



General Assembly

Substitute Bill No. 5491

February Session, 2008

* HB05491KIDJUD030508 *

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 Section 54-76c of the general statutes is repealed and the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 court shall conduct a hearing to determine whether the case
29 of any defendant who is a youth and is charged with the commission
30 of a felony, other than a felony set forth in subsection (a) of this section,
31 shall be transferred from the youthful offender docket to the regular
32 criminal docket of the Superior Court. [, provided the court finds that
33 there is probable cause to believe the defendant has committed the act
34 for which he or she is charged. The] If the court grants the motion to
35 transfer, the defendant shall be arraigned in the regular criminal
36 docket of the Superior Court by the next court business day following
37 such transfer. [, provided] The court file shall remain sealed until such
38 motion is decided by the court and any proceedings held prior to the
39 finalization of such transfer shall be private and shall be conducted in
40 such parts of the courthouse or the building wherein court is located as
41 shall be separate and apart from the other parts of the court which are
42 then being held for proceedings pertaining to adults charged with
43 crimes. [The file of any case so transferred shall remain sealed until the
44 end of the tenth working day following such arraignment, unless the
45 prosecuting official has filed a motion pursuant to subdivision (2) of
46 this subsection, in which case such file shall remain sealed until the
47 court makes a decision on the motion.]

48 [(2) A prosecuting official may, not later than ten working days
49 after such arraignment, file a motion to transfer the case of any
50 defendant who is a youth and is charged with the commission of a
51 felony, other than a felony set forth in subsection (a) of this section,
52 from the regular criminal docket of the Superior Court to the youthful

53 offender docket for proceedings in accordance with the provisions of
54 sections 54-76b to 54-76n, inclusive. The court sitting for the regular
55 criminal docket of the Superior Court shall, after hearing and not later
56 than ten working days after the filing of such motion, decide such
57 motion.]

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 Section 54-76d of the general statutes is repealed and the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

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

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

86 offender. If the court determines that the defendant [is ineligible to]
87 should not be so adjudged, [it] the court shall order the information or
88 complaint to be unsealed and the defendant shall be prosecuted as
89 though the proceedings under sections 54-76b to 54-76n, inclusive, had
90 not been had.

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

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

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

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

118 *passage*):

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

152 violation of probation. If the court places a person adjudicated as a
153 youthful offender for a violation of section 53-247 on probation, the
154 court may order that, as a condition of such probation, the person
155 undergo psychiatric or psychological counseling or participate in an
156 animal cruelty prevention and education program, provided such a
157 program exists and is available to the person.

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

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

181 (b) The records of any [such youth] youthful offender, or any part
182 thereof, may be disclosed to and between individuals and agencies,
183 and employees of such agencies, providing services directly to the
184 [youth] youthful offender, including municipal, state and federal law

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

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

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

213 (e) Any reports and files held by the Court Support Services
214 Division regarding any [such youth] youthful offender who served a
215 period of probation may be accessed and disclosed by employees of
216 the division for the purpose of performing the duties contained in
217 section 54-63b.

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

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

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

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

240 Sec. 6. (NEW) (*Effective October 1, 2008*) Any child who is arrested
241 and held in a juvenile detention center, an alternative detention center,
242 the Connecticut Juvenile Training School or any other facility or a
243 hospital pursuant to a detention order or confined to a police station or
244 courthouse lockup or correctional facility in connection with a
245 delinquent act shall, if subsequently convicted as delinquent by the
246 Superior Court and committed to the Department of Children and
247 Families, earn a reduction of such child's period of commitment equal
248 to the number of days such child spent in such facility, hospital, lockup
249 or correctional facility.

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

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

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

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

276 (a) The Commissioner of Children and Families shall adopt
277 regulations, in accordance with chapter 54, setting standard leave and
278 release policies for [juvenile delinquents] children committed to the
279 Department of Children and Families as delinquent and assigned to
280 state facilities and private residential programs. Such regulations shall
281 provide that [juvenile delinquents] such children shall not be eligible

282 for leave without an initial sixty-day evaluation of fitness and security
 283 risk, including a trial leave not exceeding one day. Such regulations
 284 shall provide that [juvenile delinquents] such children shall not be
 285 eligible for any leave or release without (1) an evaluation of fitness and
 286 security risk, (2) the assignment of supervision and clear identification
 287 of custody of a parent, legal guardian or other responsible adult, (3)
 288 confidential notification of local police for a leave or release granted to
 289 a serious juvenile offender, and (4) a determination of eligibility
 290 immediately prior to granting the leave or release of a delinquent
 291 child.

292 (b) Notwithstanding the provisions of subsection (a) of this section,
 293 the Commissioner of Children and Families may waive the
 294 requirement of an initial sixty-day evaluation of fitness and security
 295 risk of a child committed to the custody of the commissioner as
 296 delinquent before such child is eligible for leave when such child has
 297 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

KID

Joint Favorable Subst. C/R

JUD