

**Testimony Supporting**

**Raised S.B. 1127: An Act Concerning Mandatory Minimum Sentences for Children Tried As Adults, H.B. 7042: An Act Concerning the Placement of Children by the Commissioner of Children and Families, and H.B. 7050: An Act Concerning the Juvenile Justice System**

Sarah Iverson, Edie Joseph, and Cyd Oppenheimer, J.D.

Judiciary Committee

March 30, 2015

Senator Coleman, Representative Tong, and distinguished members of the Judiciary Committee:

My name is Sarah Iverson and I am a Policy Fellow at Connecticut Voices for Children. I am testifying today on behalf of Connecticut Voices for Children, a research-based public education and advocacy organization that works statewide to promote the well-being of Connecticut's children, youth, and families.

**Connecticut Voices for Children supports S.B. 1127: An Act Concerning Mandatory Minimum Sentences for Children Tried as Adults, H.B. 7042: An Act Concerning the Placement of Children by the Commissioner of Children and Families, and H.B. 7050: An Act Concerning the Juvenile Justice System.** In recognition that children take until well beyond age 18 to mature, these three bills align Connecticut with national best practices and afford critical protections to Connecticut's youth involved in the juvenile justice system.

**1. Connecticut Voices for Children supports S.B. 1127, which gives the court the discretion to sentence a child to a term of imprisonment shorter than the prescribed mandatory minimum term.** S.B. 1127 would bring Connecticut into compliance with the Supreme Court decision in *Miller v. Alabama* (2012), which declares that mandatory life sentences without the possibility of parole are unconstitutional for juveniles.<sup>1</sup> In order to fully comply with *Miller*, Connecticut must reform its laws and ensure that judges are allowed the discretion to consider age-related factors when sentencing juveniles.

With the advent of magnetic resonance imaging (MRI) technology, and exhaustive studies conducted over the last two decades, a scientific consensus has emerged that children's brains are not fully developed until late into their twenties. The last features of the brain to develop are those that control judgment, decision-making, and proper understanding of the consequence of actions.<sup>2</sup> This information about teenage brain development ought to have significant impact on how we view young people's culpability, competency, and potential for rehabilitation, and therefore how the courts try and sentence juveniles.

The US Supreme Court has recognized the importance of these scientific findings, noting "[j]uveniles' susceptibility to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult'" in justifying their 2005 decision to declare the death penalty unconstitutional for juveniles.<sup>3</sup> The Supreme Court took further steps in *Graham v. Florida* in 2010, when it declared unconstitutional life sentences for juveniles for all crimes other than homicide and required that states "impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation."<sup>4</sup> Most recently, in *Miller v. Alabama* (2012), the Supreme Court struck down mandatory life without parole sentences for all juveniles including those convicted of murder. The Court stated that we must treat juvenile offenders

differently from adults, reasoning:

“Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him —and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys...And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.”<sup>5</sup>

In order to comply with *Miller*, Connecticut must pass S.B. 1127, as well as ensure that judges incorporate consideration of youth-related factors, like immaturity and the possibility of rehabilitation, when sentencing juveniles. We have taken important steps in recent years in recognizing that children take until well beyond age 18 to mature. S.B. 1127 helps ensure that juvenile sentencing rules incorporate the scientific and legal consensus that has emerged concerning treatment of juveniles by the courts.

**2. Connecticut Voices for Children supports HB 7042**, which eliminates the ability of the Commissioner of Children and Families to transfer a child in his or her care to the Department of Corrections. There is no instance in which an adult correctional facility is an appropriate placement for a child, unless he or she is charged with a crime that legally warrants prosecution as an adult.

National research shows that juveniles housed in adult facilities face an increased likelihood of traumatic outcomes: juveniles are 36 times more likely to commit suicide in an adult facility than in a juvenile detention facility,<sup>6</sup> are five times more likely to be sexually assaulted,<sup>7</sup> 24 percent more likely to be rearrested for a felony,<sup>8</sup> and are often placed in solitary confinement apart from adult prisoners, leading to an increase in symptoms of paranoia, anxiety, and depression, even after very short periods of isolation.<sup>9</sup> Connecticut has been a national leader in reducing the number of youth placed in adult jail; H.B. 7042 affords this same protection to youth in the custody of the State.<sup>10</sup>

The Department of Children and Families has garnered significant savings in recent years as it has reduced the number of children in congregate care. We urge the legislature to ensure that these savings are reinvested in the Department, so that the Department has sufficient mental, behavioral, emotional, and social support services to serve all children in its custody. Children with extreme needs should be placed in settings that can provide the supports necessary to meet the child’s needs, not in adult facilities. Further investments must be made to ensure that DCF has the capacity to meet the extreme needs of children in its care.

**3. Connecticut Voices for Children supports H.B. 7050, which (a) reduces the unnecessary shackling of juveniles in court and (b) includes other provisions that take youth-related factors into account in the juvenile justice system.**

a. **Shackling**

Shackling children at a juvenile hearing, without a finding from a judge that such restraint is necessary for public safety, punishes and humiliates children for crimes for which they have not yet been adjudicated delinquent. Shackles have historically been used as a form of punishment, and can be degrading to the shackled child.<sup>11</sup> In fact, in the U.S. Supreme Court case *Deck v. Missouri*, the majority found that, unless there exists a particular reason for shackling in adult criminal hearings, shackling 1) undermines the presumption of innocence, 2) diminishes the right to counsel by making it more difficult for a defendant to communicate with his or her lawyer, and 3) undermines the dignity of the courtroom.<sup>12</sup>

The practice of juvenile shackling is particularly troubling, because substantial evidence from psychological research shows that shackling youth in court is humiliating and leaves the young person feeling as if he or she has been treated like a “dangerous animal.”<sup>13</sup> These feelings can persist into adulthood, and can actually confirm a child’s own belief that he or she is a bad person, leading to increased court involvement and running counter to a Juvenile court’s stated purpose of rehabilitation.<sup>14</sup>

The Judicial Department has recently announced a new policy which creates a presumption that shackles will be removed from a juvenile prior to and throughout the juvenile’s appearance in juvenile court. This presumption can be overridden if the judge determines that the juvenile is a danger to himself or others, and no lesser restrictive means are deemed sufficient to mitigate such danger. We suggest that H.B. 7050 be amended to reflect and codify this language. We also recommend that H.B. 7050 be amended to require that the Court Support Services Division (CSSD) oversee implementation of this practice, collect data regarding the use of shackling, and mandate that the Juvenile Justice Policy and Oversight Committee issue an annual report to the legislature analyzing this data. The addition of these provisions would create accountability in the implementation of a statutory presumption against shackling, as well as increase transparency in our Courts.

**b. Other Provisions in H.B. 7050**

We also support the following sections of H.B. 7050:

- Section 1(a), which removes the provision allowing automatic transfers of class B felonies from the juvenile court docket to the regular criminal docket. Since Connecticut and national best practice has been to limit the number of juveniles tried in adult court, in recognition of the aforementioned increased likelihood of negative life outcomes for juveniles in the adult justice system, this change will help ensure that children remain in a developmentally appropriate setting.<sup>15</sup> In addition, the court will retain the discretion to transfer class B felony cases to the regular criminal docket when appropriate through a judicial hearing.
- Section 1(a), which raises the age from fourteen to fifteen, of automatic transfer from the juvenile court docket to the regular criminal docket. As stated above, Connecticut and national best practice has been to limit the number of juveniles tried in adult court. In addition, scientific consensus has emerged that children’s brains are not fully developed until late into their twenties, particularly in the areas that control judgment, decision-making, and proper understanding of the consequence of actions.<sup>16</sup> The age of automatic transfer must be raised to ensure that juvenile

sentencing rules incorporate the scientific and legal consensus that has emerged concerning treatment of juveniles by the courts, so that children are tried in courts that are tailored to serve their needs.

- Section 2(a), which prohibits the admission of statements made by children under eighteen without their parents present in all cases. This provision helps to protect juvenile defendants from self-incrimination, recognizing that children are less capable than adults of understanding the consequences of their actions and are more vulnerable to coercion and false confession.<sup>17</sup>

Taken together, S.B. 1127, H.B. 7042, and H.B. 7050 afford crucial protections to Connecticut's youth involved with the Court system, and bring Connecticut in line with national best practices.

Thank you for the opportunity to testify. Please reach out to myself or my colleagues with any questions.

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<sup>1</sup> Miller v. Alabama, No. 10-9646, Supreme Court of the U.S. June 25, 2012

<sup>2</sup> See, for example, Kendall Powell, "Neurodevelopment: How Does the Teenage Brain Work?," *Nature* 442 (24 August 2006): 865-867, available at: <http://www.nature.com/nature/journal/v442/n7105/pdf/442865a.pdf>. See also, Jay M. Giedd, "The Teen Brain: Insights from Neuroimaging," *Journal of Adolescent Health* 42 (2008): 335-343, available at: [http://brainmind.umin.jp/Jay\\_2.pdf](http://brainmind.umin.jp/Jay_2.pdf) and Debra Bradley Ruder, "The Teen Brain," *Harvard Magazine*, (September – October 2008) available at: <http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf>.

<sup>3</sup> Roper v. Simmons, 543 U.S. 551 (2005).

<sup>4</sup> Graham v. Florida, No. 08-7412, Supreme Court of the U.S. May 17, 2010.

<sup>5</sup> Miller v. Alabama, No. 10-9646, Supreme Court of the U.S. June 25, 2012.

<sup>6</sup> See, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," Campaign for Youth Justice (November 2007), available at [http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf).

<sup>7</sup> See, Beck, Allen J. and David Cantor, "Sexual Victimization in Juvenile Facilities Reported by Youth, 2012," U.S. Department of Justice, Bureau of Justice Statistics (June 2013), available at <http://www.bjs.gov/content/pub/pdf/svjfry12.pdf>.

<sup>8</sup> See, Robert Hahn et al, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System," The Center for Disease Control (November 2007), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>.

<sup>9</sup> See, "Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America," Campaign for Youth Justice (November 2007), available at [http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf).

<sup>10</sup> See, "State Trends: Legislative Victories from 2011-2013," Campaign for Youth Justice (2013), available at <http://www.campaignforyouthjustice.org/documents/ST2013.pdf>.

<sup>11</sup> See, Brian Gallagher & John Lore III, "Shackling children in juvenile court: The growing debate, recent trends and the way to protect everyone's interest," *UC Davis Journal of Juvenile Law & Policy*, Summer, 2008. Available at [http://jilp.law.ucdavis.edu/archives/vol-12-no-2/09\\_Article-Gallagher-Lore.pdf](http://jilp.law.ucdavis.edu/archives/vol-12-no-2/09_Article-Gallagher-Lore.pdf).

<sup>12</sup> See, *Deck v. Missouri*, Opinion of the Court. Available at [http://scholar.google.com/scholar\\_case?case=7408663479458041642&q=deck+v.+missouri&hl=en&as\\_sdt=2,7&as\\_v\\_is=1](http://scholar.google.com/scholar_case?case=7408663479458041642&q=deck+v.+missouri&hl=en&as_sdt=2,7&as_v_is=1).

<sup>13</sup> See, Affidavit of Dr. Marty Beyer, available through the Miami Public Defender's Office at <http://www.pdmiami.com/unchainthechildren/AppendixDBeyer.pdf>.

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<sup>16</sup> See, for example, Kendall Powell, "Neurodevelopment: How Does the Teenage Brain Work?," *Nature* 442 (24 August 2006): 865-867, available at: <http://www.nature.com/nature/journal/v442/n7105/pdf/442865a.pdf>. See also, Jay M. Giedd, "The Teen Brain: Insights from Neuroimaging," *Journal of Adolescent Health* 42 (2008): 335-343, available at: [http://brainmind.umin.jp/Jay\\_2.pdf](http://brainmind.umin.jp/Jay_2.pdf) and Debra Bradley Ruder, "The Teen Brain," *Harvard Magazine*, (September – October 2008) available at: <http://harvardmag.com/pdf/2008/09-pdfs/0908-8.pdf>.

<sup>17</sup> See, Amicus Brief of the American Psychological Association in *Roper v. Simmons*, July 19<sup>th</sup>, 2004. In *Roper v. Simmons*, the Supreme Court held that sentencing a juvenile to death constitutes cruel and unusual punishment, because juveniles are less culpable for their actions. Amicus brief available at <http://www.apa.org/about/offices/ogc/amicus/roper.aspx>.