill. However, despite the fact that we want some changes, our position is clear -- that we support this bill.

Because of Senator Pou's accessibility to continuing to discuss the bill, and this Committee's decision to report the bill without recommendation so that the discussions can continue, I'm going to give Senator Pou copies of the same materials that you have. We haven't been involved in the discussions to date -- we, meaning the People's organization for Progress, or Bonnie Kerness, who is the Director of the AFSC program -- but we hope to be involved in those discussions in the future.

So I want to just give you one example of something that we would like -- the People's Organization for Progress would like to see in the solitary confinement part of the bill; and it's something that we have taken

from the practice in the adult prisons. And that is, that before anyone in an adult prison is put in solitary confinement -- by whatever name -- there has to be a medical and a clinical review, a mental health review. And I don't see that in S-2003.

And secondly -- I think this is consistent with what people both in support and in opposition to the bill have said -- when juveniles are in room restriction -- or solitary confinement, or whatever they want to call it -- it's important that there be therapeutic staff intervention in the course of their stay, their confinement. And I don't think that I heard any opposition to that idea.

SENATOR GREENSTEIN: No, I think that that might actually take place now. I have the impression it does.

MS. ROSS: Yes, I think it may take place, but I'm not sure that it's in the bill -- a requirement that there be therapeutic staff intervention. I don't think that I heard any opposition to that concept. That's one of the things we would support in ensuing discussions.

So that's all I have to say.

SENATOR GREENSTEIN: Thank you.

MS. ROSS: And you have copies of the details of our positions in the papers we submitted.

SENATOR GREENSTEIN: Thank you.

MS. ROSS: Thank you.

SENATOR GREENSTEIN: Senator Pou, we only have a few more, but you're welcome to sit up here if you'd like to.

SENATOR POU: Oh, thank you, thank you.

SENATOR GREENSTEIN: Ceil Zalkind, Advocates for Children of New Jersey, in favor.

CECILIA ZALKIND: Senator Greenstein, thank you for the opportunity to testify in support of 2003.

I'm Cecilia Zalkind, Executive Director of Advocates for Children of New Jersey; and we are a member of the Juvenile Justice Reform Coalition.

I've submitted written testimony, so I'm not going to go into that in any detail. I just wanted to add my comments to the discussion on juvenile waiver.

As a member of the New Jersey Council on Juvenile Justice System Reform, which is co-chaired by the Administrative Office of the Courts and the JJC, I chaired a committee looking at reforms to the waiver provisions. This committee had broad representation of public defenders, prosecutors, judges, court staff, staff from the JJC, the Administrative Office of the Courts, and advocates like me.

And we actually started our question around looking at the very few children who were waived for trial as adults, and asked the question, "Are we a solution in search of a problem?" And we decided that we were not.

There was consensus around certain provisions that Senator Pou has included in her bill: one was, there is strong support for raising the age of waiver -- and, in fact, our committee recommended 16 as being the age for waiver, not 15; limiting the use of some crimes for waiver and focusing only on the most serious crimes; setting a clear standard for waiver and a burden of proof -- and I think you've heard from the prosecutors

today about what may happen if the standard of this bill goes forward, but you can also hear from judges who talk about the standard being unclear now, with different pathways for different youth, depending on age and crime; and also a burden on a youth of having to demonstrate that he can be rehabilitated by age 19. I think the standard that Senator Pou has included in this bill addresses that in a very fair way. And also the issue of extending the time to filing, from 30 to 60 days. And I think this bill accomplishes that.

And in reality, as you've heard today, it really reflects what happens already. Our committee was the committee that had an opportunity to look at the 2009 data and see what happened to kids who were -- waiver motions filed in 2009 to 2013. I'm happy that that data and the committee report is actually out.

We found basically what you've heard: There are few children waived; less than 200 filed per year, and a much smaller percentage that actually are waived to adult court. Very few are waived at age 14 and 15. Those waived tend to do the most serious crimes, and it's often used as a bargaining chip -- which leads to delays.

We were concerned that, when we looked at the data in 2013, out of those 189 or so children where a motion was filed, there were still 30 cases that were left unresolved, four years later. That's a long time to be waiting. And most important, we did see uneven application in the counties, with some counties having extremely high rates of waiver, and some very little. I think that reason alone is enough to look at changes to the waiver statute.

I would just conclude by saying we know so much more now than we did when the Juvenile Code was enacted in 1984. You've heard about the brain research that talks about brain development, now, to the age of 26. I would just add that we have an example of success in New Jersey in the Juvenile Justice Detention Alternatives Initiative. You know, 10 years ago we'd be sitting in this room talking about overcrowding in detention and how would we treat youth more effectively. We're now a model for the rest of the country in the successful reduction of the number of youth in the juvenile detention centers without risk to public safety. Those youth have been treated more effectively in the community; recidivism is down, juvenile crime is down. We have detention centers that have closed.

Having done this work back to the Juvenile Code in 1984, it's amazing to be able to say that. And that's been done, again, by partnerships like this, and it's been done without risk to public safety.

So I would urge you to consider this bill favorably; and to end just by commending Senator Pou for introducing it.

Thank you.

SENATOR GREENSTEIN: Thank you very much. Thank you.

Let's see -- the next will be Harold Katz, New Jersey Office of the Public Defender, in favor.

**HAROLD KATZ, Esq.:** Thank you, Senator.

I very much appreciate being here today, and it's a privilege to be here today on behalf of Public Defender Joseph Krakora.

My name is Harold Katz, and I'm the Deputy Public Defender in charge of the Camden Regional Office of the Public Defender. I've worked as a Public Defender for a little over 37 years; and for almost 20 of those years I was on the front lines during the 1980s and 1990s representing juveniles charged with acts of delinquency.

We very strongly support this bill, and we do so for several reasons: First of all, we believe that the decision as to whether a juvenile is tried in the Family Court or an adult court is, perhaps, the most serious decision that is made in the course of delinquency proceedings. And we believe that that decision should be made by the Judiciary. The current system vests enormous discretion with the prosecutor. And even though there are relatively few numbers of waivers, as has been pointed out, this legislation is extremely important because it's important that we get the decision right as to whether a juvenile should be waived. It's important if it's only 5 juveniles, or 10 juveniles, or 15 juveniles. And we believe that judges are in the best position to consider all the different factors, and to make an informed decision.

The fact of the matter is that, as a defense attorney, I come with a certain perspective; prosecutors come with a different perspective; but judges are in a position to balance all the considerations and make an informed decision.

The standard of review currently is a very limited standard of review by the courts -- so the courts play a very limited role in what's commonly referred to as *prosecutorial waiver*, at the present time. It's also-- This reform is also very important because, aside from the numbers of waivers, the prosecutorial waiver system has an enormous impact upon the

processing of juvenile cases -- because the prosecutor has enormous power. As a result, they have a great deal of leverage of how cases are treated. “If you don’t accede to the offer made in this case, we will move for waiver,” or “If you don’t accede to a term of incarceration in a juvenile facility, we will move for waver.” So the influence extends far beyond the number of waivers that are actually filed and granted.

I would also just like to say that what has been raised about the spectrum of the battle of the experts, I have not found to be the case. During my years on the front lines in the 1980s and the 1990s, when there were judicial discretion waivers which involved rehabilitation hearings in Camden County -- one of the highest crime rate counties in the state -- the prosecutor simply elected, when they filed waivers -- and they filed quite a number of waivers -- they simply didn’t get experts. The court was still able to evaluate the evidence that was presented; a lot of the factors are objective factors that don’t relate to expert testimony. Even if the defense presents an expert, the court sometimes credits that, sometimes doesn’t. So I think it’s a red herring to say that reform will involve a battle of experts and will devolve into protracted, meaningless litigation. What it will do is, it will provide an impartial fact-finder with information from which the best decision can be made.

Thank you.

SENATOR GREENSTEIN: Thank you very much.

Questions? (no response)

Thank you.

MR. KATZ: You’re welcome. Thank you, Senator.

SENATOR GREENSTEIN: We appreciate it.

Do we have Cynthia Spadola here? Okay; she's from the Mental Health Association, in favor.

And we'll be ending with the ACLU, Alex-- Is Alexander Shalom here?

MR. SHALOM: (off mic) Yes, I am.

SENATOR GREENSTEIN: Okay, you're the last, after--

MR. SHALOM: (Indiscernible)

**CYNTHIA SPADOLA:** Good afternoon. Thank you so much for allowing us the opportunity to continue to provide testimony. We really appreciate it.

Briefly, the Mental Health Association is a statewide, private, nonprofit advocacy organization.

SENATOR GREENSTEIN: Put your--

MS. SPADOLA: I'm not on?

SENATOR GREENSTEIN: Pull it towards you. (referring to PA microphone)

MS. SPADOLA: Is that better? Okay, thank you.

Our interest in this bill-- First of all, we strongly support the bill. Our interest is in the confinement piece of it.

We thank you, Senator Pou, for your strong advocacy for youth; and we have some amendments that we would like to suggest.

We ask you to consider incorporating into the bill those portions of Bill S-2588 that require a clinical assessment of inmates, which help protect juveniles with mental illness and other disabilities from the effects of isolation. Currently, S-2003 does not require these clinical assessments, which may help prevent irreparable harm to juveniles with

mental illness. It would be particularly inappropriate to put someone in isolated confinement for behavior that is a result of their disability.

We also ask you to consider addressing the Behavioral Accountability Unit alongside solitary confinement. The BAU is a separate wing segregated from the general population, which is used either as a place for a juvenile who poses a threat or as a transitional placement upon discharge from isolation. In current practice, a juvenile is released from isolation after a period of up to 5 days, and sent to the Behavioral Accountability Unit for usually about a week. Anecdotally, however, advocates report that clients stay for much longer periods.

Unlike confinement or restriction, the Behavior Accountability Unit has a classroom that the juveniles attend during the day. Other than during meals, school, and recreation, these residents remain in their cells while in the Behavior Accountability Unit.

We suggest that the Behavior Accountability Unit be considered a less-restrictive option under the current bill. If the bill significantly curtails the punitive use of solitary confinement, it may have the unintended consequence of increasing the use of the Behavior Accountability Unit. Therefore, we'd recommend the same protections that I mentioned earlier be amended to cover the Behavior Accountability Unit as well.

Thank you for hearing our testimony, and for your consideration of these amendments. We believe this is a very strong bill, and we want to see it continue to go.

SENATOR GREENSTEIN: Thank you very much. We really appreciate it.

MS. SPADOLA: Thank you.

SENATOR GREENSTEIN: Thank you.

And Alexander, bringing up the rear. (laughter)

MR. SHALOM: I asked Wendy if I might go toward the end, and I've learned my lesson. I won't make the same mistake again. (laughter)

Senator Greenstein, thank you for your patience. I see we've even outlasted Senator Barnes' other committee obligations. (laughter)

Senator Pou, thank you--

SENATOR GREENSTEIN: Probably not; he just left it.

MS. WHITBECK: No, he just left. (laughter)

MR. SHALOM: We caused him to come back, one way or the other.

I'm here on behalf of the ACLU, but also on behalf of the Juvenile Justice Reform Coalition. And I'd like to mostly talk about the solitary confinement aspects; but, if I can, briefly respond on waiver.

My friends from the Prosecutor's Offices who came here talked about how the system is working. And the truth is, they might be right in their counties. In their counties, if over the period of time we're talking about -- collectively in the three counties that they represented, there were 14 juvenile waivers amongst 326 arrests of juveniles charged with serious crimes. In Cumberland County (*sic*), there were twice as many waivers on 43 arrests -- so a seventh of the number of arrests, and twice as many waivers -- that's Cape May County; Cumberland County had three times the number of waivers. So the fact that it's working in some counties is not a signal that we don't need a judicial role; it's the signal that the Judiciary

might agree with the prosecutors in the counties where they are already identifying the worst offenders.

But if -- if they are correct, and they are only using this waiver provision for the most dangerous kids who have committed the most horrific and heinous crimes, then why do they need the ability to waive kids who commit auto theft, who commit computer crimes -- these are not the worst among us. And the bill, S-2003, seeks to remove those crimes from consideration because they can't be the worst among us. So that's on waiver.

A few things on solitary confinement. I should note that the-- You've referenced Federal standards that brought the time down to 5 days. In fact, those are State regulations. And when those State regulations came about that reduced the amount of time a kid could spend in room restriction to 5 days, they were hard-fought. They were fought against by the corrections officers who said the exact same things that they're saying now, "We can't control it if you don't let us lock kids in for 30 days." Now they're saying, "The difference between 5 days and 4 days will put our guards at risk." It simply hasn't borne out in the decade since we've changed the amount of time.

And here's the thing. I think we need to be aware of certain red herrings. When we're told that, right now, they have nothing they can do when a guard is assaulted, well, a child faces outside criminal charges if he commits an assault on a guard. That child can get more time in Jamesburg or, if the kid has turned 18, in an adult facility. That can happen. And the fact that guards aren't properly remunerated when they're injured -- that

should be resolved, but that's not about room restriction. That's about protecting the guards.

That there needs to be more programming? Sure, but that's not about whether we're locking kids in boxes. And I think we need to frame it. I think-- Mr. Pritchett was very careful, Senator Greenstein, in responding to your question -- that the rooms in room restriction are just like the rooms elsewhere at Bordentown and Jamesburg; and that's true. But those rooms are not the rooms that my children stay in at night, or most people here. Those rooms are 7 feet wide; they have a steel bed in them; and yes, there's a sink and a toilet, but they are cells. There is nothing that separates them from your image of a cell. And I think-- I commend everyone to take the tour that Senator Pou has taken, that I have taken. But I'll note that I actually got to take a tour in the context of litigation. So that allowed me to go not on the tour of where the JJC wanted to show us, but it allowed us to see the room restriction cells, to see where kids are kept for up to 5 days at a time. And it's a prison cell. And we need to get beyond that.

And the last thing I'll say on this is, you asked about mental illness. And Mr. Pritchett said, "I've never seen that." Senator Pou indicated the reason she came to this bill--

SENATOR GREENSTEIN: Actually, I think what he said-- I was asking the question: Does he see-- Has he--

MR. SHALOM: Deterioration.

SENATOR GREENSTEIN: --seen instances where the isolated confinement seemed to be causing mental illness.

MR. SHALOM: Correct.

SENATOR GREENSTEIN: And he said he hadn't.

MR. SHALOM: Right. And Senator Pou talked about a case that brought her to this bill -- and that was a case litigated in Federal court; a young man named Troy D. was held in various forms of isolation for periods of time -- around a hundred days. During his time in isolation-- He had a prior diagnosis of mental illness, but during his time in isolation, there was feces smeared on the wall and he engaged in a serious amount of self-mutilation -- cutting himself. And so we can bury our heads in the sand and say that kids aren't getting worse when they go in. But the six-figure settlement that Troy D. reached with the State of New Jersey suggests otherwise. It suggests that when we put kids in isolation it causes serious and long-term consequences to their mental health.

And the last thing I'll say -- and this really hits all of these issues -- this is a public safety issue; it really is. Mr. Levine referenced three Supreme Court cases that talk about how kids are different and refers to the brain science. And in the last two of those cases -- *Graham vs. Florida* and *Miller vs. Alabama* -- what the Supreme Court did is, it said, "We can't any longer condemn children to die in prison for crimes committed as juveniles. There's no longer a juvenile life without parole." And what that means is, every kid we're talking about here is getting out. They're coming back to our communities. And the question we need to ask is, how do we want them to come back? Do we want them to come back rehabilitated, or do we want them to come back horribly damaged from the time they spent in solitary confinement? And that's really a public safety choice.

And for that reason I urge this Committee to support S-2003.  
Thank you.

SENATOR GREENSTEIN: Thank you, thank you.

Questions? (no response)

Well, great. We are ready to take the vote, which is going to be a vote without recommendation.

MS. WHITBECK: Okay, so on the motion-- It's a motion to amend S-2003; and it's also to release S-2003 without recommendation.

I need a motion and a second.

SENATOR BARNES: So moved.

SENATOR GREENSTEIN: Second.

MS. WHITBECK: On the motion to release S-2003 without recommendation, as amended, Senator Holzapfel has indicated a negative vote, as has Senator Bateman; both are on the record. Senator Sacco has indicated an affirmative vote.

Senator Barnes.

SENATOR BARNES: Yes.

MS. WHITBECK: And Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. WHITBECK: The bill is released, as amended, without recommendation.

SENATOR GREENSTEIN: Thank you. Thank you, Senator Barnes.

SENATOR POU: Thank you, Madam Chair.

SENATOR GREENSTEIN: Thank you very much, Senator Pou.

**(MEETING CONCLUDED)**