

MEMO

TO: Committee on Criminal Justice and Public Safety

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 546

Date: March 18, 2021

CLAC members are divided with respect to the merits of section 1 of LD 546 and express no opinion on the balance of the bill. Section 1 would repeal the provision of the Juvenile Code that authorizes a court to detain a juvenile for the purpose of providing “physical care for a juvenile who cannot return home” because no suitable parent or other adult is willing and able to care for the juvenile. CLAC understands that this recommendation is aimed at eliminating the practice of using secure detention to care for children who cannot return home despite no or minimal risk to public safety. CLAC also understands that the Department of Health and Human Services has secured funding for a “Families First” initiative that could provide care for children in these circumstances.

Members who oppose the repeal of this provision believe that detention should remain available to provide care for children who cannot return home until alternative programs are established and have demonstrated the ability to meet this need. These members point out that although funding may have been secured, at this point, no such programs exist. They believe that the State should not eliminate a viable option for providing care for children until there is certainty that an appropriate alternative exists.

Members who support section 1 suggest that on this issue, deference should be accorded to the expertise of the Task Force making this recommendation. They also point out that placement in secure detention when that is not necessary to ensure public safety can be detrimental to the children involved. These members also note the recent movement on funding and planning to provide services for these children and suggest that removal of the detention alternative will further incentivize the State to develop appropriate alternatives for care.

Finally, CLAC heard from an experienced juvenile prosecutor who suggested that enactment of section 1 would narrow, but not eliminate, detention as a last resort for the care of children in need. Even if section 1 were enacted, the juvenile code would still allow a court to order secure detention to “protect the juvenile from an immediate threat of bodily harm.”