



General Assembly

February Session, 2008

Raised Bill No. 5491

LCO No. 1368

01368_____KID

Referred to Committee on Select Committee on Children

Introduced by:
(KID)

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 Section 54-76c of the general statutes is repealed and the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 of the 2008 supplement to the general statutes or section
12 53a-70, 53a-70a, 53a-70b, 53a-71 of the 2008 supplement to the general
13 statutes, 53a-72a or 53a-72b, except a violation involving consensual
14 sexual intercourse or sexual contact between the youth and another
15 person who is thirteen years of age or older but under sixteen years of
16 age, or (2) has been previously convicted of a felony in the regular

17 criminal docket of the Superior Court or been previously adjudged a
18 serious juvenile offender or serious juvenile repeat offender, as defined
19 in section 46b-120 of the 2008 supplement to the general statutes.
20 [Except as provided in subsection (b) of this section, upon] Upon
21 motion of the prosecuting official, the court may order that an
22 investigation be made of such defendant under section 54-76d, as
23 amended by this act, for the purpose of determining whether such
24 defendant is ineligible to be adjudged a youthful offender, provided
25 the court file shall remain sealed, but only as to the public, during such
26 investigation.

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

47 [(2) A prosecuting official may, not later than ten working days after
48 such arraignment, file a motion to transfer the case of any defendant
49 who is a youth and is charged with the commission of a felony, other

50 than a felony set forth in subsection (a) of this section, from the regular
51 criminal docket of the Superior Court to the youthful offender docket
52 for proceedings in accordance with the provisions of sections 54-76b to
53 54-76n, inclusive. The court sitting for the regular criminal docket of
54 the Superior Court shall, after hearing and not later than ten working
55 days after the filing of such motion, decide such motion.]

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

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

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

82 the information or complaint and the defendant shall be required to
83 enter a plea of "guilty" or "not guilty" to the charge of being a youthful
84 offender. If the court determines that the defendant [is ineligible to]
85 should not be so adjudged, [it] the court shall order the information or
86 complaint to be unsealed and the defendant shall be prosecuted as
87 though the proceedings under sections 54-76b to 54-76n, inclusive, had
88 not been had.

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

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

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

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

117 (b) If execution of the sentence is suspended under subdivision (6)
118 of subsection (a) of this section, the defendant may be placed on
119 probation or conditional discharge for a period not to exceed three
120 years, provided, at any time during the period of probation, after
121 hearing and for good cause shown, the court may extend [the period as
122 deemed appropriate by the court] such probation or conditional
123 discharge for a period not to exceed five years, including the original
124 period of probation or conditional discharge. If the court places the
125 person adjudicated to be a youthful offender on probation, the court
126 may order that, as a condition of such probation, the person be
127 referred for services to a youth service bureau established pursuant to
128 section 10-19m of the 2008 supplement to the general statutes,
129 provided the court finds, through an assessment by a youth service
130 bureau or its designee, that the person is in need of and likely to
131 benefit from such services. If the court places a person adjudicated as a
132 youthful offender on probation, the court may order that, as a
133 condition of such probation, the person participate in the zero-
134 tolerance drug supervision program established pursuant to section
135 53a-39d. If the court places a youthful offender on probation, school
136 and class attendance on a regular basis and satisfactory compliance
137 with school policies on student conduct and discipline may be a
138 condition of such probation and, in such a case, failure to so attend or
139 comply shall be a violation of probation. If the court has reason to
140 believe that the person adjudicated to be a youthful offender is or has
141 been an unlawful user of narcotic drugs, as defined in section 21a-240,
142 and the court places such youthful offender on probation, the
143 conditions of probation, among other things, [shall] may include a
144 requirement that such person [shall] submit to periodic tests to
145 determine, by the use of "synthetic opiate antinarcotic in action",
146 nalline test or other detection tests, at a hospital or other facility,
147 equipped to make such tests, whether such person is using narcotic

148 drugs. A failure to report for such tests or a determination that such
149 person is unlawfully using narcotic drugs [shall] may constitute a
150 violation of probation. If the court places a person adjudicated as a
151 youthful offender for a violation of section 53-247 on probation, the
152 court may order that, as a condition of such probation, the person
153 undergo psychiatric or psychological counseling or participate in an
154 animal cruelty prevention and education program, provided such a
155 program exists and is available to the person.

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

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

179 (b) The records of any [such youth] youthful offender, or any part

180 thereof, may be disclosed to and between individuals and agencies,
181 and employees of such agencies, providing services directly to the
182 [youth] youthful offender, including municipal, state and federal law
183 enforcement officials, state and federal prosecutorial officials, school
184 officials in accordance with section 10-233h, court officials, the Division
185 of Criminal Justice, the Court Support Services Division, the Board of
186 Pardons and Paroles and an advocate appointed pursuant to section
187 54-221 for a victim of a crime committed by the [youth] youthful
188 offender. Such records shall also be available to the attorney
189 representing the [youth] youthful offender, in any proceedings in
190 which such records are relevant, to the parents or guardian of such
191 [youth] youthful offender, until such time as the [youth] youthful
192 offender reaches the age of majority or is emancipated, and to the
193 [youth] youthful offender upon his or her emancipation or attainment
194 of the age of majority, provided proof of the identity of such [youth]
195 youthful offender is submitted in accordance with guidelines
196 prescribed by the Chief Court Administrator. Such records disclosed
197 pursuant to this subsection shall not be further disclosed.

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

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

211 (e) Any reports and files held by the Court Support Services

212 Division regarding any [such youth] youthful offender who served a
213 period of probation may be accessed and disclosed by employees of
214 the division for the purpose of performing the duties contained in
215 section 54-63b.

216 (f) Information concerning any [such youth] youthful offender who
217 has escaped from an institution to which such [youth] youthful
218 offender has been committed or for whom an arrest warrant has been
219 issued may be disclosed by law enforcement officials.

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

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

230 Sec. 5. (NEW) (*Effective October 1, 2008*) At any proceeding
231 concerning the alleged delinquency of a child, no child under sixteen
232 years of age shall be physically restrained by the use of shackles,
233 handcuffs or other mechanical restraint prior to being convicted or
234 adjudicated as delinquent, unless the judge determines that restraints
235 on the child are necessary to ensure public safety. Nothing in this
236 section shall be construed as preventing a child from being physically
237 restrained while being transported from one place to another.

238 Sec. 6. (NEW) (*Effective October 1, 2008*) Any child who is arrested
239 and held in a juvenile detention center, an alternative detention center,
240 the Connecticut Juvenile Training School or any other facility or a
241 hospital pursuant to a detention order or confined to a police station or
242 courthouse lockup or correctional facility in connection with a

243 delinquent act shall, if subsequently convicted as delinquent by the
244 Superior Court and committed to the Department of Children and
245 Families, earn a reduction of such child's period of commitment equal
246 to the number of days such child spent in such facility, hospital, lockup
247 or correctional facility.

248 Sec. 7. Section 46b-137 of the general statutes is repealed and the
249 following is substituted in lieu thereof (*Effective October 1, 2008*):

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

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

272 Sec. 8. Section 17a-7a of the general statutes is repealed and the
273 following is substituted in lieu thereof (*Effective October 1, 2008*):

274 (a) The Commissioner of Children and Families shall adopt
 275 regulations, in accordance with chapter 54, setting standard leave and
 276 release policies for [~~juvenile delinquents~~] children committed to the
 277 Department of Children and Families as delinquent and assigned to
 278 state facilities and private residential programs. Such regulations shall
 279 provide that [~~juvenile delinquents~~] such children shall not be eligible
 280 for leave without an initial sixty-day evaluation of fitness and security
 281 risk, including a trial leave not exceeding one day. Such regulations
 282 shall provide that [~~juvenile delinquents~~] such children shall not be
 283 eligible for any leave or release without (1) an evaluation of fitness and
 284 security risk, (2) the assignment of supervision and clear identification
 285 of custody of a parent, legal guardian or other responsible adult, (3)
 286 confidential notification of local police for a leave or release granted to
 287 a serious juvenile offender, and (4) a determination of eligibility
 288 immediately prior to granting the leave or release of a delinquent
 289 child.

290 (b) Notwithstanding the provisions of subsection (a) of this section,
 291 the Commissioner of Children and Families may waive the
 292 requirement of an initial sixty-day evaluation of fitness and security
 293 risk of a child committed to the custody of the commissioner as
 294 delinquent before such child is eligible for leave when such child has
 295 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, 2008</i>	New section
Sec. 6	<i>October 1, 2008</i>	New section
Sec. 7	<i>October 1, 2008</i>	46b-137
Sec. 8	<i>October 1, 2008</i>	17a-7a

Statement of Purpose:

To make certain changes in youthful offender and juvenile delinquency proceedings.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]