****

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion. In no event will any such motions be accepted before the "officially released" date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

The syllabus and procedural history accompanying the opinion as it appears on the Commission on Official Legal Publications Electronic Bulletin Board Service and in the Connecticut Law Journal and bound volumes of official reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced and distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.
****

EVELEIGH, J., with whom PALMER, J., joins, dissenting. I respectfully dissent. I disagree with the majority's conclusion that the Appellate Court improperly concluded that the failure to provide a hearing in the juvenile court on class C and D and unclassified felonies prior to the transfer of such cases to the regular criminal docket of the Superior Court, and to afford the defendant in the present case, who was fifteen years old at the time of the incident giving rise to his conviction, an opportunity to contest his transfer, violated the requirements of General Statutes (Rev. to 2005) § 46b-127 (b).[1] Instead, I would conclude that the language of the statute and its legislative history reveal that the legislature intended to provide juveniles with an opportunity to contest their transfer at a hearing in the juvenile court. Accordingly, I would affirm the judgment of the Appellate Court, which had reversed the trial court's judgment convicting the defendant of assault in the second degree as an accessory, a class D felony, following the transfer of his case from the juvenile docket to the regular criminal docket of the Superior Court without conducting a hearing in the juvenile court.

The majority opinion holds that the juvenile court's transfer of a class C, class D or unclassified felony is a "ministerial act." In my view, this conclusion completely ignores the fact that on two separate occasions in 1995 during the debate on the bill that resulted in the current statutory scheme, members of the legislature proposed amendments to the bill that would have made the transfer of these cases automatic upon the filing of a motion. Significantly, both amendments containing the aforesaid language were eventually rejected by the legislature in favor of the language "approval by the court," later changed to "order of the court." General Statutes (Rev. to 2005) § 46b-127 (b). The rejection of these two amendments is a strong indication of the legislative intent to allow the juvenile court judge discretion to order or reject a transfer of the juvenile who was charged with commission of the aforesaid offenses. See 2A N. Singer & J. Singer, Sutherland Statutory Construction (7th Ed. 2008) § 48.18, pp. 621–22 ("the rejection of an amendment indicates that the legislature does not intend the bill to include the provisions embodied in the rejected amendment"). The importance of the legislative action is not mentioned by the majority. For this reason, coupled with other relevant legislative history, including comments by the original sponsor of the bill, as well as the inclusion of the language "order of the court," I dissent.

I agree with the majority with respect to the standard of review. The issue of whether the failure to provide a hearing in the juvenile court to afford the defendant

an opportunity to contest his transfer violated the requirements of § 46b-127 (b) is a question of law, over which we exercise plenary review. *Ziotas* v. *Reardon Law Firm, P.C.*, 296 Conn. 579, 587, 997 A.2d 453 (2010). "The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . [General Statutes] § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered. . . . When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . . A statute is ambiguous if, when read in context, it is susceptible to more than one reasonable interpretation. . . . Additionally, statutory silence does not necessarily equate to ambiguity." (Internal quotation marks omitted.) *Hartford/Windsor Healthcare Properties, LLC* v. *Hartford*, 298 Conn. 191, 197–98, 3 A.3d 56 (2010).

At the outset, I note that, at oral argument before this court, the state conceded that a hearing of some sort must take place in juvenile court regarding the transfer of class C, class D or unclassified felonies. The state, however, would limit that hearing to: (1) a finding of probable cause; (2) a finding that the age of the juvenile was fourteen or over; and (3) a finding that the crime charged is a class C, class D or unclassified felony. Therefore, the dispute, as far as the state is concerned, is not the question of whether a hearing should take place but, rather, the extent of that hearing. I would allow the juvenile to further object to the transfer by argument of counsel, on the basis of the juvenile's prior record and involvement or lack thereof in the crime.

I begin my analysis with the relevant statutory text. General Statutes (Rev. to 2005) § 46b-127 (b) provides: "Upon motion of a juvenile prosecutor and *order of the court*, the case of any child charged with the commission of a class C or D felony or an unclassified felony shall be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court, provided such offense was committed after such child attained the age of fourteen years and the court finds ex parte that there is probable cause to believe the child has committed the act for which he is charged.

The file of any case so transferred shall remain sealed until such time as the court sitting for the regular criminal docket accepts such transfer. The court sitting for the regular criminal docket may return any such case to the docket for juvenile matters not later than ten working days after the date of the transfer for proceedings in accordance with the provisions of this chapter. The child shall be arraigned in the regular criminal docket of the Superior Court by the next court date following such transfer, provided any proceedings held prior to the finalization of such transfer shall be private and shall be conducted in such parts of the courthouse or the building wherein court is located as shall be separate and apart from the other parts of the court which are then being held for proceedings pertaining to adults charged with crimes." (Emphasis added.)

I would conclude that the plain language of § 46b-127 (b) indicates that the legislature intended to vest the juvenile court with discretion over whether to transfer the case of a juvenile charged with a class C or D felony or an unclassified felony. Specifically, the statute requires an "*order of the court*" prior to any case involving a class C or D felony or an unclassified felony being transferred from the juvenile court to the adult court. General Statutes (Rev. to 2005) § 46b-127 (b). The statute does not define the term order of the court. "When a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." (Internal quotation marks omitted.) *Potvin* v. *Lincoln Service & Equipment Co.*, 298 Conn. 620, 633, 6 A.3d 60 (2010). Quoting from a treatise, Black's Law Dictionary provides as follows: " 'An order is the mandate or determination of the court upon some subsidiary or collateral matter arising in an action, not disposing of the merits, but adjudicating a preliminary point or directing some step in the proceedings.' " Black's Law Dictionary (9th Ed. 2009) p. 1206, quoting 1 H. Black, A Treatise on the Law of Judgments (2d Ed. 1902) § 1, p. 5. Accordingly, I would conclude that the legislature's use of the term order of the court in § 46b-127 indicates that the legislature intended the juvenile court to make a determination as to whether the case is appropriate for transfer to the adult court.

Indeed, if the legislature had intended the phrase order of the court to be merely a ministerial act, as contended by the majority, it could easily have said that upon a finding of probable cause, verification that the juvenile was over the age of fourteen, and that the crime was a class C, D or unclassified felony, the juvenile court shall transfer the case to the adult court. Instead, the legislature inserted the phrase "[u]pon motion of a juvenile prosecutor and order of the court . . . ." General Statutes (Rev. to 2005) § 46b-127 (b). Further, I reject the premise enunciated by the majority to the

effect that the use of the discretionary word "may" in the transfer statute would result in a duplication of effort, since the adult criminal court has discretion to send the case back to the juvenile court. First, it is axiomatic that if the juvenile court had discretion, it could reject the transfer and there would not be any duplication of effort. Second, the fact that a juvenile judge may approve the transfer should not affect the motivation of a prosecutor in criminal court to pursue the case or for another judge to send the matter back to juvenile court. The motivation may be different for the respective parties. I certainly do not dispute the majority's proposition that the criminal court has discretion to accept or reject the matter. The hearing that I contemplate in juvenile court, however, would probably take ten to fifteen minutes. I do not consider this time period to be overly burdensome, even if another hearing were to take place in criminal court.

Furthermore, an examination of subsection (a) of § 46b-127, which sets forth the procedure for transferring any case involving a class A or B felony, provides further evidence that the legislature intended the juvenile court to be vested with some discretion over the transfer of a class C, D or an unclassified felony. General Statutes (Rev. to 2005) § 46b-127 (a) provides in relevant part: "*The court shall automatically transfer* from the docket for juvenile matters to the regular criminal docket of the Superior Court the case of any child charged with the commission of a capital felony, a class A or B felony or a violation of section 53a-54d, provided such offense was committed after such child attained the age of fourteen years and counsel has been appointed for such child if such child is indigent. Such counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer. . . ." (Emphasis added.) The use of the phrase "[t]he court shall automatically transfer" in subsection (a) of General Statutes (Rev. to 2005) § 46b-127 indicates that, where the legislature wanted to require the juvenile court to transfer a case without providing it with any discretion, it knew how to do so. In contrast, § 46b-127 (b) only provides that "[u]pon motion of a juvenile prosecutor and *order of the court, the case* . . . *shall be transferred* from the docket for juvenile matters to the regular criminal docket of the Superior Court . . . ." (Emphasis added.) General Statutes (Rev. to 2005) § 46b-127 (b). Indeed, if the legislature had intended the juvenile court to be without discretion in these matters, it could have provided, as it did in § 46b-127 (a), language to the effect that "upon motion of a juvenile prosecutor, the court shall transfer the case." Furthermore, in § 46b-127 (a), the legislature explicitly provided that "counsel may appear with the child but shall not be permitted to make any argument or file any motion in opposition to the transfer." General Statutes (Rev. to 2005) § 46b-127 (a). The legislature

did not include similar language regarding the role of the child's counsel in proceedings under subsection (b). I would conclude that the legislature's omission of both the mandatory transfer language and the explicit prohibition against argument by counsel from subsection (b) of § 46b-127 indicates that it intended the court to have a level of discretion in the transfer of cases under that subsection that it did not intend for cases under subsection (a) of § 46b-127. See *Saunders* v. *Firtel*, 293 Conn. 515, 527, 978 A.2d 427 (2009) ("when a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject . . . is significant to show that a different intention existed" [internal quotation marks omitted]).

Nevertheless, I agree with the Appellate Court's conclusion in the present case that "[§ 46b-127 (b)], however, does not provide guidance to the court on what discretion the court has to consider a motion to transfer." *State* v. *Fernandes*, 115 Conn. App. 180, 187, 971 A.2d 846 (2009). Accordingly, in accordance with § 1-2z, I would look to the legislative history of § 46b-127 to determine what level of discretion the legislature intended the juvenile court to have when considering a motion to transfer.

As the majority explains, § 46b-127 underwent substantial revisions in 1995 and was replaced with the predecessor to the scheme that operates today. I would point out that the pre-1995 scheme was different from the current scheme in three ways. First, as the majority acknowledges, prior to 1995, § 46b-127 only allowed for the transfer of the most serious felony offenses, which were specifically enumerated in the statute, including murder, assault, sexual assault, kidnapping, burglary, robbery and some firearm related crimes. General Statutes (Rev. to 1993) § 46b-127 (a), as amended by Public Acts, Spec. Sess., July, 1994, No. 94-2, § 6. Second, the statute set forth a detailed procedure for the probable cause hearing. General Statutes (Rev. to 1993) § 46b-127 (b), as amended by Public Acts, Spec. Sess., July, 1994, No. 94-2, § 6. Third, if the court made a finding of probable cause, any child, except for those charged with the commission of murder, could request a hearing to present evidence that the case should not be transferred to the criminal docket because the child met one of the following criteria: (1) the child is a person with mental retardation; (2) the child suffers from a substantial mental disorder; or (3) an alternative plan or placement within the juvenile justice system has been arranged that will protect the community from further criminal conduct by the child. See General Statutes (Rev. to 1993) § 46b-127 (c), as amended by Public Acts, Spec. Sess., July, 1994, No. 94-2, § 6.

In 1995, the legislature undertook substantial amendments to § 46b-127. See Public Acts 1995, No. 95-225,

§ 13 (P.A. 95-225). In making these amendments, the legislature acknowledged that it was trying "to fix what most people considered to be a broken criminal juvenile justice system." 38 H.R. Proc., Pt. 8, 1995 Sess., p. 2933, remarks of Representative Michael P. Lawlor. Indeed, a review of the legislative discussions surrounding the 1995 amendments demonstrates that the legislature sought to allow for more transfers of cases involving juveniles in an effort to address the juvenile crime problems that the state was experiencing. See, e.g., id., p. 2942.

Representative Lawlor, the sponsor of the bill in the House of Representatives, acknowledged that "what we've intended to do is make it identical to the process by which cases are transferred between the two levels of the adult court. . . . So if the prosecutors make the motion to transfer in the adult system, the case automatically goes to the [p]art A court, the higher court. Technically the judges retain some overall control on that process. They may feel there's too many cases coming, they may feel a case is really not serious enough. But I think most attorneys at least in the hall who do criminal cases would acknowledge that any time a prosecutor wants to send a case to [p]art A, it generally goes. We've attempted to use the same exact procedures for the transfer from the juvenile court to the adult court. Just to safeguard that not too many cases are transferred, such that they can't be prosecuted, but at the same time give the maximum discretion to the prosecutors that whenever they want to send any felony, not just the [c]lass A or B felony, but any felony to the adult court, that transfer is automatic. In other words, there's no procedural steps between the decision to transfer and the transfer." Id., p. 2952–53.

I disagree with the majority's selective use of Representative Lawlor's statements. The majority quotes a portion of these comments by Representative Lawlor to support its conclusion that the juvenile court does not have discretion over whether to order the transfer. In doing so, however, the majority has completely disregarded Representative Lawlor's express statement that when a prosecutor makes a motion to transfer the case to adult court, the case will generally be transferred, however, "technically the judges retain some overall control on that process." Id. Reading Representative Lawlor's statements fully in context, I would conclude that he clearly indicated that the juvenile court would retain ultimate discretion over whether to order the transfer.

Indeed, Representative Lawlor further clarified the role of the juvenile court in answering specific questions posed by other members of the House of Representatives. Notably, Representative Philip F. Prelli disagreed that Representative Lawlor's statements, which the majority cites in its opinion, were a correct interpreta-

tion of the bill. See id., pp. 2953–54, remarks of Representative Prelli ("I disagree with his interpretation, a little bit . . . because, first of all, we're now talking about a judge in the juvenile court . . . he has to approve the transfer"). Furthermore, Representative Lawlor himself later clarified his interpretation. Representative Dale W. Radcliffe asked: "So then a judge . . . in carrying out this statute might determine that a hearing was appropriate and might decline to automatically transfer or transfer, even on a finding of probable cause based on the four corners of an affidavit. Is that true . . . ?" Id., p. 2962. Representative Lawlor responded: "[Y]es, that's true." Id. Representative Radcliffe again asked: "I do think we have an amendment here, however, that allows a judge, ex parte, on the basis of the affidavits to find probable cause and then still does not require that judge to approve the transfer, is that correct?" Id., p. 2966. Representative Lawlor responded: "Yes, that's correct . . . ." Id.

Indeed, an examination of the process leading to P.A. 95-225 reveals that the legislature considered and rejected proposals that would have removed the language requiring "approval by the court" prior to transfer. For instance, Representative Radcliffe raised a proposed amendment to include part B felonies in the automatic transfer provision and to require that, "[o]n motion of a court advocate, the court shall transfer from the docket for juvenile matters to the regular criminal docket of the [S]uperior [C]ourt the case of any child charged with the commission of a class C or D felony or an unclassified felony . . . ." Substitute House Bill No. 7025, § 13, as amended by House Amendment Schedule B. This proposed amendment was defeated in the House. Once the bill reached the Senate, Senator Thomas Upson raised an amendment to make the transfer of class A and B felonies automatic and to require that, "[o]n motion of a court advocate, the court shall transfer from the docket for juvenile matters to the regular criminal docket of the [S]uperior [C]ourt the case of any child charged with the commission of a class C or D felony or an unclassified felony . . . ." Substitute House Bill No. 7025, § 13, as amended by Senate Amendment Schedule A. The Senate passed the version of this bill bearing Senator Upson's amendment. The bill then was referred to the committee on conference, which recommended rejecting this amended bill, but including class B felonies in the automatic transfer provision, which is the bill that ultimately passed both houses. See Bill Status Report for Substitute for Raised H.B. No. 7025, available at
http://cga.ct.gov/asp/cgabillstatus/cgabillstatus.asp?selBillType=Bill&bill_num=7025&which_year=1995&SUBMIT1.x=8&SUBMIT1.y=16 (last visited January 4, 2011) (noting that Senate Amendment Schedule A, originally passed in Senate on May 30, 1995, was later rejected by House on May 31, 1995, and committee on conference

recommended its rejection; thereafter, House of Representatives rejected Senate Amendment Schedule A on June 3, 1995, and Senate similarly rejected on June 5, 1995). Thus, on two occasions, members of the legislature attempted to insert language that would have made the transfer of these cases automatic upon the filing of a motion. On both occasions, these attempts were defeated and the phrase approval by the court, later changed to order of the court, remained intact. "[T]he rejection of an amendment indicates that the legislature does not intend the bill to include the provisions embodied in the rejected amendment." 2A N. Singer & J. Singer, supra, § 48.18, pp. 621–22. Accordingly, this is strong evidence that the legislature did not intend the transfer of class C, D or unclassified felonies to be automatic upon the filing of a motion by a prosecutorial authority.

As passed, P.A. 95-225 provided that § 46b-127 (b) be amended as follows: "Upon motion of a juvenile prosecutor and approval by the court, the case of any child charged with the commission of a class C or D felony or an unclassified felony shall be transferred . . . ." P.A. 95-225, § 13. The legislature did not define the phrase approval by the court. Accordingly, I turn to the dictionary definition of the term "approval" to ascertain its common usage. See *Potvin* v. *Lincoln Service & Equipment Co.*, supra, 298 Conn. 633 ("When a statute does not provide a definition, words and phrases in a particular statute are to be construed according to their common usage. . . . To ascertain that usage, we look to the dictionary definition of the term." [Internal quotation marks omitted.]). The American Heritage Dictionary defines approval as "[t]he act of approving . . . [a]n official approbation . . . sanction; [f]avorable regard" and defines "approve" as "[t]o consider right or good . . . ." The American Heritage Dictionary of the English Language (3d Ed. 1992). Webster's Third New International Dictionary (1993) defines approval as "the act of approving" and defines "approve" as "to judge and find commendable or acceptable." Accordingly, I would conclude that the term approval by the court demonstrates that the legislature intended the juvenile court to have the discretion to determine whether transfer was appropriate considering all of the issues involved.

As the majority recognizes, the language approval by the court was changed to order of the court in 1998. See Public Acts 1998, No. 98-256, § 3 (P.A. 98-256). As the majority also acknowledges, there is little legislative history surrounding this change and "nothing in the brief reference to this change in legislative debates reflects any intention to make a substantive change to the statute." See footnote 11 of the majority opinion; see also 41 H.R. Proc., Pt. 15, 1998 Sess., p. 5189. Moreover, a report on Substitute House Bill 5696 prepared by the office of legislative research, which was incorporated into P.A. 98-256, indicates that the legislature intended

that the change of language from approval by the court to order of the court would require even greater active involvement by the juvenile court. The report provides in relevant part as follows: "The bill requires that in order for a juvenile accused of a class C or D felony to be transfer[r]ed to adult court, the juvenile court must 'order' the transfer not just 'approve' a juvenile prosecutor's motion to transfer." Office of Legislative Research, Amended Bill Analysis for Substitute House Bill 5696, available at http://www.cga.ct.gov/ps98/fc/625.htm#ba (last visited January 4, 2011). " 'Although the comments of the office of legislative research are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill.' *Harpaz* v. *Laidlaw Transit, Inc.*, 286 Conn. 102, 124 n.15, 942 A.2d 396 (2008); cf. *State* v. *Tabone*, 279 Conn. 527, 542, 902 A.2d 1058 (2006) (consulting analysis of bill by office of legislative research to ascertain legislative intent)." *State* v. *Courchesne*, 296 Conn. 622, 700, 998 A.2d 1 (2010); see also *Butts* v. *Bysiewicz*, 298 Conn. 665, 688 n.22, 5 A.3d 932 (2010). Accordingly, I would conclude that the use of the term order of the court in § 46b-127 (b) evidences the legislature's intent to allow the juvenile court to exercise discretion in deciding whether to transfer a case involving a class C, D or unclassified felony.

Although it is not dispositive in construing § 46b-127, it is important to note that my construction of § 46b-127 (b) so as to provide the juvenile court with discretion in determining whether to order the transfer of a case involving the commission of a class C, D or unclassified felony to the regular criminal docket of the Superior Court is consistent with this state's current public policy favoring extending the length of time individuals are eligible for treatment by the juvenile court. Specifically, in 2007, the legislature decided to raise the age for the jurisdiction of the juvenile court and allow the juvenile court to have jurisdiction over most crimes committed by sixteen year olds (became effective January 1, 2010) and seventeen year olds (effective January 1, 2012). See generally Public Acts, Spec. Sess., June, 2007, No. 07-4, §§ 73 through 78 (P.A. 07-4); Public Acts, Spec. Sess., September, 2009, No. 09-7, §§ 69 through 93 (P.A. 09-7). In making these amendments, the legislature recognized the public policy in favor of making the unique resources of the juvenile court system available to more youth. The majority's interpretation of § 46b-127 (b) is inconsistent with this public policy as it reduces the number of youths who are able to utilize the juvenile court system. Accordingly, I would conclude that allowing the trial court to have discretion over transferring cases involving juveniles charged with class C, D or unclassified felonies is consistent with the public policy of this state as embodied in P.A. 07-4 and 09-7.

It is also noteworthy that in a report on P.A. 07-

4, the office of legislative research stated that it left unchanged the existing law on transfers that "(1) requires juvenile cases involving serious felonies to automatically be transferred to adult court and (2) *allows prosecutors to ask* juvenile court judges to transfer other cases to adult court." (Emphasis added.) Office of Legislative Research, Amended Bill Analysis for Senate Bill 1500, available at http://cga.ct.gov/2007/BA/2007SB-01500-R00SS1-BA.htm (last visited January 4, 2011). As I have explained previously herein, "[a]lthough the comments of the office of legislative research are not, in and of themselves, evidence of legislative intent, they properly may bear on the legislature's knowledge of interpretive problems that could arise from a bill." (Internal quotation marks omitted.) *State* v. *Courchesne*, supra, 296 Conn. 700; see also *Butts* v. *Bysiewicz*, supra, 298 Conn. 688 n.22. The fact that as recently as 2007, the office of legislative research interpreted § 46b-127 (b) to allow prosecutors "to ask" a juvenile court judge to transfer a case involving a class C, D or unclassified felony further bolsters my conclusion that the trial court has discretion over whether to grant the transfer in such cases.

Accordingly, I would conclude that the language of § 46b-127 and its legislative history demonstrate that the legislature intended to allow the juvenile court to exercise discretion in deciding whether to transfer a case involving a class C, D or unclassified felony. I would, therefore, conclude that a hearing is required in juvenile court, without evidence, but the juvenile may object to the transfer on the grounds of, inter alia, his involvement in the alleged crime and prior record, and the judge has discretion whether to transfer the case to the adult court. I would, accordingly, affirm the judgment of the Appellate Court.

[1] Although I agree with the majority that a hearing in the criminal court satisfies due process requirements, I disagree that such a hearing satisfies the requirements of § 46b-127 (b). I also note that such a hearing also satisfies due process concerns if held in juvenile court.

All references in this opinion to § 46b-127 are to the 2005 revision, unless otherwise indicated.