



General Assembly

Substitute Bill No. 7406

January Session, 2007

* HB07406HS 050907 *

AN ACT CONCERNING YOUTHFUL OFFENDERS, DELINQUENT CHILDREN AND DRUG-FREE ZONES.

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 Section 54-76c of the general statutes is repealed and the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.

295 Sec. 9. Subsection (c) of section 21a-267 of the general statutes is
296 repealed and the following is substituted in lieu thereof (*Effective*
297 *October 1, 2007*):

298 (c) Any person who violates subsection (a) or (b) of this section in or
299 on, or within [one thousand five] two hundred feet of, the real
300 property comprising a public or private elementary or secondary
301 school and who is not enrolled as a student in such school shall be
302 imprisoned for a term of one year which shall not be suspended and
303 shall be in addition and consecutive to any term of imprisonment
304 imposed for violation of subsection (a) or (b) of this section.

305 Sec. 10. Subsection (b) of section 21a-278a of the general statutes is
306 repealed and the following is substituted in lieu thereof (*Effective*
307 *October 1, 2007*):

308 (b) Any person who violates section 21a-277 or 21a-278 by
309 manufacturing, distributing, selling, prescribing, dispensing,
310 compounding, transporting with the intent to sell or dispense,
311 possessing with the intent to sell or dispense, offering, giving or
312 administering to another person any controlled substance in or on, or
313 within [one thousand five] two hundred feet of, the real property
314 comprising a public or private elementary or secondary school, a
315 public housing project or a licensed child day care center, as defined in
316 section 19a-77, that is identified as a child day care center by a sign

317 posted in a conspicuous place shall be imprisoned for a term of three
 318 years, which shall not be suspended and shall be in addition and
 319 consecutive to any term of imprisonment imposed for violation of
 320 section 21a-277 or 21a-278. To constitute a violation of this subsection,
 321 an act of transporting or possessing a controlled substance shall be
 322 with intent to sell or dispense in or on, or within [one thousand five]
 323 two hundred feet of, the real property comprising a public or private
 324 elementary or secondary school, a public housing project or a licensed
 325 child day care center, as defined in section 19a-77, that is identified as a
 326 child day care center by a sign posted in a conspicuous place. For the
 327 purposes of this subsection, "public housing project" means dwelling
 328 accommodations operated as a state or federally subsidized
 329 multifamily housing project by a housing authority, nonprofit
 330 corporation or municipal developer, as defined in section 8-39,
 331 pursuant to chapter 128 or by the Connecticut Housing Authority
 332 pursuant to chapter 129.

333 Sec. 11. Subsection (d) of section 21a-279 of the general statutes is
 334 repealed and the following is substituted in lieu thereof (*Effective*
 335 *October 1, 2007*):

336 (d) Any person who violates subsection (a), (b) or (c) of this section
 337 in or on, or within [one thousand five] two hundred feet of, the real
 338 property comprising a public or private elementary or secondary
 339 school and who is not enrolled as a student in such school or a licensed
 340 child day care center, as defined in section 19a-77, that is identified as a
 341 child day care center by a sign posted in a conspicuous place shall be
 342 imprisoned for a term of two years, which shall not be suspended and
 343 shall be in addition and consecutive to any term of imprisonment
 344 imposed for violation of subsection (a), (b) or (c) of this section.

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
Sec. 9	<i>October 1, 2007</i>	21a-267(c)
Sec. 10	<i>October 1, 2007</i>	21a-278a(b)
Sec. 11	<i>October 1, 2007</i>	21a-279(d)

JUD *Joint Favorable Subst.*

HS *Joint Favorable*