



# State of Connecticut

## DIVISION OF PUBLIC DEFENDER SERVICES

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### TESTIMONY OF DEBORAH Del PRETE SULLIVAN, LEGAL COUNSEL OFFICE OF CHIEF PUBLIC DEFENDER

*Raised Senate Bill No. 440  
An Act Concerning Juvenile Justice*

*Judiciary Committee Public Hearing  
March 20, 2006*

The Office of Chief Public Defender opposes passage of *Raised Senate Bill No. 440, An Act Concerning Juvenile Justice*. This proposal would require that a case be transferred from the Youthful Offender docket to the regular criminal docket of the Superior Court (adult court) merely because the prosecutor filed a motion to transfer. By permitting such discretion to the prosecutor, there is a concern that the intent of the drafters of the 2005 legislation will not be fulfilled. The legislation adopted during the 2005 legislative session was intended to be more inclusive for purposes of Youthful Offender status of those aged 16 and 17 charged with offenses. Passage of this bill would clearly eliminate the exercise of discretion by the court to transfer a matter. Such discretion should exist in the court, not the prosecutor.

The Office of Chief Public Defender would instead urge this Committee to adopt *Raised House Bill No. 5209, An Act Concerning Youthful Offender Proceedings* instead. Raised House Bill No. 5209 clarifies that the court has the discretion to decide a motion filed by the prosecutor. Exercising such discretion is not new to the court. For years, until the adoption of *P.A. No. 05-232, An Act Concerning Youthful Offender Proceedings*, the court was clearly authorized to exercise its discretion in regard to whether to grant Youthful Offender status.

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Defender

There should be an opportunity for the court to consider any information pertaining to a youth who is 16 or 17 years of age and not just the offenses for which he/she is charged. By permitting the prosecutor the sole discretion to transfer, denies a youth the opportunity to present any mitigating evidence. Such information is rarely, if ever, known by the prosecutor. As a result, the decision to transfer by a prosecutor is made without any consideration of such information. Without the existence of criteria upon which to base this exercise of discretion, except for the charge, a decision to file a motion is subjective and can vary among prosecutors and jurisdictions. As a result, a person could be transferred to the adult court for a crime in one jurisdiction who might not be transferred for the same crime if committed in another jurisdiction. As in capital felony cases where a determination is made whether to seek the death penalty or in cases regarding mandatory minimum sentences, the discretion to transfer a case to the adult court is made by the prosecutor and subjective.

Cases involving youths aged 16 or 17 who are arrested as Youthful Offenders are not processed in the criminal justice system the same as juvenile cases. In addition to the readily apparent difference of age, the services available to Youthful Offenders are remarkably less than those available to juveniles and the sentences which can be imposed are different. There is even more of a disparity in the availability of services for those youth who are then prosecuted as adults.

This legislation would also impact negatively upon juveniles who are transferred from the juvenile docket. Once transferred, the juvenile is presumed Youthful Offender status. However, this legislation if adopted would permit a prosecutor to transfer that same juvenile to the adult docket. There is already a lack of meaningful counsel for those juveniles who have been automatically transferred from the juvenile court to the adult court. This legislation would compound the matter by eliminating the ability of the court to consider any information pertaining to the juvenile until he/she is sentenced in the adult court.

During the last few years, there has been much discussion about children and youth and the best ways to help them through prevention, treatment and other alternatives. Why then should there be no discussion about a youth charged with an offense *until* the day of sentencing? Why not assure that the court has the discretion to

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transfer a case from the Youthful Offender docket. The court exercises its discretion daily in this state in regard to numerous motions that are filed. A prosecutor has the right to charge. But it should be the court that decides whether the case should be transferred.

For the reasons as aforesaid, the Office of Chief Public Defender opposes this bill and urges its rejection.