



General Assembly

February Session, 2006

Amendment

LCO No. 4192

HB0520904192HDO

Offered by:
REP. SPALLONE, 36th Dist.

To: Subst. House Bill No. 5209 File No. 482 Cal. No. 322

"AN ACT CONCERNING YOUTHFUL OFFENDER PROCEEDINGS."

1 Strike lines 1 to 276, inclusive, in their entirety and substitute the
2 following in lieu thereof:

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4 the general statutes is repealed and the following is substituted in lieu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

6 (a) For the purposes of sections 54-76b to 54-76n, inclusive, as
7 amended:

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

13 (2) "Youthful offender" means a youth who (A) is charged with the
14 commission of a crime which is not (i) a class A felony or a violation of

15 subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-
16 70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, except a violation involving
17 consensual sexual intercourse or sexual contact between the youth and
18 another person who is thirteen years of age or older but under sixteen
19 years of age, or (ii) a violation of section 53a-172 or 53a-173 where the
20 charge for which the defendant is alleged to have failed to appear is (I)
21 one for which the defendant has been determined to be ineligible to be
22 adjudged a youthful offender or has been transferred to the regular
23 criminal docket of the Superior Court, or (II) a violation of probation or
24 conditional discharge under section 53a-32, and (B) has not previously
25 been convicted of a felony in the regular criminal docket of the
26 Superior Court or been previously adjudged a serious juvenile
27 offender or serious juvenile repeat offender, as defined in section 46b-
28 120, as amended; and

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

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31 is repealed and the following is substituted in lieu thereof (*Effective*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

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

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

61 (b) [(1)] Upon motion of the prosecuting official and order of the
62 court, the case of any defendant who is a youth and is charged with
63 the commission of a felony, other than a felony set forth in subsection
64 (a) of this section, [shall] may be transferred from the youthful
65 offender docket to the regular criminal docket of the Superior Court. [,
66 provided the court finds that there is probable cause to believe the
67 defendant has committed the act for which he or she is charged. The
68 defendant shall be arraigned in the regular criminal docket of the
69 Superior Court by the next court business day following such transfer,
70 provided] The court file shall remain sealed until such motion is
71 decided by the court and any proceedings held prior to the finalization
72 of such transfer shall be private and shall be conducted in such parts of
73 the courthouse or the building wherein court is located as shall be
74 separate and apart from the other parts of the court which are then
75 being held for proceedings pertaining to adults charged with crimes.
76 [The file of any case so transferred shall remain sealed until the end of
77 the tenth working day following such arraignment, unless the
78 prosecuting official has filed a motion pursuant to subdivision (2) of
79 this subsection, in which case such file shall remain sealed until the
80 court makes a decision on the motion.

81 (2) A prosecuting official may, not later than ten working days after

82 such arraignment, file a motion to transfer the case of any defendant
83 who is a youth and is charged with the commission of a felony, other
84 than a felony set forth in subsection (a) of this section, from the regular
85 criminal docket of the Superior Court to the youthful offender docket
86 for proceedings in accordance with the provisions of sections 54-76b to
87 54-76n, inclusive. The court sitting for the regular criminal docket of
88 the Superior Court shall, after hearing and not later than ten working
89 days after the filing of such motion, decide such motion.]

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

93 (a) If the court grants a motion made by the prosecuting official
94 under subsection (a) of section 54-76c, as amended by this act, that the
95 defendant be investigated, or if the court on its own motion determines
96 that the defendant should be investigated under this section, and the
97 defendant consents to physical and mental examinations, if deemed
98 necessary, and to investigation and questioning, and to a trial without
99 a jury, should a trial be had, the information or complaint shall be held
100 in abeyance and no further action shall be taken in connection with
101 such information or complaint until such examinations, investigation
102 and questioning are had of the defendant. [Investigations] Any
103 investigation under this section shall be made by [an adult probation
104 officer] the Court Support Services Division. When the information or
105 complaint charges commission of a felony, [the adult probation officer]
106 such investigation shall include [in the investigation] a summary of
107 any uneraser juvenile record of adjudications of the defendant.

108 (b) Upon the termination of such examinations, investigation and
109 questioning, the court, in its discretion based on the severity of the
110 crime, which shall also take into consideration whether or not the
111 defendant took advantage of the victim because of the victim's
112 advanced age or physical incapacity, and the results of the
113 examinations, investigation and questioning, shall determine whether
114 such defendant [is eligible or ineligible to] should be adjudged a

115 youthful offender. If the court determines that the defendant [is
116 eligible to] should be so adjudged, no further action shall be taken on
117 the information or complaint and the defendant shall be required to
118 enter a plea of "guilty" or "not guilty" to the charge of being a youthful
119 offender. If the court determines that the defendant [is ineligible to]
120 should not be so adjudged, [it] the court shall order the information or
121 complaint to be unsealed and the defendant shall be prosecuted as
122 though the proceedings under sections 54-76b to 54-76n, inclusive, as
123 amended, had not been had.

124 (c) If no motion is made by the prosecuting official under subsection
125 (a) or (b) of section 54-76c, as amended by this act, or by the court
126 under subsection (a) of this section, and the defendant consents to a
127 trial without a jury, should a trial be had, no further action shall be
128 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.

131 (d) At any time prior to trial as provided in section 54-76e or at any
132 time prior to entering a plea of "guilty" to the charge of being a
133 youthful offender, the defendant, on motion and with the concurrence
134 of the defendant's parent or guardian and the defendant's attorney, if
135 any, may waive further proceedings under the provisions of sections
136 54-76b to 54-76n, inclusive, as amended, and request a trial by jury in
137 the regular criminal docket of the Superior Court. If the court, after
138 making a thorough inquiry, is satisfied that such waiver is knowingly
139 and voluntarily made, the court may grant such motion and order the
140 information or complaint to be unsealed and the defendant shall be
141 prosecuted as though the proceedings under sections 54-76b to 54-76n,
142 inclusive, as amended, had not been had.

143 (e) [At any point, if] If the court determines at any time during the
144 pendency of the case that a defendant is ineligible to be a youthful
145 offender, the court shall order the information or complaint to be
146 unsealed and the defendant shall be prosecuted as though the
147 proceedings under sections 54-76b to 54-76n, inclusive, as amended,

148 had not been had.

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

152 (b) If execution of the sentence is suspended under subdivision (6)
153 of subsection (a) of this section, the defendant may be placed on
154 probation or conditional discharge for a period not to exceed three
155 years, provided, at any time during the period of probation, after
156 hearing and for good cause shown, the court may extend [the period as
157 deemed appropriate by the court] such probation or conditional
158 discharge for a period not to exceed five years, including the original
159 period of probation or conditional discharge. If the court places the
160 person adjudicated to be a youthful offender on probation, the court
161 may order that, as a condition of such probation, the person be
162 referred for services to a youth service bureau established pursuant to
163 section 10-19m, provided the court finds, through an assessment by a
164 youth service bureau or its designee, that the person is in need of and
165 likely to benefit from such services. If the court places a person
166 adjudicated as a youthful offender on probation, the court may order
167 that, as a condition of such probation, the person participate in the
168 zero-tolerance drug supervision program established pursuant to
169 section 53a-39d. If the court places a youthful offender on probation,
170 school and class attendance on a regular basis and satisfactory
171 compliance with school policies on student conduct and discipline
172 may be a condition of such probation and, in such a case, failure to so
173 attend or comply shall be a violation of probation. If the court has
174 reason to believe that the person adjudicated to be a youthful offender
175 is or has been an unlawful user of narcotic drugs, as defined in section
176 21a-240, and the court places such youthful offender on probation, the
177 conditions of probation, among other things, [shall] may include a
178 requirement that such person shall submit to periodic tests to
179 determine, by the use of "synthetic opiate antinarcotic in action",
180 nalline test or other detection tests, at a hospital or other facility,
181 equipped to make such tests, whether such person is using narcotic

182 drugs. A failure to report for such tests or a determination that such
183 person is unlawfully using narcotic drugs [shall] may constitute a
184 violation of probation. If the court places a person adjudicated as a
185 youthful offender for a violation of section 53-247 on probation, the
186 court may order that, as a condition of such probation, the person
187 undergo psychiatric or psychological counseling or participate in an
188 animal cruelty prevention and education program, provided such a
189 program exists and is available to the person.

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

193 (a) The records or other information of a [youth, other than a youth
194 arrested for or charged with the commission of a crime which is a class
195 A felony or a violation of subdivision (2) of subsection (a) of section 53-
196 21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b,
197 except a violation involving consensual sexual intercourse or sexual
198 contact between the youth and another person who is thirteen years of
199 age or older but under sixteen years of age] youthful offender,
200 including fingerprints, photographs and physical descriptions, shall be
201 confidential and shall not be open to public inspection or be disclosed
202 except as provided in this section, but such fingerprints, photographs
203 and physical descriptions submitted to the State Police Bureau of
204 Identification of the Division of State Police within the Department of
205 Public Safety at the time of the arrest of a person subsequently
206 adjudged, or subsequently presumed or determined to be eligible to be
207 adjudged, a youthful offender shall be retained as confidential matter
208 in the files of the bureau and be opened to inspection only as provided
209 in this section. Other data ordinarily received by the bureau, with
210 regard to persons arrested for a crime, shall be forwarded to the
211 bureau to be filed, in addition to such fingerprints, photographs and
212 physical descriptions, and be retained in the division as confidential
213 information, open to inspection only as provided in this section.

214 (b) The records of any [such youth] youthful offender, or any part

215 thereof, may be disclosed to and between individuals and agencies,
216 and employees of such agencies, providing services directly to the
217 youth, including municipal, state and federal law enforcement
218 officials, state and federal prosecutorial officials, school officials in
219 accordance with section 10-233h, court officials, the Division of
220 Criminal Justice, the Court Support Services Division, the Board of
221 Pardons and Paroles and an advocate appointed pursuant to section
222 54-221 for a victim of a crime committed by the [youth] youthful
223 offender. Such records shall also be available to the attorney
224 representing the [youth] youthful offender, in any proceedings in
225 which such records are relevant, to the parents or guardian of such
226 [youth] youthful offender, until such time as the [youth] youthful
227 offender reaches the age of majority or is emancipated, and to the
228 [youth] youthful offender upon his or her emancipation or attainment
229 of the age of majority, provided proof of the identity of such [youth]
230 youthful offender is submitted in accordance with guidelines
231 prescribed by the Chief Court Administrator. Such records disclosed
232 pursuant to this subsection shall not be further disclosed.

233 (c) The records of any [such youth] youthful offender, or any part
234 thereof, may be disclosed upon order of the court to any person who
235 has a legitimate interest in the information and is identified in such
236 order. Records or information disclosed pursuant to this subsection
237 shall not be further disclosed.

238 (d) The records of any [such youth] youthful offender or any part
239 thereof, shall be available to the victim of the crime committed by such
240 [youth] youthful offender to the same extent as the record of the case
241 of a defendant in a criminal proceeding in the regular criminal docket
242 of the Superior Court is available to a victim of the crime committed by
243 such defendant. The court shall designate an official from whom such
244 victim may request such information. Information disclosed pursuant
245 to this subsection shall not be further disclosed.

246 (e) Any reports and files held by the Court Support Services
247 Division regarding any [such youth] youthful offender who served a

248 period of probation may be accessed and disclosed by employees of
249 the division for the purpose of performing the duties contained in
250 section 54-63b.

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

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

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