



# House of Representatives

General Assembly

**File No. 866**

January Session, 2007

Substitute House Bill No. 7406

*House of Representatives, May 23, 2007*

The Committee on Appropriations reported through REP. MERRILL of the 54th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING YOUTHFUL OFFENDERS AND DELINQUENT CHILDREN.***

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

1 Section 1. Section 54-76c of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) In any case where an information or complaint has been laid  
4 charging a defendant with the commission of a crime, and where it  
5 appears that the defendant is a youth, such defendant shall be  
6 presumed to be eligible to be adjudged a youthful offender and [the  
7 court having jurisdiction shall, but only as to the public, order] the  
8 court file shall be sealed, but only as to the public, unless such  
9 defendant (1) is charged with the commission of a crime which is a  
10 class A felony or a violation of subdivision (2) of subsection (a) of  
11 section 53-21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-  
12 72b, except a violation involving consensual sexual intercourse or  
13 sexual contact between the youth and another person who is thirteen  
14 years of age or older but under sixteen years of age, or (2) has been

15 previously convicted of a felony in the regular criminal docket of the  
16 Superior Court or been previously adjudged a serious juvenile  
17 offender or serious juvenile repeat offender, as defined in section 46b-  
18 120. [Except as provided in subsection (b) of this section, upon] Upon  
19 motion of the prosecuting official, the court may order that an  
20 investigation be made of such defendant under section 54-76d, as  
21 amended by this act, for the purpose of determining whether such  
22 defendant is ineligible to be adjudged a youthful offender, provided  
23 the court file shall remain sealed, but only as to the public, during such  
24 investigation.

25 (b) [(1)] Upon motion of the prosecuting official and order of the  
26 court, the case of any defendant who is a youth and is charged with  
27 the commission of a felony, other than a felony set forth in subsection  
28 (a) of this section, shall be transferred from the youthful offender  
29 docket to the regular criminal docket of the Superior Court, [ provided  
30 the court finds that there is probable cause to believe the defendant has  
31 committed the act for which he or she is charged. The defendant shall  
32 be arraigned in the regular criminal docket of the Superior Court by  
33 the next court business day following such transfer, provided] The  
34 court file shall remain sealed until such motion is decided by the court  
35 and any proceedings held prior to the finalization of such transfer shall  
36 be private and shall be conducted in such parts of the courthouse or  
37 the building wherein court is located as shall be separate and apart  
38 from the other parts of the court which are then being held for  
39 proceedings pertaining to adults charged with crimes. [The file of any  
40 case so transferred shall remain sealed until the end of the tenth  
41 working day following such arraignment, unless the prosecuting  
42 official has filed a motion pursuant to subdivision (2) of this  
43 subsection, in which case such file shall remain sealed until the court  
44 makes a decision on the motion.]

45 [(2) A prosecuting official may, not later than ten working days after  
46 such arraignment, file a motion to transfer the case of any defendant  
47 who is a youth and is charged with the commission of a felony, other  
48 than a felony set forth in subsection (a) of this section, from the regular

49 criminal docket of the Superior Court to the youthful offender docket  
50 for proceedings in accordance with the provisions of sections 54-76b to  
51 54-76n, inclusive. The court sitting for the regular criminal docket of  
52 the Superior Court shall, after hearing and not later than ten working  
53 days after the filing of such motion, decide such motion.]

54 Sec. 2. Section 54-76d of the general statutes is repealed and the  
55 following is substituted in lieu thereof (*Effective from passage*):

56 (a) If the court grants a motion made by the prosecuting official  
57 under subsection (a) of section 54-76c, as amended by this act, that the  
58 defendant be investigated or if the court on its own motion determines  
59 that the defendant should be investigated under this section, and the  
60 defendant consents to physical and mental examinations, if deemed  
61 necessary, and to investigation and questioning, and to a trial without  
62 a jury, should a trial be had, the information or complaint shall be held  
63 in abeyance and no further action shall be taken in connection with  
64 such information or complaint until such examinations, investigation  
65 and questioning are had of the defendant. [Investigations] Any  
66 investigation under this section shall be made by [an adult probation  
67 officer] the Court Support Services Division. When the information or  
68 complaint charges commission of a felony, [the adult probation officer]  
69 such investigation shall include [in the investigation] a summary of  
70 any uneraser juvenile record of adjudications of the defendant.

71 (b) Upon the termination of such examinations, investigation and  
72 questioning, the court, in its discretion based on the severity of the  
73 crime, which shall also take into consideration whether or not the  
74 defendant took advantage of the victim because of the victim's  
75 advanced age or physical incapacity, and the results of the  
76 examinations, investigation and questioning, shall determine whether  
77 such defendant [is eligible or ineligible to] should be adjudged a  
78 youthful offender. If the court determines that the defendant [is  
79 eligible to] should be so adjudged, no further action shall be taken on  
80 the information or complaint and the defendant shall be required to  
81 enter a plea of "guilty" or "not guilty" to the charge of being a youthful

82 offender. If the court determines that the defendant [is ineligible to]  
83 should not be so adjudged, [it] the court shall order the information or  
84 complaint to be unsealed and the defendant shall be prosecuted as  
85 though the proceedings under sections 54-76b to 54-76n, inclusive, as  
86 amended by this act, had not been had.

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

94 (d) At any time prior to trial as provided in section 54-76e or at any  
95 time prior to entering a plea of "guilty" to the charge of being a  
96 youthful offender, the defendant, on motion and with the concurrence  
97 of the defendant's parent or guardian and the defendant's attorney, if  
98 any, may waive further proceedings under the provisions of sections  
99 54-76b to 54-76n, inclusive, as amended by this act, and request a trial  
100 by jury in the regular criminal docket of the Superior Court. If the  
101 court, after making a thorough inquiry, is satisfied that such waiver is  
102 knowingly and voluntarily made, the court may grant such motion  
103 and order the information or complaint to be unsealed and the  
104 defendant shall be prosecuted as though the proceedings under  
105 sections 54-76b to 54-76n, inclusive, as amended by this act, had not  
106 been had.

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

113 Sec. 3. Subsection (b) of section 54-76j of the general statutes is  
114 repealed and the following is substituted in lieu thereof (*Effective from*

115 *passage*):

116 (b) If execution of the sentence is suspended under subdivision (6)  
117 of subsection (a) of this section, the defendant may be placed on  
118 probation or conditional discharge for a period not to exceed three  
119 years, provided, at any time during the period of probation, after  
120 hearing and for good cause shown, the court may extend [the period as  
121 deemed appropriate by the court] such probation or conditional  
122 discharge for a period not to exceed five years, including the original  
123 period of probation or conditional discharge. If the court places the  
124 person adjudicated to be a youthful offender on probation, the court  
125 may order that, as a condition of such probation, the person be  
126 referred for services to a youth service bureau established pursuant to  
127 section 10-19m, provided the court finds, through an assessment by a  
128 youth service bureau or its designee, that the person is in need of and  
129 likely to benefit from such services. If the court places a person  
130 adjudicated as a youthful offender on probation, the court may order  
131 that, as a condition of such probation, the person participate in the  
132 zero-tolerance drug supervision program established pursuant to  
133 section 53a-39d. If the court places a youthful offender on probation,  
134 school and class attendance on a regular basis and satisfactory  
135 compliance with school policies on student conduct and discipline  
136 may be a condition of such probation and, in such a case, failure to so  
137 attend or comply shall be a violation of probation. If the court has  
138 reason to believe that the person adjudicated to be a youthful offender  
139 is or has been an unlawful user of narcotic drugs, as defined in section  
140 21a-240, and the court places such youthful offender on probation, the  
141 conditions of probation, among other things, [shall] may include a  
142 requirement that such person shall submit to periodic tests to  
143 determine, by the use of "synthetic opiate antinarcotic in action",  
144 nalline test or other detection tests, at a hospital or other facility,  
145 equipped to make such tests, whether such person is using narcotic  
146 drugs. A failure to report for such tests or a determination that such  
147 person is unlawfully using narcotic drugs [shall] may constitute a  
148 violation of probation. If the court places a person adjudicated as a  
149 youthful offender for a violation of section 53-247 on probation, the

150 court may order that, as a condition of such probation, the person  
151 undergo psychiatric or psychological counseling or participate in an  
152 animal cruelty prevention and education program, provided such a  
153 program exists and is available to the person.

154 Sec. 4. Section 54-76l of the general statutes is repealed and the  
155 following is substituted in lieu thereof (*Effective from passage*):

156 (a) The records or other information of a [youth, other than a youth  
157 arrested for or charged with the commission of a crime which is a class  
158 A felony or a violation of subdivision (2) of subsection (a) of section 53-  
159 21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b,  
160 except a violation involving consensual sexual intercourse or sexual  
161 contact between the youth and another person who is thirteen years of  
162 age or older but under sixteen years of age] youthful offender,  
163 including fingerprints, photographs and physical descriptions, shall be  
164 confidential and shall not be open to public inspection or be disclosed  
165 except as provided in this section, but such fingerprints, photographs  
166 and physical descriptions submitted to the State Police Bureau of  
167 Identification of the Division of State Police within the Department of  
168 Public Safety at the time of the arrest of a person subsequently  
169 adjudged, or subsequently presumed or determined to be eligible to be  
170 adjudged, a youthful offender shall be retained as confidential matter  
171 in the files of the bureau and be opened to inspection only as provided  
172 in this section. Other data ordinarily received by the bureau, with  
173 regard to persons arrested for a crime, shall be forwarded to the  
174 bureau to be filed, in addition to such fingerprints, photographs and  
175 physical descriptions, and be retained in the division as confidential  
176 information, open to inspection only as provided in this section.

177 (b) The records of any [such youth] youthful offender, or any part  
178 thereof, may be disclosed to and between individuals and agencies,  
179 and employees of such agencies, providing services directly to the  
180 youth, including municipal, state and federal law enforcement  
181 officials, state and federal prosecutorial officials, school officials in  
182 accordance with section 10-233h, court officials, the Division of

183 Criminal Justice, the Court Support Services Division, the Board of  
184 Pardons and Paroles and an advocate appointed pursuant to section  
185 54-221 for a victim of a crime committed by the [youth] youthful  
186 offender. Such records shall also be available to the attorney  
187 representing the [youth] youthful offender, in any proceedings in  
188 which such records are relevant, to the parents or guardian of such  
189 [youth] youthful offender, until such time as the [youth] youthful  
190 offender reaches the age of majority or is emancipated, and to the  
191 [youth] youthful offender upon his or her emancipation or attainment  
192 of the age of majority, provided proof of the identity of such [youth]  
193 youthful offender is submitted in accordance with guidelines  
194 prescribed by the Chief Court Administrator. Such records disclosed  
195 pursuant to this subsection shall not be further disclosed.

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

201 (d) The records of any [such youth] youthful offender, or any part  
202 thereof, shall be available to the victim of the crime committed by such  
203 [youth] youthful offender to the same extent as the record of the case  
204 of a defendant in a criminal proceeding in the regular criminal docket  
205 of the Superior Court is available to a victim of the crime committed by  
206 such defendant. The court shall designate an official from whom such  
207 victim may request such information. Information disclosed pursuant  
208 to this subsection shall not be further disclosed.

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

214 (f) Information concerning any [such youth] youthful offender who  
215 has escaped from an institution to which such [youth] youthful

216 offender has been committed or for whom an arrest warrant has been  
217 issued may be disclosed by law enforcement officials.

218 (g) The information contained in and concerning the issuance of any  
219 protective order issued in a case [in which a person is presumed or  
220 determined to be eligible to be adjudged] involving a youthful  
221 offender shall be entered in the registry of protective orders pursuant  
222 to section 51-5c and may be further disclosed as specified in said  
223 section.

224 (h) The provisions of this section, as amended by [public act 05-232]  
225 this act, apply to offenses committed after [January 1, 2006] the  
226 effective date of this section, and do not affect any cases pending on  
227 said date or any investigations involving offenses committed prior to  
228 said date.

229 Sec. 5. (NEW) (*Effective October 1, 2007*) At any proceeding  
230 concerning the alleged delinquency of a child, no child under sixteen  
231 years of age shall be physically restrained by the use of shackles,  
232 handcuffs or other mechanical restraint prior to being convicted or  
233 adjudicated as delinquent, unless the judge determines that restraints  
234 on the child are necessary to ensure public safety. Nothing in this  
235 section shall be construed as preventing a child from being physically  
236 restrained while being transported from one place to another.

237 Sec. 6. (NEW) (*Effective October 1, 2007*) Any child who is arrested  
238 and held in a juvenile detention center, an alternative detention center,  
239 the Connecticut Juvenile Training School or any other facility or a  
240 hospital pursuant to a detention order or confined to a police station or  
241 courthouse lockup or correctional facility in connection with a  
242 delinquent act shall, if subsequently convicted as delinquent by the  
243 Superior Court and committed to the Department of Children and  
244 Families, earn a reduction of such child's period of commitment equal  
245 to the number of days such child spent in such facility, hospital, lockup  
246 or correctional facility.

247 Sec. 7. Section 46b-137 of the general statutes is repealed and the

248 following is substituted in lieu thereof (*Effective October 1, 2007*):

249 (a) Any admission, confession or statement, written or oral, made by  
250 a child to a police officer or Juvenile Court official shall be inadmissible  
251 in any delinquency proceeding or prosecution in the regular criminal  
252 docket of the Superior Court concerning the alleged [delinquency]  
253 criminal conduct of the child making such admission, confession or  
254 statement unless made by such child in the presence of his parent or  
255 parents or guardian and after the parent or parents or guardian and  
256 child have been advised (1) of the child's right to retain counsel, or if  
257 unable to afford counsel, to have counsel appointed on the child's  
258 behalf, (2) of the child's right to refuse to make any statements, and (3)  
259 that any statements he makes may be introduced into evidence against  
260 him.

261 (b) Any confession, admission or statement, written or oral, made  
262 by the parent or parents or guardian of the child or youth after the  
263 filing of a petition alleging such child or youth to be neglected,  
264 uncared-for or dependent, shall be inadmissible in any proceeding  
265 held upon such petition against the person making such admission or  
266 statement unless such person shall have been advised of his right to  
267 retain counsel, and that if he is unable to afford counsel, counsel will  
268 be appointed to represent him, that he has a right to refuse to make  
269 any statement and that any statements he makes may be introduced in  
270 evidence against him.

271 Sec. 8. Section 17a-7a of the general statutes is repealed and the  
272 following is substituted in lieu thereof (*Effective October 1, 2007*):

273 (a) The Commissioner of Children and Families shall adopt  
274 regulations, in accordance with chapter 54, setting standard leave and  
275 release policies for [juvenile delinquents] children committed to the  
276 Department of Children and Families as delinquent and assigned to  
277 state facilities and private residential programs. Such regulations shall  
278 provide that [juvenile delinquents] such children shall not be eligible  
279 for leave without an initial sixty-day evaluation of fitness and security  
280 risk, including a trial leave not exceeding one day. Such regulations

281 shall provide that [juvenile delinquents] such children shall not be  
 282 eligible for any leave or release without (1) an evaluation of fitness and  
 283 security risk, (2) the assignment of supervision and clear identification  
 284 of custody of a parent, legal guardian or other responsible adult, (3)  
 285 confidential notification of local police for a leave or release granted to  
 286 a serious juvenile offender, and (4) a determination of eligibility  
 287 immediately prior to granting the leave or release of a delinquent  
 288 child.

289 (b) Notwithstanding the provisions of subsection (a) of this section,  
 290 the Commissioner of Children and Families may waive the  
 291 requirement of an initial sixty-day evaluation of fitness and security  
 292 risk of a child committed to the custody of the commissioner as  
 293 delinquent before such child is eligible for leave when such child has  
 294 been transferred from one facility to another facility.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	54-76c
Sec. 2	<i>from passage</i>	54-76d
Sec. 3	<i>from passage</i>	54-76j(b)
Sec. 4	<i>from passage</i>	54-76l
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	New section
Sec. 7	<i>October 1, 2007</i>	46b-137
Sec. 8	<i>October 1, 2007</i>	17a-7a

**APP**      *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 chamber thereof for any purpose:

## OFA Fiscal Note

### State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Children & Families, Dept.; Judicial Department (Probation); Correction, Dept.	GF - Potential Savings	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

### Explanation

Section 5 could result in a minor workload increase to the Judicial Department that could be accommodated without requiring additional resources.

Enactment of Section 6, which would credit the time of commitment of a delinquent child by the number of days spent in detention or similar placement, is not expected to materially impact the budget of the Department of Children and Families. On average, the length of stay of committed children (about 480 days) is significantly less than their term of commitment (an indefinite period of not less than 18 months).<sup>1</sup> The needs of those children having unusually extended stays in pre-commitment detention (typically awaiting placement in a residential treatment center) are generally expected to be of a nature that would result in longer-term DCF-involvement. It should be noted that the department has the authority to petition the court to continue a commitment when it is deemed in the child's best interest. In FY 06, 92 continuations were granted.

Section 8 authorizes the commissioner of children and families, on a

<sup>1</sup> The average length of time spent by a child in pre-adjudication status is about 14 days. Also, serious juvenile offenders may have terms of commitment of not less than 4 year.

case by case basis, to waive a sixty-day evaluation period that a committed delinquent must meet prior to being allowed to go on leave from a residential facility when the child has been transferred from one facility to another. As the department does not incur a charge specific to this evaluation, no fiscal impact is anticipated in response to enactment of this section.

The bill makes other minor, technical and clarifying changes with minimal fiscal impact.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 7406*****AN ACT CONCERNING YOUTHFUL OFFENDERS AND DELINQUENT CHILDREN.*****SUMMARY:**

This bill makes a number of unrelated changes in the drug sentencing, youthful offender (YO) and delinquency laws. It generally:

1. makes the granting of transfer motions in YO cases mandatory and permanent,
2. shortens sentences and relaxes probation rules,
3. limits use of (a) shackles on juveniles and (b) illegally obtained confessions, and
4. relaxes the Department of Children and Families' (DCF's) leave policies.

EFFECTIVE DATE: October 1, 2007, except the youthful offender provisions are effective upon passage.

**§§ 1-4 — YOUTHFUL OFFENDERS*****Transfers to Criminal Docket***

Existing law creates a presumption that 16- and 17-year-olds charged with certain crimes are entitled to be adjudged YOs rather than tried and sentenced as adults. The bill eliminates court discretion to retain a case on the YO docket once a prosecutor files a motion to transfer it to the adult docket. It requires the court file to remain sealed from public view until the transfer motion is decided. And it eliminates a prosecutor's authority to request that a case he or she successfully transferred be returned to the YO docket.

---

***Limit on Period of Probation and Conditional Discharge***

Judges can place YOs on probation, discharge them conditionally, or combine periods of probation and conditional discharge instead of ordering them to serve prison time. Currently, the initial period of probation, conditional discharge, or combination cannot exceed three years, but judges can order extensions for a period they deem appropriate after (1) holding hearings and (2) finding good cause for doing so.

The bill specifies that the total probation and conditional release period, including any extension, can be five years at most.

***Probation Conditions: Drug Testing***

Current law requires judges to order youthful offenders with a history of illegal drug use to undergo drug testing as a condition of release on probation. It also makes it an automatic probation violation to refuse or fail a drug test. The bill gives the court the discretion to order the tests and use test refusals or failures as a basis for further sanctions.

**§§ 5-8 — JUVENILE DELINQUENTS*****Shackling Children for Juvenile Court Proceedings***

The bill prohibits the use of physical restraints, such as shackles and handcuffs, on children under age 16 during delinquency hearings without a judicial finding that they are necessary to ensure public safety.

The bill specifies that its provisions do not affect the use of physical restraints on children being transported.

***Ban on Use of Illegally Obtained Confessions***

The law prohibits the use of a child's confession to a police officer or juvenile court official in delinquency adjudications unless it was made with a parent present and after both parent and child had been advised of (1) the child's rights to counsel and to remain silent and (2) the fact that the confession can be used against him in court.

The bill makes confessions that would not be admissible in delinquency matters also inadmissible in related delinquency and criminal court proceedings. These include (1) discretionary transfer proceedings (i.e., when a juvenile court judge has the discretion to grant or deny the prosecutor's motion to transfer a child's case to the adult docket) and (2) adult criminal proceedings (i.e., when the child is being tried as an adult).

Current case law permits confessions obtained outside of a parent's presence to be used as evidence in both of these proceedings so long as the judge determines, based on the totality of the circumstances, that the child made the confession freely and understood his or her rights (*State v. Ledbetter*, 263 Conn. 1 (2003)).

### ***Credit for Time Served***

The bill requires delinquency commitments to be reduced by the number of days the child spent in pre-trial detention. It covers time spent in juvenile and alternative detention centers, the Connecticut Juvenile Training School, police station and court house lockups, correctional facilities, and hospitals or other facilities where the child was held under a detention order.

### ***Relaxing DCF Leave Policies***

DCF, by regulation, sets leave policies for delinquent children in residential placements. Its regulations require children to have lived in a facility for at least 60 days before qualifying for leave. The bill allows the commissioner to waive this requirement when a child has been transferred between facilities.

## **BACKGROUND**

### ***Youthful Offenders***

Unlike adult prosecutions, youthful offender proceedings are conducted in private and court records are sealed from public view. Those convicted as youthful offenders can be imprisoned for no more than four years. Their police and court records are automatically erased on their 21<sup>st</sup> birthdays so long as they have no subsequent

felony or youthful offender convictions.

***Legislative History***

The House referred the bill (File 654) to the Appropriations Committee which voted out a substitute eliminating criminal provisions that reduced the size of drug free zones.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 29 Nay 12 (04/13/2007)

Human Services Committee

Joint Favorable

Yea 11 Nay 6 (05/09/2007)

Appropriations Committee

Joint Favorable Substitute

Yea 35 Nay 4 (05/14/2007)