

CCDLA
"Ready in the Defense of Liberty"
Founded 1988

**Connecticut Criminal Defense
Lawyers Association**
P.O. Box 1766
Waterbury, CT 07621-1776
(860) 283-5070 Phone/Fax
www.ccdla.com

March 23, 2012

The Honorable Eric D. Coleman
The Honorable Gerald M. Fox, Chairmen
Joint Committee on Judiciary
Room 2500, Legislative Office Building
Hartford, CT 06106

**Testimony Of Jennifer L. Zito, Immediate Past President of The
Connecticut Criminal Defense Lawyers Association
In Support Of Raised Bill No. 417, An Act Concerning Juvenile
Matters and Permanent Guardianships**

Dear Chairmen and Committee Members:

CCDLA submits this testimony in support of Raised Senate Bill No. 417, An Act Concerning Juvenile Matters and Permanent Guardianships, specifically Section 15 seeking to repeal subsections (a) and (b) of CGS §46b-127 pertaining to the transfer provisions of juvenile matters to the regular criminal docket of the Superior Court. Relative to the remaining sections of the proposed bill, CCDLA adopts the testimony of the Office of the Chief Public Defender and supports passage of the bill in its entirety.

CCDLA, in concert with the Chief Public Defender's Office, proposed the statutory language set forth in Raised Bill No. 417 last year in response to the 2011 Supreme Court decision in *State v. Fernandes*, 300 Conn. 104 (2011), holding that due process considerations necessitate a hearing before a juvenile matter can be transferred to the regular criminal docket. While the Supreme Court interpreted the 1995 legislative intent of the transfer statute to require the hearing take place in the adult court this would seem contradictory to its holding: the juvenile's due process rights should be met in the juvenile court before any such transfer takes place. In light of recent neuro-scientific findings relative to adolescent brain development, and consistent with the intent of Connecticut's Raise the Age legislation, the proposed language of Section 15 should be adopted requiring, among other things, that the transfer hearing be held in the juvenile court.

Raised Bill No. 417, Section 15, makes three changes to the existing discretionary transfer provisions of C.G.S. §46b-127. First, it seeks to remove Class B felonies from the mandatory transfer requirement for juveniles 14 and over and reclassify them under

the discretionary transfer provisions of that statute. Second, it importantly requires that the due process hearing occur in the juvenile court and establishes criteria for the juvenile court to consider in making the decision to transfer. Third, it seeks to eliminate the time limits for transferring a case back to the juvenile court from the adult court for good cause shown.

The amendment to the transfer statute as proposed is consistent with Connecticut's movement to more adequately protect our young from felony convictions and harsh sentences acknowledging their unequal culpability and potential for rehabilitation. Mandatory transfers should be reserved for the most serious felonies leaving it to the court's discretion to transfer cases to the adult docket charging a Class B felony. This proposal was made to reflect current practices where Class B felonies are not routinely transferred in Connecticut. Moreover, as juveniles are more likely to offend in groups, it is often the case that a juvenile is charged with the more serious offense committed in the transaction even if his/her involvement in the particular felony is tangential. Therefore, it is appropriate to leave the transfer decision in all but the most serious cases to the court's discretion.

In keeping with the Supreme Court decision in *Fernandes*, Raised Bill 417 amends the present discretionary provisions of the transfer statute to require a hearing to determine if any B, C or D felony or unclassified felony should be transferred to the regular criminal docket. Previously, the statute had been construed to mandate transfer solely upon motion by the State. The Supreme Court's decision in *Fernandes* made clear, however, that a hearing must be held to satisfy due process considerations in depriving a juvenile of his/her juvenile status. The proposed bill therefore amends the statute to comport with the hearing requirement. It further requires that the transfer hearing occur in the juvenile court, not the adult court, as interpreted by the Supreme Court. Public policy favors conducting the transfer hearings at the juvenile court where the child's identity remains protected and the proceedings are closed. Further, it enables judges more experienced in cases affecting juveniles to discern whether the matter should be transferred using new criteria specifically set forth in this bill. Finally it affords the juvenile due process prior to abrogating his/her rights by sending them to the adult court. It should be noted that the adult court would then have the ability to return the case to the Juvenile Court if appropriate under the proposed bill.

Finally, Raised Bill No. 417 would eliminate the ten day time limit for the adult court to transfer a case back to the juvenile court and replace it with more flexible language allowing for transfers back to the juvenile court at any time for good cause shown. This

Page 3
March 22, 2012
Testimony of Jennifer L. Zito
Raised Bill No. 417

provision enables the adult court, should good cause arise, to return the case to the juvenile docket without tying its hands after ten days from the date of transfer. While CCDLA realizes that this provision may allow for the unsealing of the juvenile's file for a period of time in the adult court, the benefit of returning the case to the juvenile docket where the juvenile's record would be protected outweighs the detriment of unsealing the file for an unspecified period of time.

Wherefore, CCDLA supports and urges the passage of Raised Senate Bill 417.

Sincerely,

CCDLA,
Jennifer L. Zito, Immediate Past President