

# Center for Children's Advocacy

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## TESTIMONY OF THE CENTER FOR CHILDREN'S ADVOCACY In Support Of H.B. 7050: AN ACT CONCERNING THE JUVENILE JUSTICE SYSTEM

Judiciary Committee

March 30, 2015

Senator Coleman, Representative Tong, Senator Doyle, Representative Fox and esteemed members of the Judiciary Committee

This testimony is submitted on behalf of the Center for Children's Advocacy, a non-profit organization affiliated with University of Connecticut School of Law in support of **H.B. 7050: An Act Concerning the Juvenile Justice System**. The Center supports this bill, and specific components therein, as it will establish new and crucial protections for youth in the juvenile justice system. Specifically, H.B. 7050 will: 1) **establish legal guidelines for and a presumption against the shackling of youth in the courtroom**; 2) **expand the protections for confessions made by youth accused of crimes or delinquencies without their parent present up until their eighteenth birthday**; and, 3) **increase the age of transfer to adult court for juveniles to age fifteen (15) while limiting the class of felonies for transfer to only those most serious class A felonies**. H.B. 7050 will also **extend, expand and further define the role of the Juvenile Justice Policy Oversight Committee** so that juvenile justice efforts will remain coordinated and focused and assessment data will be readily available to the public. While Connecticut has been a national leader of juvenile justice reform in many respects, reform and oversight are still needed. H.B. 7050 will ensure Connecticut continues in the right direction for the benefit of its most vulnerable and at risk youth.

The Center provides holistic legal services for Connecticut's poorest and most vulnerable children through both individual representation and systemic advocacy. Through our TeamChild Juvenile Justice Project, the Center collaborates with the Juvenile Probation Offices in Hartford and Bridgeport to improve our clients' juvenile justice outcomes by securing needed services through community agencies or the school system. We also run Disproportionate Minority Contact (DMC) Reduction Projects in Hartford, Bridgeport, New Haven and Waterbury, where we work with local stakeholders to develop strategies to reduce the disproportionate representation of youth of color in our juvenile justice system.

### Pass and Expand Section Four, Limiting the Shackling of Juveniles in the Courtroom

The Center strongly urges you to pass Section 4 in its entirety, while also adding in a provision that establishes the right for youth to have a hearing in front of a judge if there is a disagreement about their being shackled in court.

Currently, Connecticut has no law governing the shackling of juveniles in the courtroom. We find this difficult to reconcile with fact that the use of shackles on children is

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**traumatizing, humiliating, and interferes with each individual child's defense.** Medical and clinical experts agree that shackling negatively impacts youth by undermining their sense of self and interfering with their ability to self-regulate concentrate and process information. Moreover, a large number of youth involved in the juvenile justice system have a trauma history themselves. The experience of being chained in shackles **may lead to further traumatization.**

National best practice, including a February 2015 resolution from the American Bar Association (ABA) Criminal Justice Division recommends that jurisdictions establish a clear presumption against the use of shackles in the courtroom:<sup>1</sup>

That the American Bar Association urges all federal, state, local, territorial and tribal governments to adopt a presumption against the use of restraints on juveniles in court and to permit a court to allow such use only after providing the juvenile with an opportunity to be heard and finding that the restraints are the least restrictive means necessary to prevent flight or harm to the juvenile or others.

#### **H.B. 7050, Sec. Four Must be Passed as Existing Policy Does Not Carry the Force of Law**

The shackling of adults in criminal court is almost wholly prohibited by well-established case law founded on principles of due process. Yet, the shackling of children in court is governed solely by the internal policy of the Judicial Department Court Support Services Divisions (CSSD). It is notable that this policy was recently and expeditiously updated by the current administration of Judge Conway to create a strong presumption against shackling, granting judicial authority over the issue and giving youth the right to a hearing if there is a disagreement over their being shackled. The policy is a strong example of national best practice. As it has just gone into effect, we have not yet had the chance to monitor its impact.

While we appreciate Judicial's action and work on this important issue, we feel strongly that a policy is not enough. First and foremost, policy does not carry with it the force of law. For example, CSSD's **previous shackling policy was not followed consistently**, although it laid out clear proscriptions. A child in Bridgeport court would have had an entirely differently experience with shackling than a child in court in Vernon-Rockville, even though their circumstances and offense were the same. Second, **policy can be readily changed without any recourse**. As the recent policy was put into effect quickly and swiftly by Judge Conway, it could also be changed just as expeditiously with a change in the administration or as a reactionary response to a crisis situation that might occur. **This is why we need legislation to address indiscriminate shackling.**

**By passing H.B. 7050, and adding a clause ensuring a youth is entitled to a hearing if they are being asked to wear shackles in the courtroom, we will create a legal presumption against shackling, vest decision making about shackling in the judicial authority, encourage the use of less restrictive alternatives, and require an affirmative finding of fact on the record that a**

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<sup>1</sup> American Bar Association, Criminal Justice Division, House of Delegates, Resolution 107A, passed February 9, 2015, found at: [http://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2015/house-of-delegates-resolutions/107a.html](http://www.americanbar.org/news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/107a.html).

child poses a safety risk to the general public *before* a child can be shackled in court. This is the least our youth deserve.

### **Other Jurisdictions Have Limited Shackling With Great Success**

Over the last several years, jurisdictions across the United States have taken affirmative action to limit courtroom shackling of youth through the passage of laws. These states include New Hampshire, Pennsylvania, North Carolina and South Carolina. Other states have established affirmative court rules, including Florida, New York, New Mexico and Washington state, among others. What has been learned from these jurisdictions, is limiting shackling does not result in any concrete negative consequences. Youth are not escaping or causing danger in the courtroom, and hearings on the issue, when they occur, happen quickly and without incident.

For example, when Miami-Dade County, Florida implemented a rule in 2006 that youth could not be shackled without an affirmative determination in court that they were dangerous, more than 25,000 youth appeared unshackled in court between 2006 and the present time.<sup>2</sup> Not once instance of harm was reported.

Similarly, in September 2014, Washington state implemented a court rule requiring a hearing and an affirmative finding that a youth was dangerous before s/he could be shackled. As a result, hearings have been held rarely, and no instances of harm have been reported. In addition to Florida and Washington, Alaska, New Hampshire, New Mexico, North Carolina and South Carolina have adopted similar laws or rules requiring a hearing for any youth to be shackled. It is time for Connecticut to do the same.

### **H.B. 7050 Should be Expanded to Include Provisions for Automatic Juvenile Record Erasure**

H.B. 7050 should be amended to add language that includes provisions for **automatic juvenile record erasure**. (See Attachment A for suggested language.) Automatic record erasure is consistent with the purpose of the juvenile justice system, which is to be rehabilitative and forgiving in nature. Currently, record erasure is permitted for youth with a history in the system who have not had subsequent involvement for a period of two years. However, the process to request erasure is a cumbersome, complicated one, beyond the capacity of and an unrealistic pursuit for most of the youth it is meant to benefit. Adding the suggested language to H.B. 7050 will facilitate automatic erasure for these same youth who have already demonstrated a level of rehabilitation.

Connecticut needs such a law, as the Juvenile Law Center recently assessed.<sup>3</sup> (See Attachment B for JLC Connecticut fact sheet.) Ranked 31<sup>st</sup> out of the 50 states in protecting the

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<sup>2</sup> The rule in Miami-Dade County became a statewide rule in 2010 that has been implemented throughout Florida with similar success.

<sup>3</sup> See Juvenile Law Center, *Failed Policies, Forfeited Futures: A Nationwide Scorecard on Juvenile Records*, November 2014, found at: <http://juvenilerecords.jlc.org/juvenilerecords/#!/rankings/total>

confidentiality of juvenile justice records of youth by the Center, Connecticut could start improving its process by facilitating automatic erasure for low offending youth.

Automatic record erasure would preserve the confidentiality that the juvenile court intends to impart on youth and protect them from the stigma associated with having a criminal record. The language suggested would not, however, change the current law for youth convicted of serious juvenile offenses. Finally, passing this bill will have **no additional fiscal impact to the budget. Funding to implement these new automatic erasure provisions was put in the Fiscal Year 2015 budget** and is just waiting to be used.<sup>4</sup>

**H.B. 7050 Should Also Be Expanded to Include Language to Facilitate Re-enrollment of Youth Discharging Youth from Certain Juvenile Justice Facilities**

In 2011, the legislature adopted important language to ensure the automatic re-enrollment in school of youth coming out of certain juvenile justice placements, namely Manson Youth Institute and the Connecticut Juvenile Training School. These specific protections to be expanded to include youth in other juvenile justice placements such as detention, congregate care and other residential settings. (See Attachment C for suggested language.)

Additionally, a provision rendering enrollment practices that create barriers illegal needs to be added as well. Too many youth who attempt to re-enter their home communities after being in a juvenile justice placement experience delays, unnecessary barriers and push out. Clear statutory language prohibiting such practices will help to ensure that youth remain in school and on track to achieve their diploma.

The Center for Children's Advocacy urges you to **pass H.B. 7050 with the aforementioned additions and changes**. To do so would help to ensure that the youth in our juvenile justice system benefit from appropriate oversight and are afforded more rehabilitative measures to which their status as youth entitles them.

Thank you in advance for your time and consideration.

Respectfully submitted,

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<sup>4</sup> CT Office of Fiscal Analysis, Judicial Department budget overview, 2014-15.

## ATTACHMENT A

### H.B. 7050, Proposed New Section 5

#### Concerning the Erasure Of Records In Delinquency And Family With Service Needs Matters

Section 5. Section 46b-146 of the general statutes is repealed and the following is substituted in lieu thereof :

(a) (1) Whenever [any] a child has been convicted as delinquent [, has been adjudicated a member of a family with service needs] for the commission of a serious juvenile offense or has signed a statement of responsibility admitting to having committed a [delinquent act] serious juvenile offense, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to [whom] which the child has been committed by the court, such child, or the child's parent or guardian, may file a petition with the Superior Court [. If such] for erasure of records pursuant to this subdivision. The court shall order all police and court records pertaining to such child to be erased if the court finds [(1)] that (A) at least [two years or, in the case of a child convicted as delinquent for the commission of a serious juvenile offense,] four years have elapsed from the date of such discharge, [(2) that] (B) no subsequent juvenile proceeding or adult criminal proceeding is pending against such child, [(3) that] (C) such child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during such [two-year or] four-year period, [(4) that] (D) such child has not been convicted as an adult of a felony or misdemeanor during such [two-year or] four-year period, and [(5) that] (E) such child has reached eighteen years of age. [, the court shall order all police and court records pertaining to such child to be erased.]

(2) Whenever a child has been convicted as delinquent for the commission of a delinquent act other than a serious juvenile offense, has been adjudicated a member of a family with service needs or has signed a statement of responsibility admitting to having committed a delinquent act other than a serious juvenile offense, and has subsequently been discharged from the supervision of the Superior Court or from the custody of the Department of Children and Families or from the care of any other institution or agency to which the child has been committed by the court, the court shall order all police and court records pertaining to such child to be erased on the second day of January of each year or on a date designated by the court without the filing of a petition if the court finds that (A) at least two years have elapsed from the date of such discharge, (B) no subsequent juvenile proceeding or adult criminal proceeding is pending against such child, (C) such child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during such two-year period, (D) such child has not been convicted as an adult of a felony or misdemeanor during such two-year period, and (E) such child has reached eighteen years of age.

(3) Upon the entry of such an erasure order, all references including arrest, complaint, referrals, petitions, reports and orders, shall be removed from all agency, official and institutional files, and a finding of delinquency or that the child was a member of a family with service needs shall be deemed never to have occurred. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it is in the best interests of such child to do so. No child who has been the subject of such an erasure order shall be deemed to have been arrested ab initio, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency or family with service needs proceedings affecting such child.

(b) Whenever the case of a child who is charged with being delinquent or being a member of a family with service needs is dismissed, [as not delinquent or as not being a member of a family with service needs,] all police and court records pertaining to such charge shall be ordered erased immediately, without the filing of a petition.

(c) Nothing in this section shall prohibit the court from granting a petition to erase a child's records on a showing of good cause, after a hearing, before the [time] date when such records could be erased.

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## ATTACHMENT B

The determination that a child is a youthful offender is not considered to be a criminal conviction. CON. GEN. STAT. § 54-76k.

### Juvenile Record Contents

For the purposes of this section, "records of cases of juvenile matters" includes, but is not limited to, court records, records regarding juveniles maintained by the Court Support Services Division, records regarding juveniles maintained by an organization or agency that has contracted with the Judicial Branch to provide services to juveniles, records of law enforcement agencies including fingerprints, photographs and physical descriptions, and medical, psychological, psychiatric and social welfare studies and reports by juvenile probation officers, public or private institutions, social agencies and clinics. Public Act 14-173, available at <http://www.cga.ct.gov/2014/act/Pa/pdf/2014PA-00173-R00SB-00152-PA.PDF>; CONN. GEN. STAT. § 46b-124(a).

### Confidentiality of Law Enforcement Records

No distinction is made between law enforcement records and court records.

### Confidentiality of Court Records

All records of cases of juvenile matters involving delinquency proceedings, or any part thereof, shall be confidential and for the use of the court in juvenile matters and shall not be disclosed. All records of cases of juvenile matters, as provided in section 46b-121, except delinquency proceedings, or any part thereof, and all records of appeals from probate brought to the superior court for juvenile matters pursuant to section 45a-186, shall be confidential and for the use of the court in juvenile matters, and open to inspection or disclosure to any third party, including bona fide researchers commissioned by a state agency, only upon order of the Superior Court, with a few exceptions. Public Law 14-174, available at: <http://www.cga.ct.gov/2014/act/Pa/pdf/2014PA-00173-R00SB-00152-PA.PDF>.

**Exceptions:** The following parties may inspect juvenile records (CON. GEN. STAT. § 54-761):

- Member and employees of the Board of Pardons and Parole and the Department of Corrections, provided the child has been adjudged a youthful offender and sentenced to a term of imprisonment or been convicted of a crime
- Judicial branch employees
- Social service providers working with or providing services to the child

■ Employees and authorized agents of state or federal agencies involved in the delinquency proceedings

■ The child's parents or guardian (until the child reaches the age of majority or is emancipated)

Additionally, under Act No. 14-173, the following individuals also have access to juvenile records:

- The Court Support Services Division of the Judicial Branch, to allow the division to determine the supervision and treatment needs of a child or youth, and provide appropriate supervision and treatment services to such child or youth, provided such disclosure shall be limited to information that identifies the child or youth, or a member of such child's or youth's immediate family, as being or having been (A) committed to the custody of the Commissioner of Children and Families as delinquent, (B) under the supervision of the Commissioner of Children and Families, or (C) enrolled in the voluntary services program operated by the Department of Children and Families. Public Act 14-173, available at: <http://www.cga.ct.gov/2014/act/Pa/pdf/2014PA-00173-R00SB-00152-PA.PDF>.

### Exceptions to Confidentiality

**Nature of Offense:** Records are not kept confidential when a child is arrested for or charged with committing a Class A felony. CON. GEN. STAT. § 54-761.

**Emergency Circumstances:** If a child has escaped from a detention facility and a warrant has been issued for his or her re-arrest, law enforcement officials may disclose information from the juvenile's record. CON. GEN. STAT. § 54-761.

### Availability of Records Online or in Commercial Background Reports

Juvenile records are not available online.

### Consequences for Unlawfully Sharing Confidential Information

No information found.

### Sealing or Expungement

Erasure: CON. GEN. STAT. § 46b-146

### Excluded Offenses

No information found.

### Automatic (without application)

No information found.

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## Eligibility

A youth (or parent/ guardian thereof) who has been released from juvenile court supervision and has turned 18 years old may petition the court for expungement if:

- 2 years have passed since release from placement
- No subsequent juvenile or adult criminal proceeding is pending against him or her
- He or she was not convicted of a delinquent act that constitutes a felony or misdemeanor if committed by an adult during the intervening 2 year period
- He or she was not convicted as an adult of a felony or misdemeanor during the 2 year period

If the juvenile was convicted as delinquent of a serious offense, he or she must wait 4 years before petitioning for expungement, but all other criteria are the same.

If a nolle prosequi is entered, the records are erased 13 months after it was entered. If a prosecutor continues the case for 13 months (and no prosecution or other disposition of the matter occurs), the case is treated as though it was nolle prossed. CON. GEN. STAT. § 46b-133a(b).

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## Notification

No information found.

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## Petition/Application

The petition must contain the following information (CONN. GEN. STAT. § 46b-146):

- Child has reached 18 years of age.
- At least 2 years have elapsed from the date of discharge from any agency or institute the youth has been committed to, or 4 years in the case of a child convicted as delinquent for the commission of a serious juvenile offense
- No subsequent juvenile proceeding or adult criminal proceeding is pending against child
- Child has not been convicted of a delinquent act that would constitute a felony or misdemeanor if committed by an adult during the 2 year or 4 year period
- Child has not been convicted as an adult of a felony or misdemeanor during the 2 year or 4 year period

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## Hearing

CON. GEN. STAT. § 46b-146 states that upon a petition for expungement, the court will hold a hearing and determine whether the applicant has met all of the required criteria. If these conditions are met, the court will enter an erasure order, which removes all references including arrest, complaint, referrals, petitions, reports and orders, from all agency, official and institutional files, and a finding of delinquency shall be deemed never to have occurred.

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## Court Process

If the requirements laid out in CON. GEN. STAT. § 46b-146 are met, or, on a showing of good cause, the court grants the erasure petition, the court will enter an erasure order, which removes all references including arrest, complaint, referrals, petitions, reports and orders, from all agency, official and institutional files, and a finding of delinquency shall be deemed never to have occurred. CON. GEN. STAT. § 46b-146. The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, unless disclosing the fact of such erasure is, in the opinion of the court, in the best interests of the child. No child who has been the subject of such an erasure order shall be deemed to have been arrested *ab initio*, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency or family with service needs proceedings affecting such child. CON. GEN. STAT. § 46b-146.

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## Effect

If the required conditions are met the court will enter an erasure order, which removes all references including arrest, complaint, referrals, petitions, reports and orders, from all agency, official and institutional files, and a finding of delinquency shall be deemed never to have occurred. CON. GEN. STAT. § 46b-146.

The persons in charge of such records shall not disclose to any person information pertaining to the record so erased, except that the fact of such erasure may be substantiated where, in the opinion of the court, it is in the best interests of such child to do so. No child who has been the subject of such an erasure order shall be deemed to have been arrested *ab initio*, within the meaning of the general statutes, with respect to proceedings so erased. Copies of the erasure order shall be sent to all persons, agencies, officials or institutions known to have information pertaining to the delinquency or family with service needs proceedings affecting such child. CON. GEN. STAT. § 46b-146.

The Department of Corrections and the Bureau of Pardons and Parole can still access erased juvenile records. ATT'Y GEN. OF CONN., Formal Op. 2009-012 (Nov. 20, 2009), available at <http://www.ct.gov/AG/cwp/view.asp?A=1770&Q=451112>.

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## Consequences for Sharing Sealed/Expunged Information

None found.

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None found.

## ATTACHMENT C

### H.B. 7050: Proposed New Section 6

Concerning the Re-Entry of Youth Leaving Detention or Congregate Care of Related Residential Facilities

Section 6: Subsection (e) of 10-186 of the general statutes is repealed and the following is substituted in lieu thereof:

(e) A local or regional board of education shall immediately enroll any student who transfers from Unified School District #1 or, Unified School District #2, a juvenile detention center, congregate care, or any other residential placement. Student enrollment shall not be delayed by additional enrollment requirements or any other special conditions imposed by the local or regional board of education. In the case of a student who transfers from any of these out home placements, such student shall be enrolled in the school such student previously attended, provided such school has the appropriate grade level for such student.