



# House of Representatives

General Assembly

**File No. 482**

February Session, 2006

Substitute House Bill No. 5209

*House of Representatives, April 11, 2006*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING YOUTHFUL OFFENDER PROCEEDINGS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 54-76b of the 2006 supplement to  
2 the general statutes is repealed and the following is substituted in lieu  
3 thereof (*Effective from passage*):

4 (a) For the purposes of sections 54-76b to 54-76n, inclusive, as  
5 amended by this act:

6 (1) "Youth" means (A) a minor who has reached the age of sixteen  
7 years but has not reached the age of eighteen years at the time of the  
8 alleged offense, or (B) a child who has been transferred to the regular  
9 criminal docket of the Superior Court pursuant to section 46b-127;  
10 [and]

11 (2) "Youthful offender" means a youth who (A) is charged with the  
12 commission of a crime which is not (i) a class A felony or a violation of  
13 subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-

14 70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, except a violation involving  
15 consensual sexual intercourse or sexual contact between the youth and  
16 another person who is thirteen years of age or older but under sixteen  
17 years of age, (ii) a violation of section 53a-172 or 53a-173 where the  
18 charge for which the defendant is alleged to have failed to appear is  
19 one for which the defendant has been determined to be ineligible to be  
20 adjudged a youthful offender or has been transferred to the regular  
21 criminal docket of the Superior Court, or (iii) a violation of probation  
22 or conditional discharge under section 53a-32 where the underlying  
23 crime is one for which the defendant has been determined to be  
24 ineligible to be adjudged a youthful offender or has been transferred to  
25 the regular criminal docket of the Superior Court, and (B) has not  
26 previously been convicted of a felony in the regular criminal docket of  
27 the Superior Court or been previously adjudged a serious juvenile  
28 offender or serious juvenile repeat offender, as defined in section 46b-  
29 120, as amended; and

30 (3) "Crime" does not include a motor vehicle violation.

31 Sec. 2. Section 54-76c of the 2006 supplement to the general statutes  
32 is repealed and the following is substituted in lieu thereof (*Effective*  
33 *from passage*):

34 (a) In any case where an information or complaint has been laid  
35 charging a defendant with the commission of a crime, and where it  
36 appears that the defendant is a youth, such defendant shall be  
37 presumed to be eligible to be adjudged a youthful offender and the  
38 [court having jurisdiction shall, but only as to the public, order the]  
39 court file shall be sealed, but only as to the public, unless such  
40 defendant (1) is charged with the commission of a crime which is a  
41 class A felony or a violation of subdivision (2) of subsection (a) of  
42 section 53-21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-  
43 72b, except a violation involving consensual sexual intercourse or  
44 sexual contact between the youth and another person who is thirteen  
45 years of age or older but under sixteen years of age, (2) is charged with  
46 a violation of section 53a-172 or 53a-173 and the charge for which the

47 defendant is alleged to have failed to appear is one for which the  
48 defendant has been determined to be ineligible to be adjudged a  
49 youthful offender or has been transferred to the regular criminal  
50 docket of the Superior Court, (3) is charged with a violation of  
51 probation or conditional discharge under section 53a-32 and the  
52 underlying crime is one for which the defendant has been determined  
53 to be ineligible to be adjudged a youthful offender or has been  
54 transferred to the regular criminal docket of the Superior Court, or [(2)]  
55 (4) has been previously convicted of a felony in the regular criminal  
56 docket of the Superior Court or been previously adjudged a serious  
57 juvenile offender or serious juvenile repeat offender, as defined in  
58 section 46b-120, as amended. Except as provided in subsection (b) of  
59 this section, upon motion of the prosecuting official, the court may  
60 order that an investigation be made of such defendant under section  
61 54-76d, as amended by this act, for the purpose of determining  
62 whether such defendant is ineligible to be adjudged a youthful  
63 offender, provided the court file shall remain sealed, but only as to the  
64 public, during such investigation.

65 (b) (1) Upon motion of the prosecuting official, [and order of] the  
66 court [,] shall order the transfer of the case of any defendant who is a  
67 youth and is charged with the commission of a felony, other than a  
68 felony set forth in subsection (a) of this section, [shall be transferred]  
69 from the youthful offender docket to the regular criminal docket of the  
70 Superior Court, provided the court finds that there is probable cause to  
71 believe the defendant has committed the act for which he or she is  
72 charged or a judge has previously found such probable cause and  
73 issued an arrest warrant for the defendant. The defendant shall be  
74 arraigned in the regular criminal docket of the Superior Court [by the  
75 next court business day following such transfer] in accordance with  
76 section 54-1g, provided any proceedings held prior to the finalization  
77 of such transfer shall be private and shall be conducted in such parts of  
78 the courthouse or the building wherein court is located as shall be  
79 separate and apart from the other parts of the court which are then  
80 being held for proceedings pertaining to adults charged with crimes.  
81 The file of any case so transferred shall remain sealed until [the end of

82 the tenth working day following] such arraignment. [, unless the  
83 prosecuting official has filed a motion pursuant to subdivision (2) of  
84 this subsection, in which case such file shall remain sealed until the  
85 court makes a decision on the motion.]

86 (2) A prosecuting official may, [not later than ten working days] at  
87 any time after such arraignment, file a motion to transfer the case of  
88 any defendant who is a youth and is charged with the commission of a  
89 felony, other than a felony set forth in subsection (a) of this section,  
90 from the regular criminal docket of the Superior Court to the youthful  
91 offender docket for proceedings in accordance with the provisions of  
92 sections 54-76b to 54-76n, inclusive, as amended by this act. [The]  
93 Upon agreement of the parties, the court sitting for the regular  
94 criminal docket of the Superior Court shall [, after hearing and not  
95 later than ten working days after the filing of such motion, decide]  
96 grant such motion and, upon the granting of such motion, the file of  
97 the case shall again be sealed and the case shall be transferred to the  
98 youthful offender docket.

99 Sec. 3. Section 54-76d of the 2006 supplement to the general statutes  
100 is repealed and the following is substituted in lieu thereof (*Effective*  
101 *from passage*):

102 (a) If the court grants a motion made by the prosecuting official  
103 under subsection (a) of section 54-76c, as amended by this act, that the  
104 defendant be investigated, or if the court on its own motion determines  
105 that the defendant should be investigated under this section, and the  
106 defendant consents to physical and mental examinations, if deemed  
107 necessary, and to investigation and questioning, and to a trial without  
108 a jury, should a trial be had, the information or complaint shall be held  
109 in abeyance and no further action shall be taken in connection with  
110 such information or complaint until such examinations, investigation  
111 and questioning are had of the defendant. [Investigations] Any  
112 investigation under this section shall be made by [an adult probation  
113 officer] the Court Support Services Division. When the information or  
114 complaint charges commission of a felony, [the adult probation officer]

115 such investigation shall include [in the investigation] a summary of  
116 any unerased juvenile record of adjudications of the defendant.

117 (b) Upon the termination of such examinations, investigation and  
118 questioning, the court, in its discretion based on the severity of the  
119 crime, which shall also take into consideration whether or not the  
120 defendant took advantage of the victim because of the victim's  
121 advanced age or physical incapacity, and the results of the  
122 examinations, investigation and questioning, including whether the  
123 defendant has a record of any conviction or adjudication as a serious  
124 juvenile offender or serious juvenile repeat offender, shall determine  
125 whether such defendant [is eligible or ineligible to] should be  
126 adjudged a youthful offender. If the court determines that the  
127 defendant [is eligible to] should be so adjudged, no further action shall  
128 be taken on the information or complaint and the defendant shall be  
129 required to enter a plea of "guilty" or "not guilty" to the charge of being  
130 a youthful offender. If the court determines that the defendant [is  
131 ineligible to] should not be so adjudged, [it] the court shall order the  
132 information or complaint to be unsealed and the defendant shall be  
133 prosecuted as though the proceedings under sections 54-76b to 54-76n,  
134 inclusive, as amended by this act, had not been had.

135 (c) If no motion is made by the prosecuting official under subsection  
136 (a) or (b) of section 54-76c, as amended by this act, or by the court  
137 under subsection (a) of this section, and the defendant consents to a  
138 trial without a jury, should a trial be had, no further action shall be  
139 taken on the information or complaint and the defendant shall be  
140 required to enter a plea of "guilty" or "not guilty" to the charge of being  
141 a youthful offender.

142 (d) At any time prior to trial as provided in section 54-76e or at any  
143 time prior to entering a plea of "guilty" to the charge of being a  
144 youthful offender, the defendant, on motion and with the concurrence  
145 of the defendant's parent or guardian and the defendant's attorney, if  
146 any, may waive further proceedings under the provisions of sections  
147 54-76b to 54-76n, inclusive, as amended by this act, and request a trial

148 by jury in the regular criminal docket of the Superior Court. If the  
149 court, after making a thorough inquiry, is satisfied that such waiver is  
150 knowingly and voluntarily made, the court may grant such motion  
151 and order the information or complaint to be unsealed and the  
152 defendant shall be prosecuted as though the proceedings under  
153 sections 54-76b to 54-76n, inclusive, as amended by this act, had not  
154 been had.

155 (e) [At any point, if] If the court determines at any time during the  
156 pendency of the case that a defendant is ineligible to be a youthful  
157 offender, the court shall order the information or complaint to be  
158 unsealed and the defendant shall be prosecuted as though the  
159 proceedings under sections 54-76b to 54-76n, inclusive, as amended by  
160 this act, had not been had.

161 Sec. 4. Subsection (b) of section 54-76j of the 2006 supplement to the  
162 general statutes is repealed and the following is substituted in lieu  
163 thereof (*Effective from passage*):

164 (b) If execution of the sentence is suspended under subdivision (6)  
165 of subsection (a) of this section, the defendant may be placed on  
166 probation or conditional discharge for a period not to exceed three  
167 years, provided, at any time during the period of probation, after  
168 hearing and for good cause shown, the court may extend [the period as  
169 deemed appropriate by the court] such probation or conditional  
170 discharge for a period not to exceed five years, including the original  
171 period of probation or conditional discharge. If the court places the  
172 person adjudicated to be a youthful offender on probation, the court  
173 may order that, as a condition of such probation, the person be  
174 referred for services to a youth service bureau established pursuant to  
175 section 10-19m, provided the court finds, through an assessment by a  
176 youth service bureau or its designee, that the person is in need of and  
177 likely to benefit from such services. If the court places a person  
178 adjudicated as a youthful offender on probation, the court may order  
179 that, as a condition of such probation, the person participate in the  
180 zero-tolerance drug supervision program established pursuant to

181 section 53a-39d. If the court places a youthful offender on probation,  
182 school and class attendance on a regular basis and satisfactory  
183 compliance with school policies on student conduct and discipline  
184 may be a condition of such probation and, in such a case, failure to so  
185 attend or comply shall be a violation of probation. If the court has  
186 reason to believe that the person adjudicated to be a youthful offender  
187 is or has been an unlawful user of narcotic drugs, as defined in section  
188 21a-240, and the court places such youthful offender on probation, the  
189 conditions of probation, among other things, [shall] may include a  
190 requirement that such person shall submit to periodic tests to  
191 determine, by the use of "synthetic opiate antinarcotic in action",  
192 nalline test or other detection tests, at a hospital or other facility,  
193 equipped to make such tests, whether such person is using narcotic  
194 drugs. A failure to report for such tests or a determination that such  
195 person is unlawfully using narcotic drugs [shall] may constitute a  
196 violation of probation. If the court places a person adjudicated as a  
197 youthful offender for a violation of section 53-247 on probation, the  
198 court may order that, as a condition of such probation, the person  
199 undergo psychiatric or psychological counseling or participate in an  
200 animal cruelty prevention and education program, provided such a  
201 program exists and is available to the person.

202 Sec. 5. Section 54-76l of the 2006 supplement to the general statutes  
203 is repealed and the following is substituted in lieu thereof (*Effective*  
204 *from passage*):

205 (a) The records or other information of a [youth, other than a youth  
206 arrested for or charged with the commission of a crime which is a class  
207 A felony or a violation of subdivision (2) of subsection (a) of section 53-  
208 21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b,  
209 except a violation involving consensual sexual intercourse or sexual  
210 contact between the youth and another person who is thirteen years of  
211 age or older but under sixteen years of age] youthful offender,  
212 including fingerprints, photographs and physical descriptions, shall be  
213 confidential and shall not be open to public inspection or be disclosed  
214 except as provided in this section, but such fingerprints, photographs

215 and physical descriptions submitted to the State Police Bureau of  
216 Identification of the Division of State Police within the Department of  
217 Public Safety at the time of the arrest of a person subsequently  
218 adjudged, or subsequently presumed or determined to be eligible to be  
219 adjudged, a youthful offender shall be retained as confidential matter  
220 in the files of the bureau and be opened to inspection only as provided  
221 in this section. Other data ordinarily received by the bureau, with  
222 regard to persons arrested for a crime, shall be forwarded to the  
223 bureau to be filed, in addition to such fingerprints, photographs and  
224 physical descriptions, and be retained in the division as confidential  
225 information, open to inspection only as provided in this section.

226 (b) The records of any [such youth] youthful offender, or any part  
227 thereof, may be disclosed to and between individuals and agencies,  
228 and employees of such agencies, providing services directly to the  
229 youth, including municipal, state and federal law enforcement  
230 officials, state and federal prosecutorial officials, school officials in  
231 accordance with section 10-233h, court officials, the Division of  
232 Criminal Justice, the Court Support Services Division, the Board of  
233 Pardons and Paroles and an advocate appointed pursuant to section  
234 54-221 for a victim of a crime committed by the [youth] youthful  
235 offender. Such records shall also be available to the attorney  
236 representing the [youth] youthful offender, in any proceedings in  
237 which such records are relevant, to the parents or guardian of such  
238 [youth] youthful offender, until such time as the [youth] youthful  
239 offender reaches the age of majority or is emancipated, and to the  
240 [youth] youthful offender upon his or her emancipation or attainment  
241 of the age of majority, provided proof of the identity of such [youth]  
242 youthful offender is submitted in accordance with guidelines  
243 prescribed by the Chief Court Administrator. Such records disclosed  
244 pursuant to this subsection shall not be further disclosed.

245 (c) The records of any [such youth] youthful offender, or any part  
246 thereof, may be disclosed upon order of the court to any person who  
247 has a legitimate interest in the information and is identified in such  
248 order. Records or information disclosed pursuant to this subsection

249 shall not be further disclosed.

250 (d) The records of any [such youth] youthful offender or any part  
251 thereof, shall be available to the victim of the crime committed by such  
252 [youth] youthful offender to the same extent as the record of the case  
253 of a defendant in a criminal proceeding in the regular criminal docket  
254 of the Superior Court is available to a victim of the crime committed by  
255 such defendant. The court shall designate an official from whom such  
256 victim may request such information. Information disclosed pursuant  
257 to this subsection shall not be further disclosed.

258 (e) Any reports and files held by the Court Support Services  
259 Division regarding any [such youth] youthful offender who served a  
260 period of probation may be accessed and disclosed by employees of  
261 the division for the purpose of performing the duties contained in  
262 section 54-63b.

263 (f) Information concerning any [such youth] youthful offender who  
264 has escaped from an institution to which such [youth] youthful  
265 offender has been committed or for whom an arrest warrant has been  
266 issued may be disclosed by law enforcement officials.

267 (g) The information contained in and concerning the issuance of any  
268 protective order issued in a case [in which a person is presumed or  
269 determined to be eligible to be adjudged] involving a youthful  
270 offender shall be entered in the registry of protective orders pursuant  
271 to section 51-5c, as amended, and may be further disclosed as specified  
272 in said section.

273 (h) The provisions of this section, as amended by public act 05-232  
274 and this act, apply to offenses committed after January 1, 2006, and do  
275 not affect any cases pending on said date or any investigations  
276 involving offenses committed prior to said date.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	54-76b(a)

Sec. 2	<i>from passage</i>	54-76c
Sec. 3	<i>from passage</i>	54-76d
Sec. 4	<i>from passage</i>	54-76j(b)
Sec. 5	<i>from passage</i>	54-76l

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The bill makes various technical and clarifying changes to the youthful offender statutes which are not expected to alter the number of youths who are designated as youthful offenders. Consequently, there is no fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

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**OLR Bill Analysis****sHB 5209*****AN ACT CONCERNING YOUTHFUL OFFENDER PROCEEDINGS.*****SUMMARY:**

This bill makes numerous changes to the youthful offender (YO) laws. Specifically, it expands the crimes that if committed by a youth will render him ineligible for YO status, permits courts to transfer cases from adult court to the youthful offender docket without a hearing; requires a court to consider a youth's prior history when determining whether to grant YO status; and caps the number of years a youth can spend on probation or conditional discharge.

The bill authorizes a court to transfer a youth to adult court without a probable cause finding if a judge has previously found probable cause and issued a warrant for the youth's arrest. It changes the length of time a transferred youth's record is sealed.

EFFECTIVE DATE: Upon passage

**YOUTHFUL OFFENDER*****Definition***

The bill prohibits a court from granting YO status to anyone charged with first- or second-degree failure to appear or a violation of probation or conditional discharge if, for the underlying crime, the youth was determined ineligible for YO or transferred to adult court. In these cases there is no presumption that the youth is eligible for YO and his court file is not sealed. The bill specifies that "crime" does not include motor vehicle violations.

***Transfer from Adult to YO Docket***

Under current law, a prosecutor may file a motion to transfer the case of any youth, except those charged with the excluded crimes,

from the adult to the YO docket within 10 business days after arraignment. The court must hold a hearing and decide the motion within 10 working days.

The bill permits a prosecutor to file the motion at any time. It eliminates the requirement for a hearing and instead requires the court to grant the motion upon the agreement of the parties. Once the motion is granted, the bill requires the youth's records sealed and the case transferred. The bill specifies that local, state, and federal law enforcement officials may have access to a youthful offender's records, which are generally sealed to everyone except people and agencies that provide services directly to the youth.

### ***Investigation of YO Eligibility***

If an investigation is conducted before a court decides on a youth's eligibility for YO status, the bill requires the court to consider whether the youth has been previously convicted or adjudicated as a serious juvenile offender or serious juvenile repeat offender before determining YO eligibility. By law, a prosecutor can make a motion for, or a court can decide on its own to have, a youth investigated before the court decides his eligibility for YO.

### ***YO Disposition***

By law, one possible disposition available to a court that grants a youth YO status is a suspended sentence. The court can place a youth who is given a suspended sentence on probation or conditional discharge for up to three years. Before the three years expire, the court can extend the probation or conditional discharge for an unspecified term.

The bill caps at a total of five years the period of time a youth may be placed on probation or conditional discharge.

The bill eliminates a requirement for a court to order a youthful offender that is a suspected user of illegal narcotic substances to submit to periodic drug tests as a condition of probation. Instead, the bill permits the court to order periodic testing. Under the bill, failure

to submit to testing or positive test results may, rather than must, constitute a probation violation.

## **TRANSFER TO ADULT COURT**

By law, a court can, upon a prosecutor's motion, transfer a youth charged with a felony to adult court if the (1) court finds probable cause to believe the youth committed the crime and (2) crime is not one for which the court could grant the youth YO status. The bill authorizes a court to transfer a youth to adult court without a probable cause finding if a judge has previously found probable cause and issued a warrant for the youth's arrest.

The bill requires the file of a transferred youth to remain sealed until he is arraigned. Under current law, the case is sealed until the end of the 10<sup>th</sup> day following arraignment or until the court makes a decision on a prosecutor's motion to transfer the case to the YO docket.

## **BACKGROUND**

### ***Youthful Offender Status***

YO status affords a youth the opportunity to have his case proceedings kept private and hearings conducted in a part of the court separate from adult criminal proceedings. If convicted, his court record is sealed. All court and police records are erased at age 21 if he successfully completes the program and does not offend again. Those subject to erasure are considered to have never been arrested for the underlying offense.

### ***Excluded Offenses***

Children and youths are ineligible if they are charged with a class A felony or:

1. risk of injury to a minor involving sex;
2. rape;
3. aggravated rape;

4. spousal rape;
5. 2<sup>nd</sup> degree sexual assault, except for statutory rape involving a victim age 13 through 15;
6. 3<sup>rd</sup> degree sexual assault; or
7. 3<sup>rd</sup> degree sexual assault with a firearm.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 38    Nay 0    (03/27/2006)