



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

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Testimony of the Division of Criminal Justice

**H.B. No. 7406 (RAISED) AN ACT CONCERNING YOUTHFUL OFFENDERS,
DELINQUENT CHILDREN AND DRUG-FREE ZONES**

Joint Committee on Judiciary – April 4, 2007

The Division of Criminal Justice opposes section 5 of the Bill which would prevent the police, court marshals, or other law enforcement agencies from restraining a child who has been arrested with shackles until such time as the child has been convicted as a delinquent. While the Division appreciates the desire to limit the use of shackles on children it recognizes that their use in certain cases is absolutely imperative. When confronted with an out-of-control juvenile it may be necessary for the police, court marshals, or juvenile authorities to use shackles in order to prevent the juvenile from causing injury to the public, the authorities, or him or herself. While the Division suspects that the provision is intended to address the use of shackles in court the language of the bill is much broader. It prevents authorities from using shackles to restrain a child any time after the child has been arrested, even before the child has appeared in court. Even if the bill were limited to courtroom situations the Division would object as it feels strongly that the decision of what means of restraint are appropriate in a given circumstance should be left to the court and, in particular, the marshals who are responsible for the safety of all.

The Division also opposes section 6 of the Bill which seeks to reduce the period of commitment upon a conviction of delinquency by the amount of time the child spent in detention prior to his conviction. The problem with this proposal is that it attempts to treat juvenile commitments like adult prison sentences when, in actuality, the two are quite different. Juvenile court commitments, unlike sentences imposed in adult court, are for treatment and rehabilitation purposes, not punishment. Also unlike sentences imposed in adult court, commitments in juvenile courts are for indeterminate periods with the Department of Children and Families (DCF) deciding when the commitments should end, subject to the eighteen-month or four-year maximum set by statute. If DCF wants to end the commitment before the maximum date, it can seek revocation from the court. Conversely, if DCF feels the commitment should be extended it can file a motion in juvenile court. The court can then extend the commitment if, after a hearing, it finds that an extension is in the best interests of the child or the community. Because the

commitments imposed in juvenile court are of indeterminate length it makes no sense reduce the sentence by the time the child spent in custody prior to being adjudicated a delinquent.

Section 7 of the Bill seeks to make statements made by juveniles to police officers or Juvenile Court officials inadmissible in criminal proceedings unless the statements were given in the presence of a parent or guardian and the parent or guardian was advised of the child's right. Currently, statements not made in the presence of a parent or guardian are not admissible in juvenile court proceedings but are in adult court. Our Supreme Court has held that the protections of the statute apply only to delinquency proceedings and that if a case is transferred to adult court, a juvenile's statements will be assessed for admissibility using a "totality of the circumstances" test as is done with statements made by adults. The Court found that a "totality of the circumstances" test that takes into consideration the age and experience of the person giving the statement and the circumstances under which it was made provides adequate protection for adults and juveniles alike. In this regard, it is important to note that Connecticut's prohibition against the use in Juvenile Court of statements made without parental involvement is one of the most restrictive in the nation. Many states use a "totality of circumstances" test in determining the admissibility of statements in Juvenile Court just as they do in adult courts.

One problem with this proposal is that it gives no consideration to the circumstances surrounding the giving of the statement. For instance, this proposal would prohibit the use in court of a statement volunteered by a juvenile upon his arrest in the absence of any police questioning whatsoever. If the statement were volunteered at the time of arrest, it is highly unlikely that the police could have had the parents there prior to the statement being made. There is no reason such a statement should not be admissible in a criminal prosecution. In this regard, the Division notes that a statement given under these circumstances by an adult clearly would be admissible.

Finally, with respect to Section 1 of the Bill, the Division questions the reasoning behind removing the provision which allows a prosecutor to transfer a case on the adult docket back to the youthful offender docket. This section, as it is currently written, provides a check on the system and allows prosecutors to correct situations where cases were moved inappropriately to the adult docket.