LANDAU, J., dissenting. I agree with the majority that there is an explicit, well defined and dominant public policy in this jurisdiction for the department of children and families (department) to provide a wide range of services to children in need of them. See General Statutes § 17a-3.[1] I do not agree, however, on the facts before this court, that an arbitration award reinstating the grievant to his position as a driver for the department violates that explicit public policy and that the award should be vacated pursuant to General Statutes § 52-418 (a) (4). Consequently, I dissent because (1) the trial court did not have the factual predicate necessary to conclude that the grievant supervised children in the custody of the department and that the department had a policy against employing individuals as drivers of children in its custody when those individuals have been convicted of possession of drugs with intent to sell, (2) there is no clear and explicit public policy that prohibits the state from employing individuals to provide services to the department when those individuals have been convicted of drug offenses and (3) the majority did not balance adequately the countervailing public policy concerning the rehabilitation of convicted felons,[2] especially those who have paid their debt to

society,[3] against the public policy that the department serves.[4]

Noting that the trial court and this court are bound by the facts found by the arbitrator; *Waterbury* v. *Waterbury Police Union*, 176 Conn. 401, 404, 407 A.2d 1013 (1979);[5] I begin with a review of the facts found by the arbitrator, some of which the majority overlooks. The sequence of events is particularly noteworthy. On January 21, 1994, the residence the grievant shared with another man was searched, and narcotics were found on the premises. The state hired the grievant to be a social services assistant with the department on March 17, 1995. A warrant for the grievant's arrest was issued on April 11, 1995, and served on December 4, 1995. On February 7, 1996, the grievant pleaded guilty to two charges of possession with intent to deliver and received a seven year suspended sentence with three years of probation. The grievant told his employer of his sentence in April, 1996. On July 29, 1996, the state discharged him.

The arbitrator also found that because the grievant was assigned to drive children whose parents may have been drug addicts, the state concluded that it could not retain the services of the grievant in view of his felony conviction of two counts of possession of narcotics with intent to distribute. The state does have a policy of furloughing employees who report that they have a drug problem, but it was the grievant's conviction of intent to deliver drugs that was of paramount importance to the state. The state ignored a genuinely laudatory letter from the grievant's immediate supervisor covering more than one year of employment. The state's contact with the police and the grievant's probationary officer was superficial. The grievant was willing to submit to drug testing.

In its memorandum of decision, the court stated that the grievant was employed by the state to drive children entrusted to the care or custody of the department, but ''[t]he circumstances of such driving, e.g., location, duration, collateral duties, age and numbers of children, time involved, [were] not part of the record.'' The record also contains no facts as to whether the grievant, himself, abused drugs. It also does not cite rules or regulations of the department relevant to employees convicted of drug offenses.

I

By its ruling, I believe the majority has carried us too far down the road. Under the facts of this case and the conclusion reached by the majority, anyone convicted of a drug offense is prohibited from providing services for the department regardless of that person's duties. As previously discussed, the trial court did not know the circumstances of the grievant's driving of children entrusted to the department. The majority recognizes

this limitation in the record at footnote 1 of its opinion. Regardless of this limitation, the majority reaches the conclusion, unsupported by the record, that the grievant supervised those children. See footnote 6 of the majority opinion.

"A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Internal quotation marks omitted.) *Sivilla* v. *Philips Medical Systems of North America, Inc.*, 46 Conn. App. 699, 708, 700 A.2d 1179 (1997). The fact of the matter here is that the trial court and this court do not know whether the grievant supervised children or merely transported them from point A to point B while the children were supervised by someone else. We do not know whether the grievant was ever the sole department employee with the children at any particular time.

Furthermore, the majority impermissibly speculates about the grievant's behavior on the basis of commonly held assumptions about and stereotypes of individuals convicted of possession of illegal drugs with intent to distribute. See footnote 3 of the majority opinion. At footnote 6, the majority attempts to distinguish a Superior Court case in which an off-duty school custodian was convicted of possession of cocaine within 1500 feet of a school because a custodian does not supervise schoolchildren. See *Norwalk Board of Education* v. *AFSCME, Council 4, Local 1042, AFL-CIO,* Superior Court, judicial district of Stamford-Norwalk, Docket No. 161740 (March 19, 1998). Here, we do not know whether the grievant supervised children.

I also note significantly that in that case, the Norwalk board of education had specifically articulated a written policy for its employees on the possession and use of drugs on school property or while on school business away from school property. Here, the record does not contain and the department has not referred to any written policy or regulation concerning employee drug use or possession. That fact also distinguishes this case from *State* v. *AFSCME, Council 4, Local 387, AFL-CIO,* 252 Conn. 467, 470–71 n.7, 747 A.2d 480 (2000), in which our Supreme Court cited at least ten department level directives concerning employee conduct and behavior, which the grievant in that case had violated.

II

Second, I conclude that there is no clear and explicit public policy that prohibits the department from using the grievant's services. The broad brush that the majority uses to depict a public policy to protect and nurture children in this instance is the same one that paints motherhood and apple pie. They are, however, only "general considerations of supposed public interests."

Groton v. *United Steelworkers of America*, 252 Conn. 508, 520, 747 A.2d 1045 (2000). No one can disagree that taking care of innocent children is a worthy public effort. That public interest is, however, not sufficiently narrow to apply to the circumstances of this case, as we know them.[6]

Despite "the general rule that challenges to an arbitrator's authority are limited to a comparison of the award to the submission, an additional challenge exists under § 52-418 (a) (4) when the award rendered is claimed to be in contravention of public policy." (Internal quotation marks omitted.) *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 474. "Accordingly, the public policy exception to arbitral authority should be narrowly construed and [a] court's refusal to enforce an arbitrator's interpretation of [collective bargaining agreements] is limited to situations where the contract as interpreted would violate some explicit public policy that is well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests. . . . The party challenging the award bears the burden of proving that illegality or conflict with public policy is clearly demonstrated. . . . Therefore, given the narrow scope of the public policy limitation on arbitral authority, the plaintiff can prevail in the present case only if it demonstrates that the board's award clearly violates an established public policy mandate. . . . *Watertown Police Union Local 541* v. *Watertown*, [210 Conn. 333, [340], 555 A.2d 406 (1989)]." (Internal quotation marks omitted.) *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 475.

In part I A of its opinion, the majority acknowledges that under *Schoonmaker* v. *Cummings & Lockwood of Connecticut, P.C.*, 252 Conn. 416, 426, 747 A.2d 1017 (2000), we must determine, as a matter of law, whether the public policy found by the trial court clearly exists. The trial court concluded that "there exists a well-defined and dominant policy prohibiting [the department] from employing persons convicted of felony drug charges of possession with intent to sell, and who are on probation, from driving children who are in the care and custody of [the department]." The majority quotes this conclusion and in its next sentence states, "In essence, we must consider whether providing a safe and nurturing environment for children under the department's care is a clear public policy." I regret that I cannot find a logical path between the trial court's conclusion and the task the majority sets before this court.

The majority cites numerous statutes and some common law in support of its effort to find that providing a safe and nurturing environment is a public policy in this jurisdiction. I concede that this state has a general policy to protect our children, but that general policy

is manifested in a variety of specific laws and regulations. The majority traverses some of those legal manifestations to find a specific public policy applicable to the situation at hand,[7] but does not cite one statute or case or regulation that stands for the proposition that, as a matter of public policy, an individual convicted of possession of drugs with an intent to distribute cannot provide transportation for children in the department's care.[8]

I cannot, given the sequence of events here, say that the department has, in fact, a clear, well-defined drug policy with respect to its employees. The grievant's offending conduct occurred in January, 1994. The defendant was employed to provide services within the department in March, 1995. If the department has a clear policy not to hire individuals with a history involving illegal drugs to drive children, what evidence is there that the department screens potential employees for that fact? The defendant was convicted in February, 1996, and he voluntarily informed the department of that fact in April, 1996, when his probation officer advised him to do so. The majority rebukes the grievant for waiting two months to inform the department but overlooks the fact that the department waited almost four months to discharge the grievant. It is not at all clear to me that the department had a relevant employment policy, let alone knew of a specific public policy, prior to terminating the grievant.[9]

In its brief, the state relies on the facts in *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 467. That case, however, does not provide the state with solid legal footing. In that case, our Supreme Court stated that ''[w]e do not hold that the violation of a criminal statute is a per se public policy violation sufficient to justify vacating an arbitrator's decision. Instead, we conclude that this case poses a narrow, blatant example of the department of correction's proper exercise of its power to dismiss. Although the conduct demonstrated by [the grievant] is particularly offensive to an enlightened society, our decision here is dictated not by personal standards of decency, but by proper legal precedent that does provide, in this case, the just outcome.'' Id., 477–78.[10]

For these reasons, I conclude that a clear public policy prohibiting the department from employing a person convicted of a felony drug charge did not exist when the grievant was discharged.

III

I need not spend much time on the last of my reasons for dissenting from the majority's opinion. I dissent, in part, because the countervailing public policy concerning the rehabilitation of criminals was not given the lengthy and detailed analysis it needs under the circumstances of this case.[11] Our legislature has enacted a law

declaring that society is best protected when criminals are rehabilitated and returned to society. Employers are encouraged to consider favorably qualified individuals, including those with a criminal past. See General Statutes § 46a-79.[12] " '[R]etribution is no longer the dominant objective of the criminal law' and . . . '[r]eformation and rehabilitation of offenders have become important goals of criminal jurisprudence.' *Williams* v. *New York*, 337 U.S. 241, 248, 69 S. Ct. 1079, 93 L. Ed. 1337, reh. denied, 337 U.S. 961, 69 S. Ct. 1529, 93 L. Ed. 1760 (1949)." *State* v. *Corchado*, 200 Conn. 453, 463, 512 A.2d 183 (1986); see also *State* v. *Wilson*, 242 Conn. 605, 641, 700 A.2d 633 (1997) (*Katz, J.*, concurring) (three asserted purposes of criminal law are rehabilitation, deterrence, retribution); *State* v. *McDowell*, 242 Conn. 648, 653, 699 A.2d 987 (1997) ("probation seeks 'to normalize the probationer into society as soon as reasonably possible"); *State* v. *Guckian*, 226 Conn. 191, 200, 627 A.2d 407 (1993) (legislature sought to provide drug rehabilitation system for people coming into criminal justice system); *State* v. *Groos*, 110 Conn. 403, 412, 148 A. 350 (1930) (board of parole has power to modulate punishment to bring about protection of society and rehabilitation of offender). I believe that this court has an obligation to balance thoroughly competing public policies when determining whether an arbitration award so violates a specific public policy to warrant our vacating the award pursuant to § 52-418 (a) (4).

For these reasons, I respectfully dissent.

[1] General Statutes § 17a-3 provides in relevant part: "The department shall plan, create, develop, operate or arrange for, administer and evaluate a comprehensive and integrated state-wide program of services, including preventive services, for children and youth whose behavior does not conform to the law or to acceptable community standards, or who are mentally ill, including deaf and hearing impaired children and youth who are mentally ill, emotionally disturbed, substance abusers, delinquent, abused, neglected or uncared for, including all children and youth who are or may be committed to it by any court, and all children and youth voluntarily admitted to the department for services of any kind. Services shall not be denied to any such child or youth solely because of other complicating or multiple disabilities. . . ."

[2] "The purposes for the enforcement of the criminal laws are the punishment and the rehabilitation of the guilty. . . ." *State* v. *Trantolo*, 209 Conn. 169, 173, 549 A.2d 1074 (1988) (*Healey, J.*, dissenting).

[3] The grievant in February, 1996, was given a seven year suspended sentence with three years of probation. The state has not suggested that the grievant did not successfully complete his probation.

[4] Although I dissent from the majority's opinion with respect to whether the arbitrator's award should be vacated, I in no way condone the grievant's criminal behavior.

[5] "Where the submission does not otherwise state, the arbitrators are empowered to decide factual and legal questions and an award cannot be vacated on the grounds that the construction placed upon the facts or the interpretation of the agreement by the arbitrators was erroneous." *Waterbury* v. *Waterbury Police Union*, supra, 176 Conn. 404; see also *United Paperworkers International Union, AFL-CIO* v. *Misco, Inc.*, 484 U.S. 29, 39, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987).

[6] The majority's statement that "the protection and nurturing of children is an important public policy is almost too obvious for discussion" comes perilously close, in my opinion, to flaunting the established rule that "a policy must be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interests." (Citation

omitted; internal quotation marks omitted.) *United Paperworkers International Union, AFL-CIO* v. *Misco, Inc.*, 484 U.S. 29, 44, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987).

[7] For example, the majority cites the best interests of the child standard, which is applied in termination of parental rights cases; see, e.g., *In re John G.*, 56 Conn. App. 12, 17, 740 A.2d 496 (1999) ("[i]n the dispositional phase, the trial court determines whether termination is in the best interests of the child"); and in awarding custody in dissolution cases; see, e.g., General Statutes § 46b-56 (b); *G.S.* v. *T.S.*, 23 Conn. App. 509, 514, 582 A.2d 467 (1990) ("[t]he guiding principle applicable to determining the custody of children in a dissolution proceeding is the best interests of the child").

[8] The majority's consideration of the grievant's drug offenses overlooks the complexity of this state's Penal Code to address wrongs of various degrees against our society. The grievant was convicted of violating General Statutes §§ 21a-277 (b) and 21a-278 (b), which relate to possession marijuana and cocaine with intent to distribute. Most notably for the facts of this case, he was not convicted under General Statutes §§ 21a-278a (possession with intent to distribute to minors) or 21-279 (d) (possession with intent to distribute within 1500 feet of school).

[9] The majority also relies on the regulations applicable to school bus drivers; see footnote 5 of the majority opinion; without any evidence that the regulations apply to department drivers.

[10] In *State* v. *AFSCME, Council 4, Local 387, AFL-CIO*, supra, 252 Conn. 467, the terminated employee violated several laws and department of correction directives while he was on the job. The concurring opinion notes that distinction. Id., 479 (*Peters, J.*, concurring).

[11] The majority lightly dismisses this important public policy by merely citing a dissenting opinion in a case decided by our Supreme Court and ascribing the word severe to the nature of the grievant's crimes. Nowhere in its opinion does the majority cite any law distinguishing crimes that are severe from those that are not severe. Indeed, if the grievant's crimes were so offensive to the children of our society, a suspended sentence and only three years of probation does not support that notion.

[12] General Statutes § 46a-79 provides: "The General Assembly finds that the public is best protected when criminal offenders are rehabilitated and returned to society prepared to take their places as productive citizens and that the ability of returned offenders to find meaningful employment is directly related to their normal functioning in the community. It is therefore the policy of this state to encourage all employers to give favorable consideration to providing jobs to qualified individuals, including those who may have criminal conviction records."