



## Legislative Testimony

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### **Testimony Regarding Connecticut's Bail System and Diversionary Programs**

Distinguished members of the Sentencing Commission. My name is David McGuire, and I am the Interim Executive Director at the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony regarding Connecticut's bail system and diversionary programs.

As a defender of equal justice under the law, the ACLU of Connecticut encourages recommendations from the Commission that would make our bail system more equitable. Many people believe our bail system penalizes people for being poor. Bail should be based on a person's flight risk or danger to society, not on the money in his or her pocket. Right now, approximately 235 people are being held pretrial on bonds of \$5,000 or less. Many of these people are accused of minor, non-violent crimes, including drug possession; they have not been convicted of a crime, they are supposed to be treated as innocent until proven guilty, and yet they remain in jail because they lack the resources to pay their way free. This flies in the face of our Constitution's promises of equal protection, due process, and freedom from excessive bail. In reality, any bail amount is excessive to someone without the means to pay it, and a bail system that penalizes people for being poor is the modern equivalent of a debtor's prison.

Our Constitution promises equal treatment under the law, but Connecticut's bail system is staggeringly unequal. Connecticut's current, bail system is fueled by and exacerbates unconscionable racial inequities. Emerging data shows that people stuck in Connecticut corrections facilities because they cannot pay bail are disproportionately minorities, and that courts set higher bail amounts for minorities than for their white peers charged with the same crimes. These unfair outcomes are compounded by many judicial assessments which are not truly individualized because Connecticut judges do not have to take a defendant's ability to pay into consideration when setting monetary bail. These inequities leave the state vulnerable to legal challenges.

Although modernizing our bail system will not solve the disturbing disparities in our justice system, it would offer one important step toward their remediation. Spending even one day in jail can endanger someone's job, housing, and family connections, even if that person is

innocent. The current bail system compounds the challenges and hardships many Connecticut residents face every day when they are already economically disadvantaged.

Regarding pretrial diversion programs, as an organization committed to freedom, justice, and equality, the ACLU of Connecticut seeks to defend and promote civil liberties for all people, including people struggling with substance abuse, people living with mental illness, and people who are homeless. Far too often, however, our justice system treats people from each of these populations as criminals to be punished rather than individuals who need community support.

We therefore endorse the concept of diverting our neighbors who are grappling with addiction, living with mental health conditions, or struggling to find housing away from the justice system. In addition to upholding our Constitution's civil liberties promises, pretrial diversion programs are more compassionate, cost-effective, and better at reducing recidivism than criminalizing addiction, illness, or poverty. Similarly, we support providing a second chance at a blank slate for people who are caught up in the criminal justice system. According to public health experts and studies from throughout the country, the most effective pretrial diversion programs are those that are person-centered, culturally-appropriate, address a complete continuum of services, and focus on case-management techniques.

We oppose, however, pretrial diversion efforts that would allow judges, prosecutors, or other government officials to make top-down treatment decisions for people struggling with addiction or living with mental illness, or to force people into housing. By creating a "treatment or prison" or "shelter or prison" ultimatum, these systems could coerce someone into medical care or housing, even if a program or shelter is not safe, appropriate, or culturally prepared to meet their needs. Individuals have a civil liberty right to make their own healthcare and housing decisions, and pretrial diversion programs that sentence people to treatment or housing can violate that right.

Furthermore, we would have serious concerns if the state adopted pretrial diversion programs that predicate individuals' access to treatment or elimination of arrest records on their admissions of guilt to crimes. In a similar vein, placing an individual in jail if he or she "fails" a drug treatment program after a drug court referral, decides not to take a medication for treatment of a mental illness, or declines state-mandated housing would reflect an archaic misunderstanding of addiction, mental health, and homelessness. This approach would be unjust and unrealistic.

Recent studies have also raised serious doubts regarding one such top-down approach to pretrial diversion. According to drug policy experts, drug courts' mixtures of punishment and rehabilitation can create a barrier, not an entry point, toward meaningful treatment. According to the Drug Policy Alliance, a national expert, drug courts may not reduce recidivism, incarceration rates, public costs, or drug use. The Alliance also found that drug courts have particularly failed minority communities, in large part due to lack of culturally competent programming. In addition, drug courts may not help the very people who need addiction

treatment most. A National Drug Court Institute study found that nearly half of drug courts nationwide exclude people with histories of treatment for drug use, and nearly 7 in 10 exclude people who have histories of struggling with both mental health and drug use.

Solving Connecticut's drug abuse crisis and homelessness, and respecting the dignity of people living with mental illness, requires a coordinated and comprehensive effort from healthcare providers, law enforcement, social service agencies, and more. The justice system can and should play a role in these fights, but we should make absolutely sure that solutions will reduce, not increase, the harm that the criminalization of poverty, mental illness, and addiction have already inflicted on our communities.

Thank you for your attention and work on these important issues.