

Quinnehtuhqut Legal News



www.ptla.org

A Newsletter for Native Americans in Connecticut

Fall 2017

ERASE YOUR CONNECTICUT JUVENILE RECORD

If you were arrested in Connecticut when you were under age 18 and not tried as an adult, you may have a juvenile criminal record. If so, you can petition the courts to erase the record to avoid potential far-reaching negative consequences affecting plans for your future. Juvenile criminal records exist in the form of arrest records, police reports, documentation of criminal charges and criminal convictions.

Juvenile criminal records may affect your efforts to obtain a job, join the military, obtain housing or gain admission to college and other educational programs, and they can stay on your juvenile record if you don't take steps to have them erased.

In Connecticut, access to these records is granted to:

- Judicial Branch employees who require access to the records in the performance of their duties.
- Employees and authorized agents of municipal, state or federal agencies who are involved in the proceedings, provision of services, or design or delivery of treatment programs or court diversionary programs.
- Law enforcement and prosecutorial officials conducting legitimate criminal investigations.
- Victims of the criminal act.

Connecticut law also authorizes access to some juvenile criminal records (that would otherwise be confidential) to schools regarding the arrest or adjudication of a juvenile.

Connecticut juvenile records can also lose confidential status if a youth is arrested for or charged with a felony.

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We Want to Hear From You!

If you have comments, articles or ideas on how the newsletter can be helpful to you, please let us know.

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U.S. Senate to Consider Reforming "Money Bail" System in Criminal Cases

In July, 2017, Senator Kamala Harris, a Democrat from California, and Senator Rand Paul, a Republican from Kentucky, co-sponsored the "Pretrial Integrity and Safety Act of 2017" which if enacted will authorize a three-year, \$10 million grant program to tribes and states to reform or replace pretrial procedures that require the payment of arbitrary cash amounts or deposit bonds by criminal defendants seeking pre-trial release pending trial without regard for whether low-income defendants have the ability to make such payments or bonds. The sponsors of this bill consider existing bail practices that require cash payments and bonds as a condition of pre-trial release to be punitive against low-income citizens. The bill proposes to replace money bail with pretrial assessments of the risk of flight (not appearing for trial) and the risk of criminal conduct of an individual defendant while free on bail.

In a joint statement, Senators Harris and Rand stated, "Whether someone stays in jail or not is far too often determined by wealth or social connections, even though just a few days behind bars can cost people their job, home, custody of their children — or their life."

This issue of conditioning pre-trial freedom on a defendant's ability to pay raises constitutional questions which are being litigated in various jurisdictions based on the argument that the 14th Amendment's due process and equal protection clauses require that the amount of cash bail be set in accordance with a defendant's ability to pay.

The American Bar Association has stated, "Money-bail systems do not improve court appearance rates or public safety, and they substantially consume public resources. It is no surprise, therefore, that a wide range of criminal justice stakeholders and a growing number of States and local jurisdictions have joined the ABA in rejecting the use of money bail."

The bill before congress cites studies and findings that:

1. Money bail is ineffective in protecting public safety and that nearly 50% of defendants who were determined to be high-risk were allowed to return to the community with little or no oversight simply because they could afford to pay the amount set for bail.
2. For low-risk defendants, pretrial detention for even short periods of time makes it more likely the individuals will commit new crimes following release. Low-risk defendants held for as little as 3 days are 40 percent more likely to commit a crime during the pretrial period compared to comparable defendants released within 24 hours.
3. Compared to defendants released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates, and defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours.
4. Jailing arrested individuals before trial is the

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Juvenile Record

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The Erasure Process

You must petition the court for the erasure, and the court must grant the petition if the conditions specified by law are met. When the court grants the petition, the records are erased, and the conviction is deemed to have never occurred.

The required conditions are that:

- The applicant is at least age 18 and at least two years have elapsed since he or she was discharged (or four years if the child was convicted of a crime designated as a serious juvenile offense). The court can grant a petition to erase an applicant's record before the required two to four year period upon a showing of good cause;
- There is no juvenile proceeding or adult criminal proceeding pending against the applicant;
- The applicant has not been convicted of another delinquent act in the two or four year period that would constitute a felony or misdemeanor if committed by an adult; and
- The applicant has not been convicted as an adult of a felony or misdemeanor during that period.

These conditions do not apply if the applicant's criminal record results from being a victim of human trafficking or related federal crimes.

The petition cannot be filed prior to the applicant being discharged from court supervision or court-ordered custody.

Record Erasure

An erasure order results in the removal of all references to the criminal record from agency, official, and government records including arrest records, criminal complaints, referrals, petitions, reports and orders.

Contact Connecticut Legal Services at 860.344.0447 or <https://ctlegal.org> to inquire whether you qualify for their free legal services on this subject.



Pine Tree Legal Assistance is a non-profit organization that gives free legal help to low-income people with civil (non-criminal) legal problems in Maine.

Pine Tree operates a special Native American Unit from its Bangor, Maine office. This unit is staffed by attorneys and paralegals in offices located throughout Maine. We help clients with many civil legal issues related to their Native American status.

Pine Tree attorneys are not licensed to practice law in Connecticut. However, the Native American Unit may be able to provide information and help to low-income Native Americans in Connecticut with federal legal problems such as those related to the Indian Child Welfare Act and the Jay Treaty. Pine Tree can also refer cases to Connecticut attorneys. The Pine Tree Legal Native American Unit can be reached at (207) 400-3290.

The articles in this newsletter are meant to give information, NOT to give legal advice. No one should interpret any law without the help of an attorney who has been told all the facts of the legal issue.

Congress Considers Expanding Grants To Tribal Veterans Cemeteries

Since 2006, the Department Of Veterans Affairs (VA) has been authorized (through its Veterans Cemetery Grant Program) to award Veterans cemetery grants to tribal governments in the same manner that grants have been awarded to national, state and territories since 1978 to establish new veterans cemeteries and improve existing cemeteries. These grants are awarded to tribal, veterans cemeteries where tribal veterans with a qualifying discharge and who have completed a period of active duty service as required by law, may be buried along with their spouses and eligible dependent children. These grants cover burial needs and increases access to benefits earned through the military service of tribal members.

On November 6, 2017, the U.S. House of Representatives approved a bill (H.R.3657) amending title 38 of the United States Code to authorize the Department of Veterans Affairs to provide certain burial benefits to tribal veterans and their families buried in tribal cemeteries which had been previously available only to national, state and territorial veteran cemeteries.

The bill directs the Department of Veterans Affairs to provide headstones and markers for the unmarked graves of veterans and spouses who are interred in a tribally-owned veterans cemetery or on tribal land owned by or held in trust by a tribal organization.

The bill is sponsored by Representative Poliquin (R-ME) who attributes the Houlton Band of the Maliseet Indians in his Congressional District for raising this issue.

The bill now goes to the U.S. Senate for consideration to either take up House passed bill or to create equivalent legislation.

Schaghticoke Tribal Nation Lawsuit Against CT Proceeds After Prevailing Against State's Motion to Dismiss

In October, 2016, the Schaghticoke Tribal Nation filed a lawsuit against the state of Connecticut suing for more than \$600 million in compensation from mismanaged land use trust funds obtained by the state from selling and renting 2,000 acres of the tribe's reservation land in northwestern Connecticut between 1801 and 1918 without paying any compensation to the tribe. The Schaghticoke reservation was established in 1736 and originally included 2,400 acres. The state was required by law to hold in trust the proceeds from any land sales and to use them in the best interest of the tribe.

The state filed a motion to dismiss the lawsuit on the grounds that the state was protected from such lawsuits through governmental immunity and on the grounds that because there are rival factions claiming authority over tribal government, the faction that filed the lawsuit lacked the authority to sue on behalf of the tribe. The tribe disputes the allegation tribal governmental authority is disputed by two tribal factions. The state's motion to dismiss was denied in Superior Court in September thereby allowing the case to proceed. The court found that a claim for compensation could be brought individually by any member of the tribe or by a group within it.

The court clarified the effect of the ruling stating that, "To be clear, this decision doesn't say the Schaghticoke Tribal Nation is the lawful representative of the Schaghticoke Tribe". "It says the Schaghticoke Tribal Nation is a group composed of Schaghticoke Indians who could have brought this lawsuit on their own but chose to do it as a group."

Money Bail

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greatest expense generated by current pretrial justice practice.

5. Unnecessary detention is counterproductive and undermines an important aspect of money bail which is to produce the defendant at trial. Studies have shown that those who are detained pretrial for more than 24 hours and then release are less likely to appear in court than other defendants who are detained for less than 24 hours.

6. The Supreme Court of the United States has ruled that the due process and equal protection principles of the 14th Amendment prohibit "punishing a person for his poverty". The Court prohibited the incarceration of indigent probationers for non-willful failure to pay a fine because to "do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine." State and local justice systems that impose money bail that leads to pretrial defendants being detained because they cannot afford a money bail amount may result in "punishing a person" for his or her poverty.

7. Pretrial detention can lead to devastating effects, including threatening the employment, housing stability, child custody and access to healthcare of an individual. The U.S. Supreme Court has stated, "The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. It is especially unfortunate to impose them on those persons who are ultimately found to be innocent."

8. Nationwide, about 9 in 10 detained defendants had a money bail amount set but were unable to meet the financial conditions required to secure release.

9. The inability to post money bail may result in innocent individuals pleading guilty to low-level crimes so they can be released.

10. Money bail systems have resulted in disparate harms to poor people and communities of color.

11. Congress should encourage the replacement of the practice of money bail systems to provide for a more equal and effective criminal justice system for the people of the United States.

If this bill is approved by Congress and the President, it will hopefully result in Tribal Courts receiving the available grant money to use to reform the bail system so that money bail is ordered only when required to assure a defendant's future appearance in court and only when the defendant has the ability to pay the bail amount.

Fight Back Against Identity Theft

Identity theft can happen to anyone. Common types of identity theft include when someone has used your name to:

- Buy things
- Get credit cards
- Rent an apartment
- Set up utilities

It could also mean that someone has:

- Received medical care in your name
- Re-routed your tax refund
- Impersonated you during contact with law enforcement
- Written checks on your account (from stealing your checkbook or getting online access to your checking account)
- Used your ATM card or credit card without your permission

How can identity theft impact me?

Even if you are able to get purchases, charges, or checks cancelled, an identity theft can have other effects. You might:

- Get collection letters for things you didn't buy, or debts you don't owe
- Have bad entries on your credit report that make it harder for you to get credit, or that trigger higher interest rates

What can I do?

The Federal Trade Commission has sample letters in their booklet titled "Identity Theft - A Recovery Plan" that you can use to tell a debt collector or credit bureau about an identity theft. The booklet is available on line from the Federal Trade Commission website at <http://www.consumer.ftc.gov/features/feature-0014-identity-theft>.

You have to report the crime of identity theft to the police before you can use these letters. You do not need to know the name of the person who used your identity. Just show the police the debt collection letters or other proof that you are the victim of this crime.

1. Letter to Creditor

The Letter To Creditor form available at the FTC website tells a creditor that you did not authorize a charge. The charge may show up on your credit card statement, or it could be a charge on an account someone opened using your name. This letter is for a creditor that is collecting its own bill, not for a collection agency attempting to collect on behalf of the creditor.

2. Letter to Debt Collector

Use this letter to tell a company collecting a debt on behalf of a creditor that you didn't incur the debt they are trying to collect. Include with the letter a copy of the bill, the police report and proof of your identity.

3. Letter to Credit Bureau

Before starting this letter, you should request a free copy of your credit reports from www.annualcreditreport.com. Read them carefully. Mark the items on the report that came from someone stealing your identity.

This letter asks them to investigate the items that came from the identity theft, and to remove them from your report.

Mail the letter to the credit bureau. Also send a copy of your credit report with the incorrect items circled, a copy of the police report you made of the identity theft and proof of your identity.

LEGAL RESOURCES

CIVIL LEGAL MATTERS

Connecticut Legal Services:

- CLS is a non-profit organization that provides free legal assistance to eligible people with legal problems in Connecticut. Most of our legal services are available only for people with household income at or below 125% of the federal poverty level.
- Services include: family law, discrimination, public benefits, educational issues, housing matters, consumer issues and employment issues.

Contact: <https://ctlegal.org> 860.344.0447

Statewide Legal Services of Connecticut:

- Help with legal questions about family, public benefits, housing, unemployment and other problems.
- Provides free legal advice answers to questions and helps to understand your legal rights and responsibilities so you can make the right choices for you and your family.
- Some cases may be referred to other legal aid programs or a volunteer attorney.
- You must have very low household income for us to be able to help you.
- Your case must be in Connecticut.
- Cannot help with criminal or immigration problems.
- A non-profit organization with limited funding. Cannot help everyone who applies for help.

Contact: <https://slsct.org/> (800) 453-3320

New Haven Legal Assistance Association:

- Free legal services to lower-income people in the New Haven area.
- Services include: child protection, education law, family law, housing law (including fair housing), immigration, public benefits, disability rights and workers' rights.

Contact: <https://nhlegal.org> 203-946-4811

Greater Hartford Legal Aid:

- Provides free legal services to lower-income people in the Hartford area to:
- Help tenants avoid homelessness.
- Preserve options for decent and affordable housing.
- Enhance the safety of family violence victims.
- Increase opportunities for an adequate public school education.
- Maintain workers' employment & related income.
- Increase access to employment opportunities.
- Seek federal immigration protection for battered immigrants.
- Preserve government benefits and access to health care.

- Protect the health, safety and self-determination of seniors.

Contact: <https://www.ghla.org> 860-541-5000

CRIMINAL LEGAL MATTERS

Connecticut Public Defender Services:

The State Division of Public Defender Services provides counsel in accordance with both the United States and Connecticut Constitutions to any indigent person charged with the commission of a crime that carries a risk of incarceration. In addition, representation and guardian ad-litem services are afforded to indigent children and parents in child welfare, family, and child support matters, in accordance with the Connecticut General Statutes and by order of the Superior Court.

Contact: <http://www.ct.gov/ocpd> (860) 509-6400

SPECIALIZED LEGAL ASSISTANCE

Commission on Human Rights and Opportunities

The mission of the Connecticut Commission on Human Rights and Opportunities is to eliminate discrimination through civil and human rights law enforcement and to establish equal opportunity and justice for all persons within the state through advocacy and education.

Contact: www.ct.gov/chro/site/default.asp (860) 541-3400

Disability Rights Connecticut

The mission is to advance the cause of equal rights for persons with disabilities and their families by:

- Increasing the ability of individuals, groups and systems to safeguard rights.
- Exposing instances and patterns of discrimination and abuse;
- Seeking individual and systemic remediation when rights are violated;
- Increasing public awareness of unjust situations and of means to address them.
- Empowering people with disabilities and their families to advocate effectively.

Contact: www.disrightsct.org 860-297-4300

Connecticut Pardon Team

Offers many informational and education processes designed to help you file your own Connecticut Full Pardon or a Certificate of Employability (Provisional Pardon).

Contact: www.connecticutpardonteam.org/pardon-services/ 860-823-1571