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**Please Support House Bill 7042,
An Act Concerning the Placement of Children by the
Commissioner Of Children and Families**

Senator Coleman, Representative Tong and distinguished members of the Judiciary Committee. My name is Patrick Gallahue, I am the director of communications with the American Civil Liberties Union of Connecticut (ACLU-CT) and I am testifying in support of House Bill 7042, An Act Concerning the Placement of Children by the Commissioner Of Children and Families.

There is a serious flaw in our state law that the Judiciary Committee has the opportunity to rectify. This flaw is at odds with our constitution in failing to provide adequate due process, it is contrary to the trend in our state which is looking to find less punitive means of dealing with young people and it is at odds with the trends in our country, as it moves to reform the circumstances under which a young people is engaged in the adult criminal justice system.

CGS § 17a-12, an obscure state law that enabled the state Department of Children and Families to transfer a young girl into the custody of the Department of Corrections (DOC), is flawed, in part, because we know it isn't necessary. It is so used so rarely. As far as ACLU of Connecticut has been able to determine, the transfer statute has been used only two times in its 40-plus year history.

The problem is that when it is used, it can be incredibly damaging to a young person. We know the case of Jane Doe, the 16-year-old transgender girl who was incarcerated in an adult prison for 77 days even though she was never even charged with, let alone convicted of, a crime. This incident is more than a cautionary tale. It is a tragedy. And it illustrates why we must remove the DCF's commissioner's ability to transfer a child in her care, who has not been charged with a crime, to the DOC.

The current trend in federal and state law is to move juveniles out of the adult court and corrections systems. In 2009, United States Senator Patrick Leahy introduced a reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP) to improve the Act in response to, among other things, "a growing body of adolescent development research [that] supports the use of developmentally appropriate services and sanctions for youth in the juvenile justice system and those at risk for delinquent behavior to help prevent youth crime and to

successfully intervene with youth who have already entered the system.”¹

In light of an epidemic of suicide among youth in adult jails and the exponential rise in incarceration rates of girls, the bill sought to expand upon the federal laws already robust requirements limiting juvenile placement in adult systems. [*Id.*] On the need for the reauthorization, the Senate Judiciary Committee cited one commentator’s summary of the national landscape: “States are rethinking and, in some cases, retooling juvenile sentencing laws. They’re responding to new research on the adolescent brain, and studies that indicate teens sent to adult court end up worse off than those who are not: They get in trouble more often, they do it faster and the offenses are more serious.”² While states are working to move juveniles out of adult systems, DCF transferred a sixteen year-old, transgender girl with a history of trauma and abuse without a criminal conviction into an adult prison.

The express goals of the adult correctional system, which seeks primarily to protect the public, are quite different from the juvenile justice system, which seeks to supervise, care for and treat its wards. People housed at DOC facilities are either adults or other juveniles treated as adults who had the benefit of rigorous due process, including proof beyond a reasonable doubt, and the right to a jury trial. CGS 17a-12 allows the DCF Commissioner to move out of the rehabilitative system, into the place where adults are sentenced in the punitive system.

Placement in adult punitive facilities without access to rehabilitative services can result in irreparable harm to the youth. Juveniles are vulnerable to the damaging psychological effects of isolation, including extreme loneliness, anxiety, rage, and depression, among other potentially debilitating emotional and psychological consequences.

The United States Supreme Court in *Roper*, *Graham*, and *Miller* recognized youths as categorically different from adults in their rehabilitative potential, signaling “substantial changes” to the constitutional understandings and protections of juveniles. The key rationale underpinning *Miller* is that “[r]ehabilitation could not justify” the sentences the youths faced in those cases, for the punishments were “at odds with a child’s capacity for change.” *Graham* justifies this rationale on scientific and moral grounds:

The principles articulated in *Graham* and *Miller* demonstrate that additional procedural protections are needed before juveniles may be treated as adults in the criminal justice system. CGS 17a-12 fails to satisfy constitutional requirements because there is a complete lack of rigorous due process and juvenile-appropriate additional protections.

By passing this bill, the legislature can ensure a just and an efficient solution to the transfer statute’s unconstitutionality.

¹ S. 678, 111th Cong. §101 (as reported by the Judiciary Committee, Aug. 10, 2010).

² S. Rep. No. 110-472 (2008) (citing Sharon Cohen, *Prosecuting Kids as Adults: Some States Ponder Change*, Associated Press, Dec. 1, 2007), available at <http://www.campaignforyouthjustice.org/documents/S.3155Committeereport.pdf>.