



General Assembly

Substitute Bill No. 5209

February Session, 2006

* HB05209JUD 032706 *

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2 the general statutes is repealed and the following is substituted in lieu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32 is repealed and the following is substituted in lieu thereof (*Effective*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.*