



**State of Connecticut**  
DIVISION OF CRIMINAL JUSTICE

**TESTIMONY OF THE DIVISION OF CRIMINAL JUSTICE**

**H.B. No. 7050 (RAISED) AN ACT CONCERNING THE JUVENILE JUSTICE SYSTEM**

JOINT COMMITTEE ON JUDICIARY  
March 30, 2015

The Division of Criminal Justice opposes Sections 1, 2 and 4 of H.B. No. 7050, An Act Concerning the Juvenile Justice System, respectfully recommends the Committee's JOINT FAVORABLE SUBSTITUTE REPORT to, at a minimum, delete those sections of the bill.

Section 1 of H.B. No. 7050 would eliminate the mandatory transfer to the regular (adult) docket of the criminal proceedings involving a juvenile charged with a class B felony. The only charges (class A felonies) for which automatic transfer would occur are: Murder (53a-54a), Felony Murder (53a-54c), Arson Murder (53a-54d), Assault of a Woman Resulting in Termination of Pregnancy (53a-59c); Kidnapping in the First Degree (53a-92); Kidnapping in the First Degree with a Firearm (53a-92a); Home Invasion (53a-100aa); Arson in the First Degree (53a-111); Employing a Minor in Obscene Performance (53a-196a); and under certain circumstances, Sexual Assault in the First Degree (53a-70); Aggravated Sexual Assault in the First Degree (53a-70a); and Aggravated Sexual Assault of a Minor (53a-70c).

Among the crimes for which automatic transfer would not occur are: Manslaughter in the First Degree (53a-55); Manslaughter in the First Degree with a Firearm (53a-55a); Assault in the First Degree (53a-59); Assault of an Elderly, Blind, Disabled or Pregnant Person or a Person with Intellectual Disability in the First Degree (53a-59a); Kidnapping in the Second Degree (53a-94); Kidnapping in the Second Degree with a Firearm (53a-94a); Burglary in the First Degree (53a-101); Arson in the Second Degree (53a-112); Robbery in the First Degree (53a-134); and under certain circumstances, Sexual Assault in the First Degree (53a-70), Aggravated Sexual Assault in the First Degree (53a-70), Sexual Assault in the Second Degree (53a-71) and Sexual Assault in the Third Degree with a Firearm (53a-72b).

Perhaps the most significant implication of adjudicating the case on the regular docket is the ultimate sanctions available to the court in the final disposition of the case. The most severe sanction that may be imposed for a matter disposed of in the juvenile court is the commitment of the offender to the Department of Children and Families for an indeterminate period of up to 18 months, or up to four years if adjudicated delinquent for a serious juvenile offense. DCF commitments are also terminated when the defendant turns age 20 regardless of the amount of time left on the commitment. For a matter decided on the regular docket, the penalty can include

incarceration in the custody of the Department of Correction for a period that can conceivably – and appropriately – exceed four years and continue beyond the defendant’s 20<sup>th</sup> birthday. These class B felony offenses are serious, and in most cases, violent crimes and should be treated as such. The protection of the public safety may well dictate that incarceration beyond commitment to DCF is not only appropriate, but prudent. Offenders convicted on the regular docket may also be required to register with the Commissioner of Emergency Services and Public Protection as a sexual offender or as an offender convicted of committing a crime with a deadly weapon, further protecting the public safety. It must be noted that there is already a safeguard in the existing law to assure that only the small number of very serious crimes, which justify prosecution on the regular docket, remain on that docket. Section 46b-127(a)(2) already allows for the prosecutor where appropriate to transfer back to the to the juvenile docket any class B felony case that has been transferred to the regular docket.

This bill would establish the same transfer standards for class B felonies that now apply to class C, D, E or unclassified felonies. The practical result would be to preclude the transfer of any class B felony case to the adult docket, since that has effectively been the case with lesser felonies since the enactment of Public Act 12-1, June Special Session, which allows transfer only when the court finds that the best interests of the public *and* the child are served by adjudicating the case in the adult court. Rarely has a court found that the best interests of the child are served by transferring a case to the adult docket. This eradicates any real consideration of the best interests of the community and is contrary to one of the most fundamental purposes for which our criminal justice system exists, that being the protection of public safety. If the Committee is going to amend this section in any way, it should restore the right of the court to determine that the best interest of the public is served by transferring a case to the adult docket. The Division would respectfully offer the following substitute language to subdivision (1) of subsection (b) of Section 46b-127:

(b) (1) Upon motion of a prosecutorial official, the superior court for juvenile matters shall conduct a hearing to determine whether the case of any child charged with the commission of a class C or D felony or an unclassified felony shall be transferred from the docket for juvenile matters to the regular criminal docket of the Superior Court. The court shall not order that the case be transferred under this subdivision unless the court finds that (A) such offense was committed after such child attained the age of fourteen years, (B) based upon sworn affidavit, there is probable cause to believe the child has committed the act for which the child is charged, and (C) the best interests of the child ~~[and]~~ or the public will not be served by maintaining the case in the superior court for juvenile matters. In making such findings, the court shall consider (i) any prior criminal or juvenile offenses committed by the child, (ii) the seriousness of such offenses, (iii) any evidence that the child has intellectual disability or mental illness, and (iv) the availability of services in the docket for juvenile matters that can serve the child’s needs. Any motion under this subdivision shall be made, and any hearing under this subdivision shall be held, not later than thirty days after the child is arraigned in the superior court for juvenile matters.

The bill seeks to further erode the transfer statute and protection of public safety by changing from 14 to 15 the age at which the juvenile transfer statute applies for any felony, including Murder and other class A felonies.

Section 2 of H.B. No. 7050 would require that a parent be present with a 16- or 17-year-old when they are interviewed by the police or a juvenile court official. Such a requirement already exists for anyone under age 16, but those age 16 or 17 can waive their right to have a parent present but only after they have been properly advised of their rights and the police have made a reasonable attempt to contact a parent. If the waiver is subsequently challenged, the court must decide if the waiver was made knowingly and intelligently by applying the “totality of circumstances” test.

Imposing a blanket rule requiring the presence of a parent or guardian before the 16- or 17-year-old can be interviewed – even if the juvenile does not want the parent there – places an unnecessary burden on the police. The burden is enhanced by the fact that a 16- or 17-year-old can legally drive and may be farther from home than someone under age 16. Further, as currently written the bill would appear to apply to statements given by anyone under age 18 in *any* case, including juvenile, motor vehicle, criminal, or civil, and exclude any statement the juvenile makes whether while under custodial interrogation or regardless of spontaneity. At the very least the Committee may wish to further scrutinize the proposed language to consider this concern.

Section 4 of the bill sounds well-intentioned but may, in fact, result in a greater danger to the juvenile himself or herself as well as to others who are present in the course of court proceedings. As the Division has stated in the past, if this bill were to be enacted, a juvenile being transported to court from a secure facility would be free of restraints for the first time when he or she is brought into court. For any juvenile contemplating escape or assault on the judge, prosecutor, probation officer or victim that may be present, being brought into the court room unrestrained would present the first opportunity to take such action. This might result in injury to those present including the juvenile himself or herself.

The bill presumably would permit restraints if the judge determines that the use of such is necessary to ensure public safety. Absent specific threats, the staff might not be aware of such danger unless and until the juvenile causes a problem in court. If there was any prior knowledge or concern, this provision would appear to require a hearing on the issue of using restraints before the juvenile could be brought into court thereby delaying the originally scheduled hearing and further delaying all other scheduled hearings. The security and protection of all involved – again, including the juvenile – is the responsibility of the Judicial Marshals and other professional staff and should be left to their professional judgment.

With regard to Section 3 of the bill, the Division has been an active participant in the Juvenile Justice Policy and Oversight Committee since the inception of the JJPOC. The Division looks forward to its continued participation in this process and as such supports this section of the bill.

In conclusion, the Division respectfully recommends the Committee’s JOINT FAVORABLE SUBSTITUTE report amending Section 1 of the bill as referenced above and

deleting Sections 2 and 4 in their entirety. We thank the Committee for affording this opportunity to offer input on this matter and would be happy to provide any additional information you require or answer any questions you might have.