

CCDLA
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April 3, 2007

Hon. Andrew J. McDonald, Senator
Hon. Michael P. Lawlor, House Representative
Chairmen, Judiciary Committee
Room 2500, Legislative Office Building
Hartford, CT 06106

Re: Raised House Bill No. 7406
An Act Concerning Youthful Offenders, Delinquent Children and Drug-Free Zones

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (“CCDLA”) supports the passage of Raised House Bill No. 7406, An Act Concerning Youthful Offenders, Delinquent Children and Drug-Free Zones repealing, *inter alia*, Connecticut General Statutes (“C.G.S.”) Section 54-76c concerning the transfer of Youthful Offender (“YO”) cases to the regular criminal docket. While supporting the passage of the Raised Bill in its entirety, CCDLA hereby offers limited testimony relative the substituted language set forth in Section 1.

In Section 1 of Raised Bill No. 7406, substituted language is proposed for C.G.S. Section 54-76c relative to the transfer of Youthful Offender (“YO”) cases. The proposed substituted language seeks to (1) remove judicial restraint in denying the motion of the prosecuting official once probable cause is found and (2) remove the ten day limitation after arraignment for transferring cases from the regular criminal docket to the youthful offender docket. CCDLA supports the substituted language to cure the present statute’s effect of giving the prosecutorial officials sole discretion to transfer eligible felony YO cases to the regular criminal docket once probable cause has been found.

The present transfer statute has been interpreted by the judiciary to restrain judicial discretion is denying prosecutorial motions to transfer such felonies once probable cause is established. While the language of the statute (stating that a YO felony may be transferred to the regular criminal docket “upon motion by the prosecuting official and order of the court”) suggests that judges have discretion to deny a prosecutor’s motion to transfer, in reality the Courts have given prosecutors unbridled discretion to transfer on the ground that the intent of the legislature was to mirror the language of the juvenile

transfer statute set forth in C.G.S. 46b-127 giving prosecutors sole discretion. It should be noted, however, that C.G. S. Section 46b-127(b), by distinction, provides the adult court discretion to then return the case to the Juvenile Court. No such discretion is afforded the "adult" court in YO cases under the present statute thereby denying the Court any opportunity to hear or rule on the grounds for the transfer exposing the most vulnerable youths to a public proceeding and criminal record.

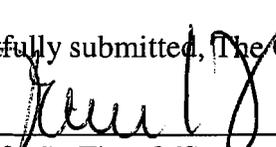
In interpreting the transfer statute this way the Courts have afforded prosecutors enormous power resulting in abuse in some judicial districts, and disparate treatment of youths with similar charges statewide. It has been reported by our members that all non-excluded felony charges on the YO docket in Norwalk were moved to be transferred as a **matter of course** by the State's Attorney's Office in that district thereby side-stepping and undermining the legislative purpose of youthful offender status to protect our young. It has also been reported by our members that prosecutors statewide now threaten to transfer felony cases--knowing it is within their sole discretion to do so--for the purpose of pressuring defendants to take unfavorable plea agreements to retain their YO status. The protections of the Youthful Offender provisions set forth in CGS 54-76b, *et seq.*, are lost to those who should be benefiting from them the most--youths charged with felonies. Felony convictions result in the denial of opportunity for our teens, and allow a population of kids to be forever tarnished by the mistakes of their youth. Judicial discretion rather than zealous prosecution should determine which teens are treated as adults.

Raised Bill 7406 seeks to restore discretion to the Court to deny the transfer of eligible felony cases to the regular criminal docket by omitting the mirrored language of the juvenile transfer statute and should be passed. However, the proposed substituted language of Bill 7406 could be clearer. Ideally, language should be added to the Bill to make this intention unequivocal.

Additionally, Raised Bill 7406's proposed deletion of subsection (b)(2) of the existing YO statute (requiring that prosecutors move to transfer cases of youths from the regular criminal docket to, or back to, the YO docket within 10 days of the arraignment and calling for a judicial decision thereon within 10 days) was intended to allow for transfers of cases to, or back to, the YO docket at any time while the case is pending. While CCDLA believes that the substituted language will likely permit previously sealed files to be unsealed, and remain so for an unspecified period of time on the regular docket, this detriment is outweighed by the multiple benefits to a youth of having his/her case potentially transferred to, or back to, the YO docket at a later date where the youth will be afforded the protections established for teens and avoid a criminal record.

Thank you for your consideration of this testimony.

Respectfully submitted, The Connecticut Criminal Defense Lawyers Association

By  _____
Jennifer L. Zito, Officer