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INTERESTS OF THE *AMICI*

The American Civil Liberties Union (ACLU) is the oldest organization dedicated to promoting and defending civil liberties in the United States. Two of the ACLU's areas of particular expertise are the rights of lesbian, gay, bisexual, and transgender individuals, and the rights of prisoners. The American Civil Liberties Union of Connecticut (ACLU of Connecticut) is an affiliate of the ACLU dedicated to promoting civil liberties in Connecticut. Both the ACLU and the ACLU of Connecticut have appeared before state and federal courts, in Connecticut and nationally, as amici and as direct counsel, in cases involving the rights of prisoners. The ACLU has appeared regularly on issues affecting transgender individuals in and out of prison.

Gay & Lesbian Advocates & Defenders (GLAD) is a New England-wide legal organization that seeks equal justice for all persons under the law regardless of their sexual orientation, gender identity, or HIV/AIDS status. The Transgender Rights Project of GLAD seeks to establish clear legal protections for the transgender community through impact litigation and law reform. The Transgender Rights Project of GLAD has expertise in working to protect transgender individuals and can thereby assist the Court in its consideration of this matter. GLAD has appeared frequently before state and federal courts, in Connecticut and nationally, as *amici* and as direct counsel, in cases involving the rights of gay, lesbian, bisexual, transgender, and HIV positive people. The Transgender Rights Project of GLAD appears as *amicus curiae* in order to provide the Court with analysis relevant to those questions based on its expertise and experience in representing transgender persons throughout New England.

The Office of the Child Advocate (OCA) is the division of the Connecticut Office of Governmental Accountability charged with monitoring and evaluating public and private child protection agencies to ensure the protection and care of children and to advocate for their well-

being. The OCA reviews state agency policies and procedures to ensure they protect children's rights and promote their best interest. The OCA advocates for children at risk, addresses public policy issues concerning juvenile justice, child care, foster care, and treatment, reviews facilities and procedures of public or private institutions or residences where juveniles are placed, educates and informs the public of laws and services affecting families and children who are placed under state supervision, and facilitates change by coordinating state agency responses to find creative solutions to difficult problems.

INTRODUCTION AND SUMMARY OF ARGUMENT

Transgender individuals, particularly, young, transgender girls, are widely recognized as one of the most vulnerable populations in juvenile and adult confinement settings.¹ In the instant case, the Connecticut Department of Children & Families (“DCF”) seeks to address the challenges of safely housing a transgender girl by moving her out of the rehabilitative setting of the juvenile justice system and into the punitive and isolating setting of a male prison facility under the control of the Connecticut Department of Correction (“DOC”).

Ms. ██████████² is a 16 year-old transgender girl currently in the custody of DCF following a neglect adjudication on or about July 25, 2013 and a delinquency adjudication on November 21, 2013. Motion to Transfer of Juvenile to Manson Youth Institution (“Motion to Transfer”) ¶ 4; Court Update p. 1. ██████████ has been in the custody of DCF on and off since the age of five. Court Update p. 1. On or about November 21, 2013, DCF placed

¹ Sylvia Rivera Law Project, *It's War in Here: A Report on the Treatment of Transgender & Intersex People in New York State Men's Prisons* 29-31(2007), available at <http://srjp.org/resources/pubs/warinhere>; Amnesty International USA, *Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the US* 54-58 (2005), available at <http://www.amnestyusa.org/outfront/stonewalled/report.pdf>.

² Amici use ██████████ preferred name and female pronouns throughout this memorandum. This practice is consistent with the practice followed by most courts in identifying transgender parties before them and is consistent with medical standards of care for transgender individuals. See, e.g., *Schwenk v. Hartford*, 204 F.3d 1187, 1192 n.1 (9th Cir. 2000); *Murray v. U.S.*, 106 F.3d 401, 402 n.1 (6th Cir. 1997); *Meriwether v. Faulkner*, 821 F.2d 408, 408 n.1 (7th Cir. 1987); *Kosilek v. Spenser*, 2014 U.S. App. LEXIS 951, n. 3 (1st Cir. 2014), *Doe v. Regional School Unit 26*, 2014 ME 11 (Me. 2014).

██████ at Meadowridge facility in Swansea, MA. Motion to Transfer ¶ 8. After an alleged assault on a staff member at Meadowridge, on or about January 27, 2014, ██████ was transferred back to the physical custody of DCF. *Id.* ██████ is currently being held in isolation at the Connecticut Juvenile Training School (“CJTS”), a boys’ facility, because as a girl she cannot be safely housed there within the general population. Motion to Transfer ¶ 13. Conn. Gen. Stat. § 17a-12 (a) (2011). On February 4, 2014, DCF Commissioner Joette Katz, filed a Motion to Transfer ██████ to the Manson Youth Institution, a men’s DOC facility, citing “the inability to integrate the youth into the general population” of CJTS as a basis for the transfer. Motion to Transfer ¶ 15. Prior to this time, it has been DCF’s position that ██████ is a girl and cannot be placed at CJTS or any other facility designated for males.³ DCF’s apparent change in position is based on ██████ alleged behavior and not on any changes to her female identity. She can no more be safely housed within the general population of a DOC facility for male offenders than she could be safely housed within the general population of a juvenile boy’s facility. In order to provide for her physical and emotional well-being, ██████ needs to be housed in a female facility.

I. TRANSFERRING ██████ TO A MEN’S DOC FACILITY THREATENS HER EMOTIONAL AND PHYSICAL WELL-BEING

To transfer a juvenile from the custody of DCF into the custody of DOC pursuant to §17a-12 (a), a court must determine, at a hearing, whether the transfer is in the best interests of the juvenile. In *In Re Steven M.*, 264 Conn. 747, 759 (2003), the Connecticut Supreme Court clarified the standard as a balancing test between the “the best interest of the juvenile [allegedly] posing a safety concern and the danger posed by that juvenile to other juveniles with whom the

³ E-mail from Sheryl Paul, LCSW, Social Worker (July 10, 2013 16:47 EST)(“DCF’s position is that [██████] is a girl...DCF cannot accept a girl into CJTS. If the court makes a referral to there, DCF cannot accept her.”).

subject juvenile is or will be situated.” Assuming *arguendo*⁴ that this is the proper standard for evaluating the instant motion, the Court must seriously consider whether the requested transfer is in ██████ best interests. Because ██████ is a girl and taking into account the considerable evidence that adolescents, particularly transgender girls, are especially vulnerable to assault and negative health outcomes when placed in men’s prisons, the requested transfer is not in ██████ best interests.

a. ██████ Should Be Placed in a Female Facility

A transgender child is one whose gender identity or brain sex—a person’s basic sense of being male or female—differs from the gender identity and/or expression typically associated with the sex assigned to him/her at birth. Gender identity is a deeply felt and core component of a person’s identity.⁵ Existing evidence overwhelmingly suggests that gender identity is innate and fixed at an early age.⁶ Children usually start to become aware of their gender identity between the ages of 18 months and 3 years.⁷ This is consistent with ██████ experience. Despite being assigned male at birth, ██████ has lived and identified as a girl for many years.

People whose bodily characteristics do not match their brain sex can experience a clinically disabling condition known as gender dysphoria. Gender dysphoria is psychological condition recognized by the American Psychiatric Association (APA) marked by a strong and

⁴ *Amici* contend that in light of intervening Supreme Court law and developments in federal statutory law and regulations under the Prison Rape Elimination Act (PREA) the standard articulated by the Court in *In Re Steven M.*, 264 Conn. 747 (2003), should be reassessed.

⁵ American Psychiatric Association, *Diagnostic & Statistical Manual of Mental Disorders*, 5th ed. (2013); American Psychological Association, *Answers To Your Questions About Transgender People, Gender Identity, and Gender Expression*, available at <http://www.apa.org/topics/sexuality/transgender.pdf> (last visited Feb. 27, 2014).

⁶ See, e.g., Peggy T. Cohen-Kettenis & Louis J. Gooren, *Transsexualism: A Review of Etiology, Diagnosis and Treatment*, 46 J. Psychosomatic Res. 315 (1999); Jiang-Ning Zhou, et al., *A sex difference in the human brain and its relation to transsexuality*, 378 Nature 68 (1995); Louis Gooren, *Gender Transpositions: The Brain Has Not Followed Other Markers of Sexual Differentiation*, 4 Int’l J. of Transgenderism (2000).

⁷ Gerald P. Mallon & Teresa DeCrescenzo, *Transgender Children and Youth: A Child Welfare Perspective*, 85 *Child Welfare*, 215, 218 (March/April 2006); Heino Meyer-Bahlburg, *Gender Identity Disorder of Childhood: Introduction*, 24 J. of Am. Acad. of Clinical Psychiatry 681, 681-83 (1985).

persistent cross-sex identification that is accompanied by clinically significant distress.⁸ The only known effective treatment for gender dysphoria is for the person to undergo a process of conforming outward presentation of their gender to reflect their brain sex.⁹ This process is known as gender transition. ██████ has been diagnosed as having gender dysphoria, has undergone gender transition, thereby making consistent her brain sex with her physical sex.

Disregarding a transgender person's gender identity after gender transition causes intense emotional suffering and distress, particularly for transgender youth.¹⁰ The mental health and well-being of transgender young people are damaged by the experience of "being misperceived, invalidated, and made to wear clothes or present themselves in ways that feel unnatural, uncomfortable, and possibly embarrassing."¹¹ When they have not been able to live consistently with their gender identity, "many gender dysphoric adolescents are considerably depressed, anxious, or both. Many engage in self-harming behavior and report suicidal ideation and attempts."¹² For this reason, it is essential that ██████ be housed in a facility for girls.

b. Transgender Youth Are Particularly Vulnerable to Sexual and Physical Violence in Prison

In the eleven years since Congress passed the Prison Rape Elimination Act (PREA), 42 U.S.C. §§ 15601 *et. seq.*, in 2003, significant federal, state and local resources have been devoted

⁸ American Psychiatric Association, *Diagnostic & Statistical Manual of Mental Disorders*, 5th ed. (2013).

⁹ *See generally*, World Professional Organization for Transgender Health (WPATH), *Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People*, Version 7 (2011), *available at* http://www.wpath.org/uploaded_files/140/files/IJT%20SOC.%20V7.pdf (last visited Feb. 27, 2014)(hereafter "Standards of Care").

¹⁰ American Psychiatric Association, *Diagnostic & Statistical Manual of Mental Disorders*, 5th ed. (2013); *Standards of Care* at 10.

¹¹ Stephanie A. Brill & Rachel Pepper, *The Transgender Child: A Handbook for Families and Professionals* 114 (2008).

¹² Laura Edwards-Leeper & Norman P. Spack, *Psychological Evaluation and Medical Treatment of Transgender Youth in an Interdisciplinary "Gender Management Service" (GeMs) in a Major Pediatric Center*, 59 *J. of Homosexuality* 321, 326 (2012). When provided with supportive care and permitted to live consistently with their gender identity, "[i]t is not uncommon for these symptoms to decrease and even disappear[.]" *Id.* at 327. *See also* Spack et al., *Children and Adolescents with Gender Identity Disorder Referred to a Pediatric Medical Center*, 129 *Pediatrics* 418, 422 (2012).

to ending sexual abuse in prison. The research that has come out of this effort consistently confirms that transgender individuals are among the most vulnerable to sexual and physical abuse in confinement.¹³ “Even when compared to other relatively vulnerable populations, transgender people are perilously situated.”¹⁴ In a national study of transgender individuals, thirty-five percent (35%) of respondents who had been incarcerated reported harassment by other inmates and thirty-seven percent (37%) reported harassment by officers, sixteen percent (16%) reported being physically assaulted while in custody and fifteen percent (15%) reported being sexually assaulted.¹⁵ The numbers were significantly higher for transgender people of color.¹⁶ Other studies suggest the incidence of sexual violence against transgender individuals in prison is significantly higher. For example, one study of sexual assault in California men’s prisons found that 59% of transgender respondents reported sexual assault as compared with 4.4% of non-transgender respondents.¹⁷ A study of the New York prison system found that transgender women housed with male inmates became frequent targets for harassment or assault.¹⁸ The Department of Justice (DOJ) explicitly recommends that transgender individuals, such as ██████ not be assigned to male or female units solely based on assigned sex at birth or genitals to combat the widespread sexual violence that transgender individuals experience in prison.¹⁹

¹³ See, e.g. A. Beck and P. Harrison, Bureau of Justice Statistics, Sexual Victimization in Local Jails, reported by inmates at 6. (June, 2008).

¹⁴ See Lori Sexton, Valerie Jenness & Jennifer Macy Sumner, *Where the Margins Meet: A Demographic Assessment of Transgender Offenders in Men’s Prisons*, 27 Justice Quarterly 6, 858 (2010), available at <http://www.tandfonline.com/doi/pdf/10.1080/07418820903419010> (last visited Feb. 27, 2014).

¹⁵ National Transgender Discrimination Survey, 166-67, available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf (last visited Feb. 27, 2014).

¹⁶ *Id.*

¹⁷ Valerie Jenness, The California Department of Corrections and Rehabilitation Wardens’ Meeting (April 8, 2009), available at <http://ucicorrections.seweb.uci.edu/files/2013/06/Transgender-Inmates-in-CAs-Prisons-An-Empirical-Study-of-a-Vulnerable-Population.pdf> (last visited Feb. 27, 2014).

¹⁸ Sylvia Rivera Law Project, *It’s War in Here* at 19-21.

¹⁹ National Standards To Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37106-01 (June 20, 2012) (to be codified at 28 CFR pt. 115) (“[T]he Department believes that the concerns . . . can be addressed by properly assigning (or re-assigning) transgender and intersex inmates to facilities or housing units that correspond to their gender identity, and not making housing determinations based solely on genital status.”).

The vulnerability of transgender women in custodial settings has also been widely recognized by the courts. Twenty years ago, the Supreme Court announced the contemporary deliberate indifference standard for Eighth Amendment conditions of confinement claims in *Farmer v. Brennan*, 511 U.S. 825 (1994), a case involving a young, transgender woman who was assaulted in a men’s federal prison. In Dee Farmer’s case, the Supreme Court ruled unanimously that deliberate indifference to the substantial risk of serious harm, including sexual abuse, violates the rights of incarcerated individuals’ under the Eighth Amendment. *Farmer*, 511 U.S. at 832 (“prison officials must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must ‘take reasonable measures to guarantee the safety of the inmates’”)(internal citations omitted). Since *Farmer*, courts have consistently found that transgender women are especially vulnerable to assault in men’s prisons. *See, e.g., Greene v. Bowles*, 361 F.3d 290, 293-94 (6th Cir. 2004) (finding a transgender woman prisoner in a men’s facility was vulnerable to both physical and sexual attacks); *R.W. v. United States*, 958 A.2d 259, 267 (D.C. 2008) (affirming lengthy sentence where former prison guard sexually assaulted a transgender inmate and finding that the “sentence was intended to reflect his victim’s particular vulnerability as a transgender inmate in an all-male prison unit”); *Green v. Hooks*, No. 6:13-cv-17, 2013 WL 4647493, at *4 (S.D. Ga. Aug. 29, 2013) (denying qualified immunity to officials in Eighth Amendment case of transgender woman in men’s prison who was assaulted by male prisoner). Congress also relied on *Farmer* in its findings supporting passage of PREA.²⁰

Though there is limited data addressing the particular risk to transgender girls the adult prison system, available data on the incidence of sexual violence against youth generally in adult facilities suggests that the rate of abuse is extremely high.²¹ In 2005, for example, youth under

²⁰ 42 U.S.C. §15601(13).

²¹ Youth under 20 experience the highest rates of sexual abuse by staff of any prison age demographic, and the

the age of 18 made up less than 1 percent of all prisoners in US jails, yet comprised 21 percent of all victims of substantiated incidents of sexual abuse involving prisoners.²² The National Prison Rape Elimination Commission (NPREC), which was convened by Congress to study the problem of prison sexual assault, found that “Juveniles in confinement are much more likely than incarcerated adults to be sexually abused, and they are particularly at risk when confined with adults. To be effective, sexual abuse prevention, investigation, and treatment must be tailored to the developmental capacities and needs of youth.”²³ Because of the high rates of reported abuse of youth and transgender women by staff, efforts to protect transgender youth from abuse in general population often just makes them more vulnerable to assault by staff in solitary confinement or protective custody.²⁴

If ██████ remains in a male facility, and particularly if she is transferred to MYI, she faces an unreasonably high risk of sexual assault. “Having incarcerated ‘persons [with] demonstrated proclivit[ies] for antisocial criminal, and often violent, conduct,’ ... having stripped them of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.” *Farmer*, 511 U.S. at 833 (internal citations omitted). The Court can facilitate a reduction in this risk by recommending that any term of incarceration imposed be served in a facility that is

highest rates of sexual abuse by other inmates of any jail age demographic. A. Beck and P. Harrison, Bureau of Justice Statistics, US Department of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09* (August 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/svpjri0809.pdf> (last visited Feb. 27, 2014). In contrast, approximately 2.6 percent of youth in juvenile facilities reported a sexual incident involving another youth, while 10.3 percent reported an incident involving facility staff. *Id.*

²² National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report*, 42 (June 2009), available at <https://www.ncjrs.gov/pdffiles1/226680.pdf> (last visited Feb. 27, 2014) (citing Howard N. Snyder and Melissa Sickmund, *Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, Juvenile offenders and victims: 2006 National Report* (2006)), and A. Beck and P. Harrison, Bureau of Justice Statistics, US Department of Justice, *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09*.

²³ National Prison Rape Elimination Commission, *National Prison Rape Elimination Commission Report*, 16 (June 2009) available at <https://www.ncjrs.gov/pdffiles1/226680.pdf> (last visited Feb. 27, 2014).

²⁴ See, e.g., Randi Feinstein, et al., *Justice for All? A Report on Lesbian, Gay, Bisexual, and Transgendered Youth in the New York Juvenile Justice System*, 2 (Urban Justice Center 2001).

appropriate to protect a transgender youth such as [REDACTED]. To do otherwise would be to ignore the fact that she faces an exceedingly high risk of being sexually or physically assaulted during her incarceration in clear violation of federal law. 28 C.F.R. §§ 115.342 (d); 115.42 (c) (when assigning a “transgender or intersex resident to a facility for male or female residents, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety”).

c. The Proposed Transfer Would Undermine Any Chance of Rehabilitation And Would Result in Serious, Lasting Harm to [REDACTED]

The juvenile court system has been, since its inception, about rehabilitation.²⁵ Consistent with that goal, the mission of the CJTS, where [REDACTED] is currently being housed, “is to provide a safe, secure and therapeutic environment while providing opportunity for growth and success. National best practices interventions and standards are integrated into facility operations with the goal of reducing risk of re-offending, preparing youth for community re-entry and developing positive youth outcomes.”²⁶ This stands in stark contrast to the mission of the Department of Corrections to “protect the public, protect staff, and provide safe, secure, and humane *supervision* of offenders with opportunities that support restitution, rehabilitation and successful community reintegration.”²⁷ The requested transfer would result in [REDACTED] removal from a system dedicated to rehabilitation into the more punitive setting of the DOC and would inevitably result in her being held in isolation among male offenders, which would further undermine any chance of rehabilitation.

The Court has already found that [REDACTED] cannot be held in the general population of a

²⁵ See The Annie E. Casey Foundation, *A Road Map for Juvenile Justice Reform*, 3 (2008). See also Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 Fla. L. Rev. 577, 586 (2002).

²⁶ Connecticut Department of Children & Families, “Connecticut Juvenile Training School,” available at <http://www.ct.gov/dcf/cwp/view.asp?a=2562&Q=539022> (last visited Feb. 27, 2014).

²⁷ Administrative Directive, State of Connecticut Dep’t of Correction (April 15, 2011), available at <http://www.ct.gov/doc/lib/doc/pdf/ad/ad0101.pdf> (emphasis added)(last visited Feb. 27, 2014).

male facility. Order for Temporary Injunction, Feb. 11, 2014. The requested transfer would simply move ██████ from one form of isolation to a more punitive and dangerous form of isolation. *Id.* DCF is requesting to transfer ██████ to the Manson Youth Institution (MYI) which is a level 4 high security DOC facility for males ages 14-20. Given ██████ female identity and age, it is unlikely that she would be held, for up to four years,²⁸ anywhere but in solitary confinement at MYI.

It is well established that the use of isolation for juveniles is punitive except where necessary to restrain a violent juvenile for a short period of time. *See, e.g., Milonas v. Williams*, 691 F.2d 931, 942-43 (9th Cir. 1982) (affirming injunction against placing children in isolation for any reason other than to contain violent behavior); *see also Santana v. Collazo*, 714 F.2d 1172 (1st Cir. 1983) (experts' testimony on lack of therapeutic and disciplinary benefits from isolation sufficient to warrant remand for further factual findings). Even the threat of isolation has been held to constitute punishment in certain circumstances. *See Finney v. Arkansas Bd. of Correction*, 505 F.2d 194 (5th Cir. 1974) (characterizing the threat of solitary confinement as "mental punishment"). Given the clarity of the law on the punitive nature of solitary confinement for juveniles, the requested transfer would result in ██████ being punished solely on the basis of her transgender status. This placement would also cause significant harm to ██████ physical and mental health.

Juveniles are especially vulnerable to the damaging psychological effects of isolation, including extreme loneliness, anxiety, rage, and depression, among other potentially debilitating emotional and psychological consequences. *See, e.g., Gary H. v. Hegstrom*, 831 F.2d 1430, 1434 (9th Cir. 1987)(Ferguson, J., concurring); *H.C. by Hewett v. Jarrard*, 786 F.2d 1080, 1088 (11th

²⁸ Upon information and belief, ██████ juvenile parole ends on ██████, but could be extended up to her 20th birthday.

Cir. 1986) (“Juveniles are even more susceptible to mental anguish than adult convicts”). Just last week, at a hearing convened before the Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights, Senator Durbin of Illinois called for an end to solitary confinement for juveniles noting that “35 percent of juveniles in custody report being held in solitary for some time. The mental health effects of even short periods of isolation - including depression and risk of suicide - are heightened in youth.”²⁹

There is no question that children have unique developmental needs and are more vulnerable to the harms of prolonged isolation than adults.³⁰ Young people’s brains are still developing, placing youth at higher risk of psychological harm when healthy development is impeded.³¹ Children experience time differently than adults, and have a special need for social stimulation.³² Like most youth involved the criminal justice system,³³ ██████ has a history of substance abuse, mental illness and childhood trauma. Isolation is especially damaging for young people with such trauma and abuse histories.³⁴ A serious and tragic consequence of the solitary

²⁹ Senator Durbin Opening Statement, “Reassessing Solitary Confinement II: The Human Rights, Fiscal, and Public Safety Consequences”: Hearing Before the Senate Committee on the Judiciary, Subcommittee on the Constitution, Civil Rights, And Human Rights (Feb. 25, 2014).

³⁰ Am. Acad. of Child & Adolescent Psychiatry, Policy Statement on Solitary Confinement of Juvenile Offenders (Apr. 2012), available at http://www.aacap.org/cs/root/policy_statements/solitary_confinement_of_juvenile_offenders; Sandra Simkins et al., *The Harmful Use of Isolation in Juvenile Facilities: The Need for Post-Disposition Representation*, 38 Wash. U.J.L. & Pol’y 241, 257-61 (2012).

³¹ Jay N. Giedd, *Structural Magnetic Resonance Imaging of the Adolescent Brain*, 1021 Annals N.Y. Acad. Sci. 77 (2004), available at <http://intramural.nimh.nih.gov/research/pubs/giedd05.pdf>; Laurence Steinberg, *Cognitive and Affective Development in Adolescence*, 9 Trends in Cognitive Sci. 69 (2005), available at <http://www.temple.edu/psychology/lids/documents/CognitiveandAffectiveDEvelopmentTICS.pdf>; Connecticut Office of the Child Advocate, *From Trauma to Tragedy: Connecticut Girls in Adult Prison* (July 2008), available at <http://www.nijn.org/uploads/digital-library/Connecticut%20Girls%20in%20Adult%20Prison,%20Office%20of%20Child%20Advocate,%207.08.pdf>.

³² Laurence Steinberg et al, *Age Differences in Future Orientation and Delay Discounting*, 80 Child Dev. 28, (2009), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/ADFO.pdf>; Jennifer Woolard et al., *Juveniles within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 Int’l J. Forensic Mental Health 1, 9 (2005), available at <http://www.policyarchive.org/handle/10207/bitstreams/20668.pdf>.

³³ J.D. Ford, J.F. Chapman, J. Hawke, & D. Albert, *Trauma Among Youth in the Juvenile Justice System: Critical Issues and New Directions*, National Center for Mental Health and Juvenile Justice, 2 (2007).

³⁴ Lindsay M. Hayes, *Nat’l Ctr. on Institutions and Alternatives Juvenile Suicide in Confinement: A National*

confinement of youth is the increased risk of suicide and self-harm, including cutting and other acts of self-mutilation; a risk that is compounded for transgender youth who have disproportionately high rates of suicidality as compared with their non-transgender peers. In juvenile facilities more than 50% of all youth suicides occur in isolation.³⁵ For youth in adult jails the suicide rates are even higher. Suicides of youth in isolation occur nineteen times more often than in the general population; youth suicide rates are thirty-six times higher in adult jails than in juvenile detention facilities.³⁶ Transgender individuals report rates of attempted suicide ten times greater than those of the general population, making the epidemic of suicide among juveniles in adult facilities particularly concerning for ██████████³⁷ Even if ██████████ is able to survive her time in the adult men's system, her chances for successfully re-entering society after potentially four years in isolation would be greatly compromised.³⁸

II. THE REQUESTED TRANSFER IS INCONSISTENT WITH DCF'S OBLIGATIONS UNDER STATE AND FEDERAL LAW

The current trend in federal and state law is to move juveniles out of the adult court and

Survey, 40 (2004); Linda A. Teplin et al., U.S. Dept. of Just., *Psychiatric Disorders of Youth in Detention* (2006), available at <https://www.ncjrs.gov/pdffiles1/ojdp/210331.pdf>; Patricia Kerig et al., *Posttraumatic Stress as a Mediator of the Relationship Between Trauma and Mental Health Problems Among Juvenile Delinquents*, 38 *J. Youth & Adolescence* 1214 (2009), available at

<http://www.psych.utah.edu/people/people/kerig/pub/PosttraumaticStressasaMediator.pdf>; Jason Washburn et al., *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 *Psychiatric Serv.* 965 (2008), available at

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2718561/pdf/nihms109770.pdf>.

³⁵ Lindsay M. Hayes, *Nat'l Ctr. on Institutions and Alternatives Juvenile Suicide in Confinement: A National Survey*, 40 (2004); Seena Fazel et al., *Suicide in Prisoners: A Systematic Review of Risk Factors*, 69 *J. Clinical Psychiatry* 1721 (2008); see Christopher Muola, U.S. Dept. of Just., *Suicide and Homicide in State Prisons and Local Jails*, 9 (2005), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/shsplj.pdf>.

³⁶ Campaign for Youth Justice, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, 10 (2007), available at http://www.campaignforyouthjustice.org/documents/CFYJNR_JailingJuveniles.pdf.

³⁷ Jodi Herman, et al, *Suicide Attempts among Transgender and Gender Non-Conforming Adults*, National Transgender Discrimination Survey (Jan. 2014), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/AFSP-Williams-Suicide-Report-Final.pdf> (in a recent study, 41% of transgender adults reported lifetime suicide attempts as compared with 4.6% with the overall U.S. population).

³⁸ U.S. Dept. of Health & Hum. Servs., *Effects of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services*, 6-8 (2007), available at <http://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>; Barry Holman & Jason Ziedenberg, Justice Policy Inst., *The Dangers of Detention* (2006), available at http://www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf.

corrections systems. In 2009, United States Senator Patrick Leahy introduced a reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA) 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.” S. 678, 111th Cong. §101 (as reported by the Judiciary Committee, Aug. 10, 2010). 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 JJDPA’s 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.”³⁹ While states are working to move juveniles out of adult systems, DCF is seeking to transfer a sixteen year-old, transgender girl with a history of trauma, sexual abuse, drug use and mental illness without a criminal conviction into an adult men’s prison system.

The Department’s motion makes clear that but for ██████ transgender status, DCF would not be seeking to transfer ██████ into the custody of DOC.⁴⁰ Such a decision, based solely on the fact that ██████ is transgender, is not in the best interest of ██████ does not fit the

³⁹ 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>.

⁴⁰ There is some indication in the record that ██████ is also being discriminated against because she is a girl and there are not sufficient beds for girls in the DCF system. If that proves to be the case and the requested transfer is based on the fact that ██████ is girl, that would also amount to sex discrimination in violation of Connecticut law.

facts of this case, and violates Connecticut anti-discrimination law. There is no question that the § 17a-12 (a) transfer procedure is exceptional. There is only one reported case involving such a transfer, and the facts in that case are not analogous to the facts in ██████ case. In that 2002 case, the juvenile “was placed in two-point restraints on 188 occasions, 5–point restraints 49 times and restricted to his unit for most of the latter part of his stay. The police were called to intervene with [the juvenile] a total of 37 times during [a single year].” *In re Steven M.*, at 751 n.3. In this case, CJTS Superintendent William Rosenbeck alleges that ██████ has a “history of violence” and that such history “is more serious than *most* other youths at CJTS...” but there is no comparable set of allegations concerning the challenges of managing ██████ in DCF. Affidavit of William Rosenbeck (hereafter, “Rosenbeck Aff.”) § 5 (emphasis added).

Superintendent Rosenbeck acknowledges that ██████ history of aggressive behavior is only more serious than most other young people at CJTS. At a minimum there are currently some other juveniles at CJTS posing at least comparably difficult, if not more difficult, management concerns and that in the last decade and a half there have been other difficult to manage cases where DCF did not move to transfer the young person into DOC custody. Yet, the Department seeks to transfer ██████ into the custody of DOC citing the fact that ██████ cannot be integrated into the general population due to the “complexity of issues” and the fact that she has made “accusations of inappropriateness... against...staff” as bases for the transfer. Rosenbeck Aff. ¶ 8. The “complexity of issues” means ██████ transgender status, which prevents her from being safely housed in the general population of a boy’s facility. ██████ is being punished more harshly than similarly situated non-transgender juveniles because of her transgender status and vulnerability to violence.

Connecticut law plainly prohibits DCF from treating ██████ differently than her non-

transgender peers solely on the basis of her gender identity. Conn. Gen. Stat. § 46a-51(6) (2011). State agencies are required, under Connecticut law, to perform services without discrimination, which includes segregation or separation, based on sex, gender identity or gender expression. Conn. Gen. Stat. § 46a-71 (2011); Conn. Gen. Stat. § 46a-51(6) (2011). In Connecticut, juveniles adjudicated delinquent are managed under DCF's Adolescent and Juvenile *Services* Division.⁴¹ By the plain language of the statute, DCF, as a state agency that provides services to juveniles adjudicated delinquent, must provide those services without discrimination based on the characteristics protected under Connecticut law, including gender identity and sex. Under its own policy, the Department also "has an obligation to ensure fair, equal, and non-discriminatory treatment of all individuals who identify themselves as Lesbian, Gay, Bisexual, Transgender, Questioning and Intersex (LGBTQI), in accordance with state laws governing non-discrimination."⁴² Treating ██████████ a female, differently than other juvenile detainees based solely on the fact that she was assigned male at birth violates Connecticut law and DCF policy. *Cf. Doe v. Regional School Unit 26*, 2014 ME 11 (holding that school's decision to ban transgender girl from girls' bathroom constituted impermissible discrimination under state human rights law).

By requesting to transfer ██████████ to MYI as opposed to available DCF facilities for girls, DCF is discriminating against her because she is transgender. In support of a new locked facility for girls, DCF Commissioner Katz explained, "Many of these girls are extremely assaultive [and] are extremely dangerous."⁴³ "These girls run," she told a reporter, "and they take other girls with

⁴¹ Connecticut Department of Children & Families, "Connecticut Juvenile Training School," *available at* <http://www.ct.gov/dcf/cwp/view.asp?a=2562&Q=539022> (last visited Feb. 27, 2014).

⁴² Connecticut Department of Children & Families, Policy 30-9, *available at* <http://www.ct.gov/dcf/cwp/view.asp?a=2639&Q=393548>

⁴³ Jacqueline Rabe Thomas, *New locked girls' facility in CT spurs questions about DCF's direction (part 2)*, *The CT Mirror*, Feb. 19, 2014.

them, putting themselves and others at risk...If they're not getting the treatment they need, then we're not helping them.”⁴⁴ These justifications mirror exactly the allegations in Commissioner Katz’s motion to transfer ██████ Motion to Transfer ¶¶7, 9 (“The above-captioned juvenile has an extensive history of violent and assaultive behavior”); (“The above-captioned juvenile has also gone AWOL from three of her residential programs”). Though DCF has just opened a new secure facility for girls who have “violent” histories and histories of “running” from placements, they are seeking to transfer ██████ to a DOC *male* facility because she has a “violent” history and has gone AWOL. DCF is deliberately putting ██████ in harm’s way because she is transgender despite the availability of alternative placements that have been justified by very the particular management challenges posed by girls, like ██████ with trauma histories. Superintendent Rosenbeck, who will oversee the new girls’ facility, said, “We have an obligation to lower a girl’s risk, make her safe and reintegrate her back into the community as a valued member of the community.”⁴⁵ Yet of ██████ Rosenbeck said, “the facility [CJTS] is running at near maximum capacity and accommodating ██████ violent history is extremely problematic.” Affidavit of Rosenbeck ¶ 11. The double standard amounts to discrimination and cannot be tolerated under Connecticut law.

While DCF is properly concerned about keeping ██████ in long-term solitary confinement, the proposed solution to transfer her to MYI serves no rehabilitative goals and would only extend ██████ isolation. DCF’s proposed transfer is inconsistent with federal law and in direct violation of the state human rights law.

⁴⁴ Josh Kovner, *Locked Facility For Juvenile Girls Debated*, Feb. 25, 2014, available at <http://www.courant.com/news/connecticut/hc-girls-locked-treatment-0225-20140224,0,2448836.story>.

⁴⁵ Jacqueline Rabe Thomas, *New locked girls’ facility in CT spurs questions about DCF’s direction (part 1)*, *The CT Mirror*, Oct. 10, 2013.

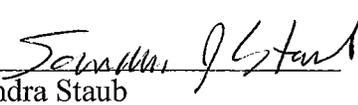
CONCLUSION

The Department's attempt to address the particular challenges of safely housing a transgender girl by transferring her into the punitive setting of the adult prison system is deeply disturbing. This case could set a dangerous precedent for future cases involving the most vulnerable youth. The Court should deny DCF's motion to transfer ██████ to the Manson Youth Institution and order her to be housed in a DCF facility for girls or, if no safe placement can be found in state, then in a facility out-of-state where she will not be subjected to long-term isolation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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