



# House of Representatives

General Assembly

**File No. 769**

January Session, 2009

Substitute House Bill No. 6664

*House of Representatives, April 21, 2009*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES  
CONCERNING THE CRIMINAL JUSTICE SYSTEM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2009*) (a) Juvenile prosecutors  
2 employed by the Division of Criminal Justice on the effective date of  
3 this section shall be deemed to have been appointed by the Criminal  
4 Justice Commission in accordance with section 51-278 of the general  
5 statutes and shall have and exercise all the powers and perform all the  
6 duties of an assistant state's attorney and have the same jurisdiction as  
7 an assistant state's attorney as provided in section 51-281 of the general  
8 statutes.

9 (b) On and after the effective date of this section, any prosecutorial  
10 official assigned to handle juvenile matters in the criminal session of  
11 the Superior Court shall have been appointed by the Criminal Justice  
12 Commission in accordance with section 51-278 of the general statutes.

13 Sec. 2. Subsection (b) of section 46b-127 of the general statutes is

14 repealed and the following is substituted in lieu thereof (*Effective July*  
15 *1, 2009*):

16 (b) Upon motion of a [juvenile prosecutor] prosecutorial official and  
17 order of the court, the case of any child charged with the commission  
18 of a class C or D felony or an unclassified felony shall be transferred  
19 from the docket for juvenile matters to the regular criminal docket of  
20 the Superior Court, provided such offense was committed after such  
21 child attained the age of fourteen years and the court finds *ex parte*  
22 that there is probable cause to believe the child has committed the act  
23 for which he is charged. The file of any case so transferred shall remain  
24 sealed until such time as the court sitting for the regular criminal  
25 docket accepts such transfer. The court sitting for the regular criminal  
26 docket may return any such case to the docket for juvenile matters not  
27 later than ten working days after the date of the transfer for  
28 proceedings in accordance with the provisions of this chapter. The  
29 child shall be arraigned in the regular criminal docket of the Superior  
30 Court by the next court date following such transfer, provided any  
31 proceedings held prior to the finalization of such transfer shall be  
32 private and shall be conducted in such parts of the courthouse or the  
33 building wherein court is located as shall be separate and apart from  
34 the other parts of the court which are then being held for proceedings  
35 pertaining to adults charged with crimes.

36 Sec. 3. Section 46b-133a of the general statutes is repealed and the  
37 following is substituted in lieu thereof (*Effective July 1, 2009*):

38 (a) A nolle prosequi may not be entered as to any count of  
39 delinquency if the juvenile objects to the nolle prosequi and demands  
40 either a trial or dismissal, except with respect to prosecutions in which  
41 a nolle prosequi is entered upon a representation to the court by the  
42 [juvenile prosecutor] prosecutorial official that a material witness has  
43 died, disappeared or become disabled or that material evidence has  
44 disappeared or has been destroyed and that a further investigation is  
45 therefore necessary.

46 (b) Whenever a nolle prosequi has been entered as to any count of

47 delinquency, or whenever any count of delinquency has been  
48 dismissed without prejudice, if at least thirteen months have elapsed  
49 since such nolle or dismissal without prejudice, all police and court  
50 records pertaining to such count shall be erased. Whenever any such  
51 count has been continued at the request of the [juvenile prosecutor]  
52 prosecutorial official and a period of thirteen months has elapsed since  
53 the granting of such continuance during which period there has been  
54 no prosecution or other disposition of the matter, the count shall be  
55 construed to have been nolle as of the date of termination of such  
56 thirteen-month period and such erasure may thereafter be effected as  
57 provided in this subsection for nolle cases.

58 Sec. 4. Section 46b-133b of the general statutes is repealed and the  
59 following is substituted in lieu thereof (*Effective July 1, 2009*):

60 (a) The court, on motion of a child charged with a delinquency  
61 offense, but not yet convicted, may order that such child be examined  
62 to determine whether the child is alcohol-dependent or drug-  
63 dependent as defined in section 46b-120. Such motion shall be filed  
64 with the court within ten days after a plea is entered, except if waived  
65 by the court or pursuant to an agreement by the parties. The results of  
66 any examination ordered pursuant to this subsection shall be utilized  
67 only for the purposes of determining whether the delinquency  
68 proceeding should be suspended under this section.

69 (b) The court, upon motion of the child charged with a delinquency  
70 offense but not yet convicted, may order the suspension of the  
71 delinquency proceedings for a period of up to one year, order periodic  
72 alcohol and drug testing of such child during the period of suspension  
73 and order treatment for alcohol or drug dependency if the court, after  
74 consideration of information before it concerning the alcohol or drug  
75 dependency of the child, finds that (1) the child is alcohol-dependent  
76 or drug-dependent as defined in section 46b-120, (2) the child  
77 presently needs and is likely to benefit from treatment for the  
78 dependency and (3) the suspension of the delinquency proceedings  
79 will advance the interests of justice. During the period of suspension, a

80 child shall be placed under the supervision of a juvenile probation  
81 officer for treatment for alcohol or drug dependency and such officer  
82 shall monitor the compliance of the child with the orders of the court.

83 (c) If the court denies the motion for suspension of the delinquency  
84 proceedings, the [juvenile prosecutor] prosecutorial official may  
85 proceed with the delinquency proceedings. Any order of the court  
86 granting or denying a motion for suspension of the delinquency  
87 proceedings shall not be deemed a final order for purposes of appeal.

88 (d) At any time before the end of the period of the suspension of the  
89 delinquency proceedings, but not later than one month before the end  
90 of the period of suspension, a juvenile probation officer shall notify the  
91 court of the impending conclusion of the suspension and submit a  
92 report on whether the child has completed the treatment program and  
93 has complied with all other conditions of the suspension order  
94 imposed by the court.

95 (e) If the court, on motion of the child or on its own motion, finds  
96 that the child has completed the treatment program and has complied  
97 with all other conditions of suspension, it may dismiss the charge for  
98 which the delinquency proceedings had been suspended. If the court  
99 denies the motion and terminates the suspension of the delinquency  
100 proceedings, the [juvenile prosecutor] prosecutorial official may  
101 proceed with such proceedings.

102 (f) The provisions of this section shall not apply to any child  
103 charged with a serious juvenile offense as defined in section 46b-120 or  
104 any child who was previously ordered treated under this section.

105 Sec. 5. Subsections (a) and (b) of section 46b-133c of the general  
106 statutes are repealed and the following is substituted in lieu thereof  
107 (*Effective July 1, 2009*):

108 (a) Whenever a child is referred for the commission of a felony  
109 committed after such child attained the age of fourteen years and such  
110 child is a serious juvenile repeat offender, as defined in section 46b-

111 120, the [juvenile prosecutor] prosecutorial official may request the  
112 court to designate the proceeding as a serious juvenile repeat offender  
113 prosecution.

114 (b) If a [juvenile prosecutor] prosecutorial official requests that a  
115 proceeding be designated a serious juvenile repeat offender  
116 prosecution, the court shall hold a hearing not later than thirty days  
117 after the filing of such request unless good cause is shown by the  
118 [juvenile prosecutor] prosecutorial official or by the child as to why the  
119 hearing should not be held within such period. If good cause is shown,  
120 the hearing shall be held not later than ninety days after the filing of  
121 such request. The court shall decide whether to designate the  
122 proceeding as a serious juvenile repeat offender prosecution not later  
123 than thirty days after the completion of such hearing. The court shall  
124 grant the request to designate the proceeding as a serious juvenile  
125 repeat offender prosecution if the [juvenile prosecutor] prosecutorial  
126 official shows by clear and convincing evidence that such designation  
127 will serve the public safety. The decision to designate the proceeding  
128 as a serious juvenile repeat offender prosecution shall not be a final  
129 judgment for purposes of appeal.

130 Sec. 6. Subsections (b) and (c) of section 46b-133d of the general  
131 statutes are repealed and the following is substituted in lieu thereof  
132 (*Effective July 1, 2009*):

133 (b) Whenever a child is referred for the commission of any crime of  
134 a sexual nature, and such case is not transferred to the regular criminal  
135 docket pursuant to section 46b-127, as amended by this act, the  
136 [juvenile prosecutor] prosecutorial official may request the court to  
137 designate the proceeding as a serious sexual offender prosecution.

138 (c) If a [juvenile prosecutor] prosecutorial official requests that a  
139 proceeding be designated a serious sexual offender prosecution, the  
140 court shall hold a hearing not later than thirty days after the filing of  
141 such request unless good cause is shown by the [juvenile prosecutor]  
142 prosecutorial official or by the child as to why the hearing should not  
143 be held within such period. If good cause is shown, the hearing shall

144 be held not later than ninety days after the filing of such request. The  
145 court shall decide whether to designate the proceeding as a serious  
146 sexual offender prosecution not later than thirty days after the  
147 completion of such hearing. The court shall grant the request to  
148 designate the proceeding as a serious sexual offender prosecution if  
149 the [juvenile prosecutor] prosecutorial official shows by a  
150 preponderance of the evidence that such designation will serve the  
151 public safety. The decision to designate the proceeding as a serious  
152 sexual offender prosecution shall not be a final judgment for purposes  
153 of appeal.

154 Sec. 7. Subsection (e) of section 46b-133e of the general statutes is  
155 repealed and the following is substituted in lieu thereof (*Effective July*  
156 *1, 2009*):

157 (e) If the court denies the motion for suspension of the delinquency  
158 proceedings, the [juvenile prosecutor] prosecutorial official may  
159 proceed with the delinquency proceedings. Any order of the court  
160 granting or denying a motion for suspension of the delinquency  
161 proceedings shall not be deemed a final order for purposes of appeal.

162 Sec. 8. Subsection (g) of section 46b-133e of the general statutes is  
163 repealed and the following is substituted in lieu thereof (*Effective July*  
164 *1, 2009*):

165 (g) If the court, on motion of the child or on its own motion, finds  
166 that the child has satisfactorily completed the school violence  
167 prevention program and has complied with all other conditions of  
168 suspension, and one year has elapsed since the child was placed in  
169 such program, it may dismiss the charge for which the delinquency  
170 proceedings had been suspended. If the court denies the motion and  
171 terminates the suspension of the delinquency proceedings, the  
172 [juvenile prosecutor] prosecutorial official may proceed with such  
173 proceedings.

174 Sec. 9. Subsection (a) of section 51-285 of the general statutes is  
175 repealed and the following is substituted in lieu thereof (*Effective July*

176 1, 2009):

177 (a) The Chief State's Attorney may appoint special assistant state's  
178 attorneys, special deputy assistant state's attorneys [, special juvenile  
179 prosecutors] and special inspectors on a contractual basis for a  
180 temporary period of time.

181 Sec. 10. Section 51-286f of the general statutes is repealed and the  
182 following is substituted in lieu thereof (*Effective July 1, 2009*):

183 The prosecuting official in a criminal proceeding shall request on  
184 the record that a transcript be prepared of any sentencing hearing at  
185 which a defendant is sentenced to a definite, nonsuspended sentence  
186 of more than two years imprisonment. [and shall cause a copy of such  
187 transcript to be delivered] The Chief Court Administrator shall  
188 provide, in a format prescribed by the Chief Court Administrator, any  
189 such transcript to the Board of Pardons and Paroles.

190 Sec. 11. Subsection (d) of section 54-142s of the general statutes is  
191 repealed and the following is substituted in lieu thereof (*Effective from*  
192 *passage*):

193 (d) Such information technology system shall include a central,  
194 integrated electronic repository of criminal justice records and  
195 documents that provides:

196 (1) Access to all state and local police reports, presentence  
197 investigations and reports, psychological and medical reports, criminal  
198 records, incarceration and parole records, and court records and  
199 transcripts, whether such records and documents normally exist in  
200 electronic or hard copy form, except that access to state and local police  
201 reports and witness statements by the Division of Public Defender  
202 Services shall be barred unless authorized by a prosecutorial official;  
203 and

204 (2) Access to scanning and processing facilities to ensure that such  
205 records and documents are integrated into the system and updated  
206 immediately.

207 Sec. 12. Section 53a-172 of the general statutes is repealed and the  
208 following is substituted in lieu thereof (*Effective October 1, 2009*):

209 (a) A person is guilty of failure to appear in the first degree when (1)  
210 while charged with the commission of a felony and while out on bail  
211 or released under other procedure of law, [he] such person wilfully  
212 fails to appear when legally called according to the terms of [his] such  
213 person's bail bond or promise to appear, or (2) while on probation for  
214 conviction of a felony, [he] such person wilfully fails to appear when  
215 legally called for [a violation of probation hearing] any court hearing  
216 relating to a violation of such probation.

217 (b) Failure to appear in the first degree is a class D felony.

218 Sec. 13. Section 53a-173 of the general statutes is repealed and the  
219 following is substituted in lieu thereof (*Effective October 1, 2009*):

220 (a) A person is guilty of failure to appear in the second degree when  
221 (1) while charged with the commission of a misdemeanor or a motor  
222 vehicle violation for which a sentence to a term of imprisonment may  
223 be imposed and while out on bail or released under other procedure of  
224 law, [he] such person wilfully fails to appear when legally called  
225 according to the terms of [his] such person's bail bond or promise to  
226 appear, or (2) while on probation for conviction of a misdemeanor or  
227 motor vehicle violation, [he] such person wilfully fails to appear when  
228 legally called for [a violation of probation hearing] any court hearing  
229 relating to a violation of such probation.

230 (b) Failure to appear in the second degree is a class A misdemeanor.

231 Sec. 14. Subsection (a) of section 53a-70 of the general statutes is  
232 repealed and the following is substituted in lieu thereof (*Effective*  
233 *October 1, 2009*):

234 (a) A person is guilty of sexual assault in the first degree when such  
235 person (1) compels another person to engage in sexual intercourse by  
236 the use of force against such other person or a third person, or by the  
237 threat of use of force against such other person or against a third

238 person which reasonably causes such person to fear physical injury to  
239 such person or a third person, or (2) engages in sexual intercourse with  
240 another person and such other person is ten years of age or older but  
241 under thirteen years of age and the actor is more than two years older  
242 than such person, or (3) commits sexual assault in the second degree as  
243 provided in section 53a-71 and in the commission of such offense is  
244 aided by two or more other persons actually present, or (4) engages in  
245 sexual intercourse with another person and such other person is  
246 mentally incapacitated to the extent that such other person is unable to  
247 consent to such sexual intercourse; or (5) engages in sexual intercourse  
248 with another person and such other person is under ten years of age  
249 and the actor is more than two years older than such person.

250 Sec. 15. Subsection (b) of section 53a-70 of the general statutes is  
251 repealed and the following is substituted in lieu thereof (*Effective*  
252 *October 1, 2009*):

253 (b) (1) Except as provided in subdivision (2) of this subsection,  
254 sexual assault in the first degree is a class B felony for which two years  
255 of the sentence imposed may not be suspended or reduced by the  
256 court or, if the victim of the offense is under ten years of age, for which  
257 ten years of the sentence imposed may not be suspended or reduced  
258 by the court.

259 (2) Sexual assault in the first degree is a class A felony if the offense  
260 is a violation of subdivision (1) of subsection (a) of this section and the  
261 victim of the offense is under sixteen years of age or the offense is a  
262 violation of subdivision (2) of subsection (a) of this section. Any person  
263 found guilty under said subdivision (1) or (2) shall be sentenced to a  
264 term of imprisonment of which ten years of the sentence imposed may  
265 not be suspended or reduced by the court if the victim is under ten  
266 years of age or of which five years of the sentence imposed may not be  
267 suspended or reduced by the court if the victim is under sixteen years  
268 of age.

269 (3) Any person found guilty under this section shall be sentenced to  
270 a term of imprisonment and a period of special parole pursuant to

271 subsection (b) of section 53a-28 which together constitute a sentence of  
272 at least ten years.

273 (4) Notwithstanding the provisions of this subsection concerning the  
274 imposition of a mandatory minimum sentence, the court may suspend  
275 the execution of such mandatory minimum sentence if at the time of  
276 the commission of the offense (A) such person was under eighteen  
277 years of age, or (B) such person's mental capacity was significantly  
278 impaired but not so impaired as to constitute a defense to prosecution.

279 Sec. 16. Section 54-85a of the general statutes is repealed and the  
280 following is substituted in lieu thereof (*Effective October 1, 2009*):

281 (a) In any criminal prosecution, the court, upon motion of the state  
282 or the defendant, shall cause any witness to be sequestered during the  
283 hearing on any issue or motion or any part of the trial of such  
284 prosecution in which [he] such witness is not testifying.

285 (b) The provisions of subsection (a) of this section shall not apply to  
286 a witness in any criminal prosecution of an offense involving assault,  
287 sexual assault or abuse of a child twelve years of age or younger if  
288 such witness is an adult who is known to the child and with whom the  
289 child feels comfortable and has been authorized by the court pursuant  
290 to subdivision (2) of subsection (b) of section 54-86g to sit in close  
291 proximity to the child during the child's testimony.

292 Sec. 17. Section 51-237 of the general statutes is repealed and the  
293 following is substituted in lieu thereof (*Effective October 1, 2009*):

294 Each juror, duly chosen, drawn and summoned, who fails to appear  
295 shall [have committed an infraction] be subject to a civil penalty, the  
296 amount of which shall be established by the judges of the superior  
297 court, but the court may excuse [him] such juror from the payment  
298 thereof. If a sufficient number of the jurors summoned do not appear,  
299 or if for any cause there is not a sufficient number of jurors to make up  
300 the panel, the court may order such number of persons who qualify for  
301 jury service under section 51-217 to be summoned as may be

302 necessary, as talesmen, and any talesman so summoned who makes  
303 default of appearance without sufficient cause shall [have committed  
304 an infraction] be subject to a civil penalty, the amount of which shall be  
305 established by the judges of the superior court.

306 Sec. 18. Section 53a-137 of the general statutes is repealed and the  
307 following is substituted in lieu thereof (*Effective October 1, 2009*):

308 The following definitions are applicable to this part:

309 (1) "Written instrument" means any instrument or article containing  
310 written or printed matter or the equivalent thereof, used for the  
311 purpose of reciting, embodying, conveying or recording information  
312 or constituting a symbol or evidence of value, right, privilege or  
313 identification, which is capable of being used to the advantage or  
314 disadvantage of some person.

315 (2) "Complete written instrument" means [one] a written instrument  
316 which purports to be a genuine written instrument fully drawn with  
317 respect to every essential feature thereof. An endorsement, attestation,  
318 acknowledgment or other similar signature or statement is deemed  
319 both a complete written instrument in itself and a part of the main  
320 instrument in which it is contained or to which it attaches.

321 (3) "Incomplete written instrument" means [one] a written  
322 instrument which contains some matter by way of content or  
323 authentication but which requires additional matter in order to render  
324 it a complete written instrument.

325 (4) A person "falsely makes" a written instrument when [he] (A)  
326 such person makes or draws a complete written instrument in its  
327 entirety, or an incomplete written instrument, which purports to be an  
328 authentic creation of its ostensible maker or drawer, but which is not  
329 such either because the ostensible maker or drawer is fictitious or  
330 because, if real, [he] the ostensible maker or drawer did not authorize  
331 the making or drawing thereof, or (B) such person signs his or her own  
332 name to a written instrument, thereby falsely and fraudulently

333 representing that he or she has authority to sign in such capacity.

334 (5) A person "falsely completes" a written instrument when (A) such  
335 person, by adding, inserting or changing matter, [he] transforms an  
336 incomplete written instrument into a complete [one] written  
337 instrument, without the authority of [anyone] any person entitled to  
338 grant it, so that such complete written instrument appears or purports  
339 to be in all respects an authentic creation of or fully authorized by its  
340 ostensible maker or drawer, or (B) such person signs his or her own  
341 name to a written instrument, thereby falsely and fraudulently  
342 representing that he or she has authority to sign in such capacity.

343 (6) A person "falsely alters" a written instrument when (A) such  
344 person, without the authority of [anyone] any person entitled to grant  
345 it, [he] changes a written instrument, whether it be in complete or  
346 incomplete form, by means of erasure, obliteration, deletion, insertion  
347 of new matter [,] or transposition of matter [,] or in any other manner,  
348 so that such instrument in its thus altered form appears or purports to  
349 be in all respects an authentic creation of or fully authorized by its  
350 ostensible maker or drawer, or (B) such person signs his or her own  
351 name to a written instrument, thereby falsely and fraudulently  
352 representing that he or she has authority to sign in such capacity.

353 (7) "Forged instrument" means a written instrument which has been  
354 falsely made, completed or altered.

355 Sec. 19. Subsection (b) of section 54-76l of the general statutes is  
356 repealed and the following is substituted in lieu thereof (*Effective*  
357 *October 1, 2009*):

358 (b) The records of any such youth, or any part thereof, may be  
359 disclosed to and between individuals and agencies, and employees of  
360 such agencies, providing services directly to the youth, including law  
361 enforcement officials, state and federal prosecutorial officials, school  
362 officials in accordance with section 10-233h, court officials, the Division  
363 of Criminal Justice, the Court Support Services Division and an  
364 advocate appointed pursuant to section 54-221 for a victim of a crime

365 committed by the youth. Such records shall also be available to the  
 366 attorney representing the youth, in any proceedings in which such  
 367 records are relevant, to the parents or guardian of such youth, until  
 368 such time as the youth reaches the age of majority or is emancipated,  
 369 and to the youth upon his or her emancipation or attainment of the age  
 370 of majority, provided proof of the identity of such youth is submitted  
 371 in accordance with guidelines prescribed by the Chief Court  
 372 Administrator. Such records shall also be available to members and  
 373 employees of the Board of Pardons and Paroles and employees of the  
 374 Department of Correction who, in the performance of their duties,  
 375 require access to such records, provided the subject of the record has  
 376 been adjudged a youthful offender and sentenced to a term of  
 377 imprisonment or been convicted of a crime in the regular criminal  
 378 docket of the Superior Court, and such records are relevant to the  
 379 performance of a risk and needs assessment of such person while such  
 380 person is incarcerated, the determination of such person's suitability  
 381 for release from incarceration or for a pardon, or the determination of  
 382 the supervision and treatment needs of such person while on parole or  
 383 other supervised release. Such records shall also be available to law  
 384 enforcement officials and prosecutorial officials conducting legitimate  
 385 criminal investigations. Such records disclosed pursuant to this  
 386 subsection shall not be further disclosed.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2009</i>	New section
Sec. 2	<i>July 1, 2009</i>	46b-127(b)
Sec. 3	<i>July 1, 2009</i>	46b-133a
Sec. 4	<i>July 1, 2009</i>	46b-133b
Sec. 5	<i>July 1, 2009</i>	46b-133c(a) and (b)
Sec. 6	<i>July 1, 2009</i>	46b-133d(b) and (c)
Sec. 7	<i>July 1, 2009</i>	46b-133e(e)
Sec. 8	<i>July 1, 2009</i>	46b-133e(g)
Sec. 9	<i>July 1, 2009</i>	51-285(a)
Sec. 10	<i>July 1, 2009</i>	51-286f
Sec. 11	<i>from passage</i>	54-142s(d)
Sec. 12	<i>October 1, 2009</i>	53a-172

Sec. 13	<i>October 1, 2009</i>	53a-173
Sec. 14	<i>October 1, 2009</i>	53a-70(a)
Sec. 15	<i>October 1, 2009</i>	53a-70(b)
Sec. 16	<i>October 1, 2009</i>	54-85a
Sec. 17	<i>October 1, 2009</i>	51-237
Sec. 18	<i>October 1, 2009</i>	53a-137
Sec. 19	<i>October 1, 2009</i>	54-761(b)

**Statement of Legislative Commissioners:**

Section 8 was added to make a conforming change.

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 10 \$</b>	<b>FY 11 \$</b>
Various State Agencies	GF - See Below	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

**Sections 1 - 9** require the Criminal Justice Commission to appoint juvenile prosecutors on or after the July 1, 2009, effective date; the bill also requires juvenile prosecutors currently employed by the Division of Criminal Justice to be considered appointed. This change is anticipated to accelerate the advancement of juvenile prosecutors in accordance with the collective bargaining agreement (through FY 10) between the Division of Criminal Justice and the Connecticut Association of Prosecutors.<sup>1</sup>

The FY 10 anticipated cost to increase the salaries of nine existing staff members under the bill is estimated to be \$47,000. This approximate cost would continue into the future until these incumbent employees have reached the salary limits of their positions.

The cost of this provision as it relates to future juvenile prosecutors is uncertain, pending subsequent collective bargaining agreements for FY 11 and beyond, and the number of juvenile attorneys appointed. If

<sup>1</sup> Juvenile prosecutors are unable to advance in accordance with Article 16, Section 4 a (1) of the collective bargaining agreement because it requires approval by the Criminal Justice Commission. (This provision of the collective bargaining agreement permits prosecutors, once they have at least two years' satisfactory service, to advance from salary step #2 directly to salary step #5.)

future collective bargaining contracts retain the provision that allows for accelerated advancement, then juvenile attorneys appointed on or after the effective date of the bill would be eligible for a salary increase of approximately \$8,000 in the third year of employment. One or two juvenile attorneys are typically hired in any given year. This trend is anticipated to continue into the future except for the year (FY 10) in which the age of juveniles is scheduled to be raised; as many as 15 additional juvenile prosecutors could be added that year. The out year (FY 13) cost associated with this group is estimated to be \$100,000.

The Criminal Justice Commission may incur costs to process additional appointments under the bill. Any such cost is anticipated to be less than \$500 annually.

**Section 10** shifts responsibility for providing copies of transcripts from the Division of Criminal Justice to the Judicial Department. The annual cost to provide these copies prospectively is approximately \$50,000 each year.<sup>2</sup> To the extent that copies of transcripts are also required for current inmates who will become eligible for parole at some point in the future, an additional cost estimated to be less than \$150,000 will be incurred over the next several years.

**Sections 11 - 14** make clarifying and minor changes that have no fiscal impact.

**Section 15** permits the court to deviate from mandatory minimum sentences in certain instances, which could result in state savings related to incarceration.

**Section 16** makes a change to the sequestering of certain witnesses which has no fiscal impact.

**Section 17** makes it a civil penalty, the amount of which is to be determined by the Judicial Department in accordance with the bill, for any person to fail to appear for jury duty. Each year approximately

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<sup>2</sup> Calculated as follows: 2,300 sentenced to 2 years or more each year \* 25 pages per transcript \* 75 cents per page (court reporter fee per CGS 53-65(c)).

26,000 people do not respond to the summons to appear for jury service. The Office of the Attorney General (OAG) would be responsible for bringing such actions before the Judicial Department. It is anticipated that the OAG would incur significant costs annually to undertake this duty; the potential revenue gain is uncertain, pending determination of the fine amount and the success of enforcement actions. Current law provides that failure to appear is an infraction; no revenues are collected pursuant to this provision.

**Section 18** expands the definition of forgery to include signing of a written instrument fraudulently representing that a person had the authority to sign in the capacity that s/he did.<sup>3</sup> To the extent that offenders are subject to incarceration or probation supervision in the community as a result of this provision, a potential cost to criminal justice agencies exists. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

Forgery Convictions			
			2008
53a-138	FORGERY 1	Class C Felony	44
53a-139	FORGERY 2	Class D Felony	489
53a-140	FORGERY 3	Class B Misdemeanor	273
			<u>806</u>

**Section 19** makes Youthful Offender records available to law enforcement and prosecutorial officials conducting criminal investigations, which has no fiscal impact.

### **The Out Years**

The various costs and savings indicated above would continue into the future subject to inflation.

<sup>3</sup> Two cases, *State v. Raffa* and *State v. Robert Kuchta*, have shown that the definition of forgery does not include public officials who "signed off" on official building inspection reports when they did not have authority to do so.

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**OLR Bill Analysis**

**sHB 6664**

***AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES  
CONCERNING THE CRIMINAL JUSTICE SYSTEM.***

**SUMMARY:**

This bill:

1. provides that juvenile prosecutors employed by the Division of Criminal Justice on July 1, 2009 are considered appointed by the Criminal Justice Commission with the powers and duties of assistant state's attorneys;
2. requires the court, instead of the prosecutor, to provide a transcript of certain sentencing hearings to the Board of Pardons and Paroles;
3. limits access to state and local police reports and witness statements by the Division of Public Defender Services unless authorized by a prosecutorial official;
4. expands the circumstances under which a person on probation is guilty of failure to appear;
5. lowers the maximum possible penalty for violations of first-degree sexual assault against a victim under age 10;
6. allows a court to suspend the mandatory minimum sentence for first-degree sexual assault if at the time of the offense, the offender was under age 18 or his or her mental capacity was significantly impaired;
7. exempts from the law on witness sequestration certain adult

- witnesses in child assault, sexual assault, or abuse cases;
8. potentially increases the penalty for jurors who fail to respond to a jury summons;
  9. expands the crime of forgery to punish someone who falsely makes, completes, or alters a written instrument by signing his or her own name to it to falsely and fraudulently represent that he or she has authority to sign the document; and
  10. makes confidential youthful offender records available to law enforcement and prosecutorial officials conducting legitimate criminal investigations.

EFFECTIVE DATE: October 1, 2009 except the provisions on juvenile prosecutors are effective July 1, 2009 and the provision on sentencing transcripts is effective upon passage.

#### **§§ 1-9 — JUVENILE PROSECUTORS**

The bill provides that juvenile prosecutors employed by the Division of Criminal Justice on July 1, 2009 (1) are deemed to have been appointed by the Criminal Justice Commission, (2) have and exercise all the powers and perform all the duties of an assistant state's attorney, (3) may act in any judicial district and in connection with any matter regardless of the judicial district where the offense took place, and (4) may be assigned to act in any judicial district at any time on designation by the chief state's attorney. The bill makes numerous conforming changes.

The bill also provides that beginning July 1, 2009, any "prosecutorial official" assigned to handle juvenile matters in the criminal session of the Superior Court will have been appointed by the Criminal Justice Commission.

Apparently the term "prosecutorial official" refers to the chief state's attorney, each deputy chief state's attorney, and each state's attorney, assistant state's attorney and deputy assistant state's attorney (CGS §§

51-278a & 51-287a).

### **§ 10—SENTENCING TRANSCRIPTS**

By law, prosecutors must request transcripts of certain sentencing hearings for delivery to the Board of Pardons and Paroles. The bill requires the prosecutor's request to be on the record and makes the court, instead of the prosecutor, responsible for delivering the transcript to the board. The affected sentencing hearings are those at which a defendant is sentenced to a definite, non-suspended sentence of more than two years imprisonment.

### **§ 11 — ACCESS TO CERTAIN INFORMATION**

Current law gives state and local criminal justice agencies access to all state and local police reports, presentence investigations and reports, psychological and medical reports, criminal records, incarceration and parole records, and court records and transcripts in the statewide criminal justice information technology system whether such records and documents normally exist in electronic or hard copy forms. The bill limits access to state and local police reports and witness statements by the Division of Public Defender Services unless authorized by a prosecutorial official.

### **§§ 12-13 — FAILURE TO APPEAR**

The bill expands the circumstances under which a person on probation for a felony conviction or a misdemeanor or motor vehicle violation is guilty of failure to appear. Under current law, the person is guilty if he or she misses a legally called probation violation hearing. Under the bill, the person is guilty if he or she is misses any legally called court hearing related to a probation violation.

Failure to appear at a hearing on a felony violation is a class D felony punishable by up to five years in prison, a \$5,000 fine or both. Failure to appear for a hearing on a misdemeanor or motor vehicle violation is a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both.

### **§§ 14-15 — SEXUAL ASSAULT**

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The bill lowers the maximum possible penalty for violations of first-degree sexual assault against a victim under age 10. Under current law, a person is guilty of first-degree sexual assault if he or she (1) has sexual intercourse with a child under age 13 and (2) is more than two years older than the victim. If the victim is under age 10, the penalty is a class A felony punishable by 10 to 25 years in prison, up to a \$20,000 fine, or both. The penalty carries a mandatory minimum sentence of 10 years.

The bill separates this crime into two distinct crimes: one involving victims between age 10 and 13 and the second involving victims under age 10. The former carries the same penalty, including the same mandatory minimum as in current law. The latter is a class B felony punishable by up to 20 years in prison, up to a \$15,000 fine, or both. The penalty still carries the 10-year mandatory minimum sentence.

The bill allows the court to suspend the mandatory minimum sentence if at the time of the offense, the offender was under age 18 or his or her mental capacity was significantly impaired.

#### **§ 16 — SEQUESTERING A WITNESS**

By law, if the state or defense asks, the court must sequester a witness during portions of a trial when they are not testifying. The bill exempts from this requirement criminal cases involving the assault, sexual assault, or abuse of a child age 12 or younger if the witness is an adult (1) the child knows, (2) with whom the child feels comfortable, and (3) who has the court's permission to sit near the child as he or she testifies.

#### **§ 17 — FAILURE TO APPEAR FOR JURY DUTY**

The bill subjects jurors who fail to appear for jury duty to a civil penalty in an amount that the Superior Court judges must establish. Under current law, they are guilty of an infraction.

#### **§ 18 — FORGERY**

The bill expands the crime of forgery to punish someone who falsely makes, completes, or alters a written instrument by signing his

or her own name to it to falsely and fraudulently represent that he or she has authority to sign the document.

By law, a person commits forgery by falsely making, completing, or altering a written instrument with intent to defraud, deceive, or injure someone or possessing a forged written instrument. The penalty ranges from a class B misdemeanor to a class C felony depending on the type of document being forged.

### **§ 19 — YOUTHFUL OFFENDER RECORDS**

The bill makes confidential youthful offender records available to law enforcement and prosecutorial officials conducting legitimate criminal investigations. By law, records of youthful offenders are confidential unless they involve certain crimes. Current law allows disclosure of confidential records:

1. between agencies and individuals directly providing services to the youth, including law enforcement, state and federal prosecutors, school and court officials, the Division of Criminal Justices, the Court Support Services Division, and a crime victim advocate;
2. to the youth and the youth's parents or guardian until the youth reach age 18 or is emancipated;
3. to the youth's attorney if they are relevant to a proceeding; and
4. to Board of Pardons and Paroles and corrections employees who need them to perform their duties when (a) the offender is adjudged a youthful offender and sentenced to prison or convicted of a crime and (b) the records are relevant to a risk and needs assessment during incarceration or determining suitability for release or a pardon or supervision and treatment needs on parole or other release.

By law, records disclosed under these provisions cannot be further disclosed.

**BACKGROUND**

***State Wide Criminal Justice Criminal Justice Information System***

The law requires the Criminal Justice Information System Governing Board to design and implement a comprehensive, state-wide information technology system to facilitate the sharing of information between all state agencies, departments, boards, and commissions having any cognizance over matters relating to law enforcement and criminal justice, and organized local police departments and law enforcement officials (CGS § 54-142s).

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 42 Nay 0