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**TESTIMONY OF  
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**JUDICIARY COMMITTEE PUBLIC HEARING  
April 4, 2007**

***RAISED BILL NO. 7406  
An Act Concerning Youthful Offenders, Delinquent Children and Drug Free Zones***

***The Office of Chief Public Defender supports passage of this bill with some modifications***

**Sections one through four** of this bill would restore discretion to the judges of the superior court to determine whether or not to order, upon motion of the prosecuting authority, the transfer of a case of a youth who is charged with the commission of a felony from the youthful offender docket to the regular criminal docket of the superior court. However, it would serve to clarify the true purpose of the bill more fully if the language in Section 1 (b) were amended to indicate that the court “may” order transfer rather than “shall” order a transfer of the case upon motion of the prosecutor. It would also help to clarify the intent of this bill if it were expressly stated that the purpose of deleting the 10 day rule is to allow prosecutors to send the cases of youth charged with felonies from the regular criminal docket back to the youthful offender docket at **anytime during the pendency of the case in the interests of justice**. The Office of Chief Public Defender is most concerned about the “default” position of some prosecutors who move to transfer all youth charged with felonies in their jurisdiction to the regular criminal docket without court discretion. Such practice thwarts the original intent of the earlier modifications made to the Y.O. statute which were clearly intended to be less punitive toward Connecticut youth.

**Section five** would prohibit the shackling of a child before the court prior to the child being adjudicated or convicted of a delinquency offense without a showing of good cause. In juvenile courts across the state, children charged with delinquency offenses are routinely shackled for court appearances. They wear ankle shackles and in some cases are subjected to belly chain restraints that require them to wear both ankle shackles and handcuffs that are attached to a belly chain. These are children as young as age 9, often charged with non-violent misdemeanors or violations of probation. They are chained for court appearances even though there is no history of violence, no indication that they will attempt to run away or be otherwise uncooperative with the court process. Juvenile justice advocates in states

such as Florida, California, Wisconsin, and New York are challenging the practice of routine shackling of juveniles in their court systems. The Supreme Court of North Dakota recently outlawed the practice and Oregon Supreme Court held that allowing youth to appear before the court unshackled "with the dignity of a free and innocent person" fosters respect for the judicial process and that unjustified physical restraint thwarts the rehabilitative purpose of the juvenile justice system. Leaving child in leg irons without finding that he is dangerous, disruptive or prone to escape is so far removed from the 'best interest of the child' that prejudice is presumed." **State ex rel. Juvenile Dep't v. Millican (In re Millican), 138 Ore. App. 142 (1995).**

Although the Judicial Branch has recently adopted a policy limiting the shackling of juvenile defendants, we would urge this Committee to take a more progressive stand by statutorily prohibiting the practice without a showing of good cause. The juvenile court is often the first experience a child and family have with our criminal justice system. We should be careful to send the message that the Connecticut Judicial system values the presumption of innocence, fairness, and equal justice and that despite alleged wrongdoing children are seen as having the potential for great success in their schools and communities and their lives.

**Section 6** provides that juvenile defendants who are committed to the Department of Children and Families as delinquent and sentenced to a residential facility or to the Connecticut Juvenile Training School should receive credit for time served in detention, in a hospital as a result of a detention order, or other correctional facility prior to their case being disposed. Even after entering an agreement to plead guilty, juveniles in detention often wait for weeks or months for a bed to open up in a DCF residential facility. Because many of these children come from families who cannot or will not care for them, the courts are reluctant to allow them to be released into their communities to wait for an available placement. These children are willing to be sentenced but are forced to do "dead time" in detention because the juvenile justice system has no good alternatives. This is especially problematic for girls. Boys can decide that they don't want to wait for a less restrictive residential facility and go directly to CJTS to start their commitments. Since Connecticut has no comparable state run facility for delinquent girls, they are forced to wait in detention until there is room at a private facility.

**Section 7** would apply the current protections of *C.G.S. §46b-137, Admissibility of confession or other statement in juvenile proceedings* to cases that have been transferred to the adult court from the juvenile docket. Currently, C.G.S. §46b-137 deems statements taken from a juvenile, outside the presence of a parent, inadmissible in a later delinquency prosecution. Under current Connecticut case law, this same statement, made without the presence of the juvenile's parent, becomes admissible against the child once the case is transferred to adult court. C.G.S. §46b-137 was originally passed to ensure that a minor, who is not legally able to waive his rights or make legal decisions, has the counsel of a parent or guardian before choosing to speak to the police. There is a large body of scientific research that indicates that children are more susceptible to coercion during police interrogation and are less able to appreciate the consequences of waiving their constitutional right to remain silent. A law review article outlining some of that research is attached to my written testimony.

The United States and Connecticut Constitutions require that any confession be knowing and voluntary. Because of the young age of a juvenile accused, there is always a question of whether a truly knowing and voluntary waiver can be taken from a juvenile without the assistance of a concerned adult. In the Roper v. Simmons case, outlawing the use of the death penalty in juvenile matters, the United States Supreme Court recognized the credibility of the scientific research indicating that children are in fact far less able than adults to understand the consequences of their actions. The fact that a child's case has been transferred to adult court should not affect the requirement that all interrogations must meet Constitutional standards. In cases where we are transferring defendants as young as fourteen (14) for adult prosecution, extreme care must be taken to ensure

that adequate due process procedural protections are in place. Connecticut should adopt the Supreme Court's conclusion that people under 18 need special protection and treatment and provide this minimum level of protection to our accused 14 and 15 year old children. The admissibility of a statement from a juvenile defendant should not depend on the venue of the criminal prosecution. Allowing this very significant difference in treatment also provides unnecessary motivation for the prosecution to transfer the matter to the adult court. Children transferred to the more complicated adult criminal justice system are developmentally the same as the fourteen and fifteen year olds who remain in the juvenile system. They should be entitled to at least the same level of protection.

**Section eight** would provide discretion to the Commissioner of the Department of Children and Families to waive the 60 day period and grant appropriate leave or furloughs to a child transferred from one DCF facility to another. Under current law, children who are committed delinquent must undergo a 60 day risk assessment before being granted leave from any residential facility. Children committed to DCF facilities may be transferred from secure to less restrictive or more appropriate residential placement as part of a "step down" level of security prior to discharge. Most of these children are assessed before transfer and do not need another 60 day risk assessment. Children also benefit from furloughs and family visits in order to successfully reintegrate into community services, schools, and families. The Commissioner should have the discretion to waive this requirement if the child is simply being moved to another facility and has had no significant behavior issues.

**Sections nine, ten and eleven**, reduce from 1500 feet to 200 feet the area around schools and other facilities within which a mandatory minimum term of incarceration applies for the sale or possession of drugs and controlled substances. This is a necessary change to existing laws that have proved to unfairly penalize defendants in highly developed Connecticut cities.

These proposals are important measures towards creating a criminal justice system that provides fair treatment and due process to all accused of any age. We urge this Committee to approve this bill and accord our children and youth the dignity and services they deserve when presented before the court.