

Hartford Courant

Hartford Courant files federal First Amendment lawsuit over Connecticut juvenile law that makes court cases secret

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The Hartford Courant filed a federal First Amendment lawsuit Wednesday to overturn a new Connecticut law that the newspaper says violates the speech and open government rights of the press and public by closing courtrooms and keeping records secret when some teenagers are charged with the most serious felonies, such as murder, armed robbery and rape.

The newspaper, joined by the Reporters Committee for Freedom of the Press, filed suit in U.S. District Court Wednesday, arguing that what is known as the Juvenile Transfer Act violates the free speech guarantees of the U.S. and Connecticut constitutions by restricting the rights "of members of the press and the public to attend criminal proceedings and inspect judicial records in criminal cases."

The law, which became effective Oct. 1, is one of the most visible aspects of an evolving package of measures developed over the last half dozen years or so by juvenile justice advocates and their legislative allies with the stated goal of keeping troubled teens out of the criminal justice system. The lawsuit asks the court to order the unsealing of judicial records related to juvenile cases that have been transferred to adult criminal court.

"The Juvenile Transfer Act creates a significant impediment to The Hartford Courant's ability to inform its readers about matters of the utmost public interest and concern, and prevents [it] from engaging in the kind of comprehensive, investigative reporting that the paper is known for and that serves the public interest," Andrew Julien, the Courant's publisher and editor-in-chief, said in a statement submitted to the court.

Critics of the legislation, among them state prosecutors, have said it is at odds with the fundamental U.S. guarantee of public trials – a right created to protect both criminal defendants and the public, and based on the premise that justice delivered openly will be delivered fairly and impartially.

Under the new law, the court records of 15, 16 and 17-year-old juveniles charged with murder and others serious felonies are sealed upon their arrest. The teens are prosecuted on major felony charges in adult court, just as adults would be prosecuted, but in parts of courthouses that are closed to the public. Only victim family members have access to the proceedings.

If a juvenile is convicted under the new law, case records are to be retroactively unsealed. The case remains seal if there is an acquittal.

"Openness is a bedrock feature of our criminal justice system. Connecticut's Juvenile Transfer Act is flatly inconsistent with the longstanding and constitutionally guaranteed right of reporters and other members of the public to attend criminal proceedings and to review court dockets and other records in criminal cases," said Reporters Committee Legal Director Katie Townsend.

Child advocates said Wednesday that the benefits to society of protecting the privacy of teens who are accused but not convicted of a serious felony is greater than the rights of the public and press to know everything that happens in the courts.

"I am sensitive to first amendment issues but I think they are outweighed by the need for the confidentiality of juveniles," Martha Stone, Executive Director Center for Children's Advocacy in Hartford.

She said Connecticut could consider raising the age at which juveniles are treated as adults, as has been done in other jurisdictions. Such a change would expand the number of cases closed to the public beyond what is called for by the juvenile transfer act.

State Rep. Steven Stafstrom, a Bridgeport Democrat and judiciary committee chairman who helped move the law through

the legislature, said the state's "substantial government interest" in regulating juvenile matters supersedes public interest.

"I'm extremely surprised and saddened that The Courant would take this course of action and tie the state up in litigation of this," Strafstrom said. "This was a bill that was introduced early in the year and was fully debated in both houses. The Courant had plenty of time to intervene rather than waiting until it became law. The time to voice opposition was during the legislative process. Or The Courant could press for changes during the upcoming legislative session."

The suit cites specific cases that the newspaper argues demonstrate how the new law undercuts public interest in judicial outcomes, pointing to the murder prosecution of now 59-year old Michael Skakel. The Skakel case has been sealed because he was 15-years old in 1975, when he is accused of the notorious bludgeoning death of his 15-year old neighbor Martha Moxley. Skakel, famously related to the Kennedy family, was tried and convicted as an adult. The state Supreme Court reversed the conviction in 2018. The state was contemplating a retrial when the new law prohibited further discussion of the case.

"In the event Skakel is retried," Julien said, "The Hartford Courant and other members of the press and public will be barred from attending any criminal proceeding in his case and from accessing any of the associated judicial records or docket information, permitting a 59-year-old public figure to be tried in complete secrecy in connection with a murder that has captured national attention for more than 40 years."

Should prosecutors decide against retrial, they will be unable to publicly explain why.

Other cases include:

- The prosecution of 16-year-old defendant charged with first-degree manslaughter in a case that stunned Hartford. A 71-year-old woman was struck and killed as she tried to cross a street by one of two cars racing by while engaged in a high-speed gun fight.
- The highly publicized prosecution of 16-year-old Alexander Bolanos, charged with conspiracy to commit murder after the December 2018 drive-by shooting death of a 12-year-old in Bridgeport.

"As with the Skakel case, the Courant is no longer able to access docket information or judicial records in connection with Bolanos' prosecution and will be prohibited from attending any future criminal proceedings in the case," Julien said.

In addition to violating the fundamental constitutional principles of free speech and public access to judicial proceedings, the newspaper argues that the new law is at odds with a string of prior, precedential court rulings. The rulings hold that courts can be closed only in narrow circumstances, and the state must first show it has an interest in secrecy that is so compelling that it outweighs rights of judicial access.

"The secrecy provisions of the Juvenile Transfer Act do not permit courts to narrowly tailor any restrictions on the public's and the press' right of access to serve a compelling interest in a specific case," the suit says. "Instead, the Act strictly requires complete closure of all proceedings in all Transferred Matters regardless of whether such closure is necessitated by any compelling interest in a given case. "

"Such sweeping, mandated secrecy is far broader than necessary to protect any potential privacy interest that could arise in any particular case," the suit says. "As the Supreme Court has recognized, mandatory closure rules are unconstitutional, even when implemented to protect the privacy interests of juveniles, for 'it is clear that the circumstances of the particular case may affect the significance of the interest.' "

The lawsuit, filed on behalf of the Courant by William S. Fish Jr., of Hinckley Allen & Snyder and lawyers from Reporters Committee for Freedom of the Press, also argues that the new transfer law cannot be construed as creating another category of secret, juvenile delinquency proceedings.

Teens whose cases are transferred under the new law are prosecuted as adults in adult court. Juveniles in delinquency cases, which also are closed to the public, are not subject to criminal conviction or criminal punishment. Instead, the juvenile justice system is created to identify teens judged to be delinquent and intervene with supervision and care.

The lawsuit names Judge Patrick L. Carroll, the state's Chief Court Administrators, and the court clerks and assistant clerks across the state who are assigned to enforce the new transfer law.

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