

2017

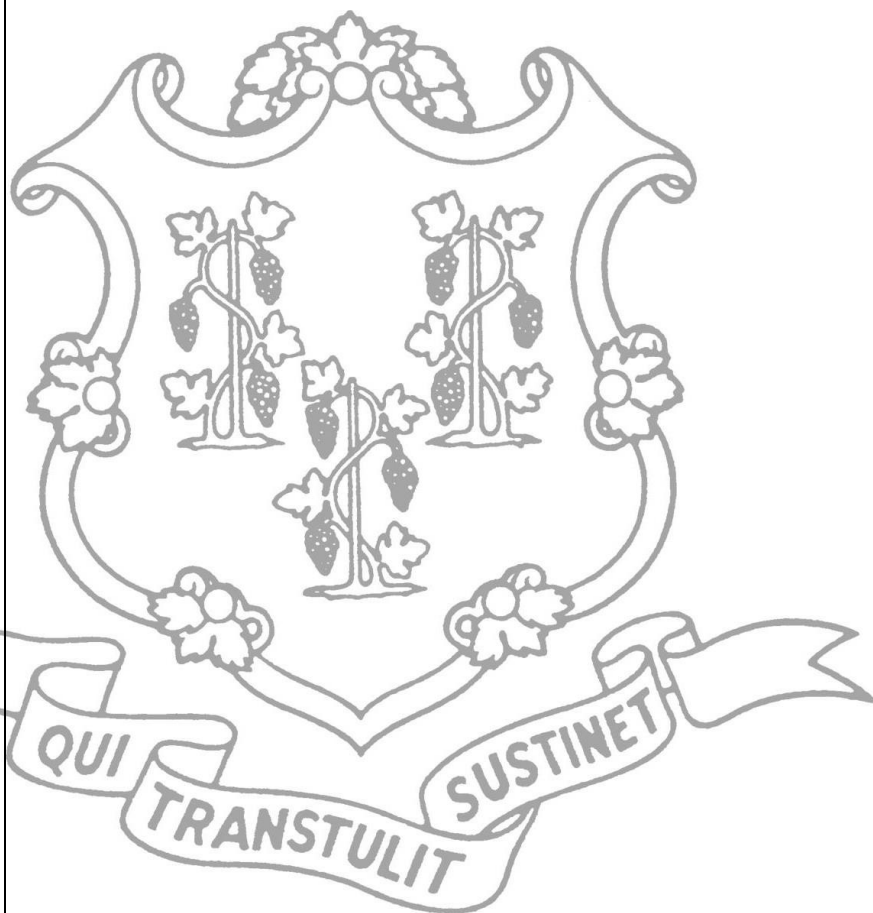


ANNUAL REPORT

CONNECTICUT SENTENCING COMMISSION

Annual Report 2017

Connecticut Sentencing Commission



Report to the Governor,
Speaker of the House of Representatives,
President of the Senate,
and Chief Justice of the Supreme Court,
pursuant to Conn. Gen. Stat. § 54-300(p)

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Executive Director

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Acknowledgements

In 2017, the Connecticut Sentencing Commission commemorated its seventh year of work. The Commission was established by PA 10-129, codified at CGS § 54-300, and became effective on February 1, 2011. From August 2016 until April 2017, the Commission was chaired by John Santa, the Commission's vice-chair. In April 2017, Chief Justice Chase Rogers appointed Judge Robert Devlin as the chair of the Commission.

While the Commission received assistance in its work from sources too numerous to mention, we recognize in particular the dedication of the Steering Committee, subcommittees, and working group members. Their consistent commitment and exceptional public service promote the success of the Sentencing Commission and its accomplishments. The Commission and its staff thank all the chairs of the committees, subcommittees, and working groups. Their tireless contributions and support are invaluable to the Sentencing Commission's work.

We also especially thank John Santa and Judge Devlin for their leadership. John Santa filled the position of acting chair of the Commission during then-chair Justice David Borden's absence and after his passing. Commissioner Santa's passion for improving the criminal justice system and his private sector background and experience have greatly contributed to the Commission's work. Judge Devlin graciously agreed to chair the Commission despite his numerous and demanding Judicial Branch responsibilities. Under Judge Devlin's leadership, with his years of experience on the bench and a tremendous talent for understanding and managing complex criminal justice matters, the Commission is poised to tackle difficult issues such as the comprehensive reforms of the bail system and the sex offender registry.

Finally, the Connecticut Sentencing Commission takes this opportunity to extend its sincere appreciation to state agencies and other organizations for the support they have provided to the Commission. The Commission's partnerships with the National Institute of Corrections, the Pretrial Justice Institute, and the National Center for State Courts, among others, have been productive. Through collaboration with all branches of government, the Sentencing Commission considers input from all criminal justice system stakeholders in its efforts to advance best practices to improve the quality of public policy in the State of Connecticut.

Commission Members

Robert J. Devlin, Jr.**Chair**

Chief Administrative Judge for Criminal Matters

Appointed by: Chief Justice of the Supreme Court

John Santa

Vice Chairman

Malta Justice Initiative

Appointed by: Minority Leader of the Senate

Michael Lawlor

Undersecretary, Office of Policy and Management

Criminal Justice Policy and Planning Division

Ex officio: Undersecretary for Criminal

Justice Policy and Planning Division

Patrick L. Carroll, III

Chief Court Administrator

Appointed by: Chief Justice of the Supreme Court

Gary White

Administrative Judge

J.D. and GA. 1 Courthouse

Appointed by: Chief Justice of the Supreme Court

Stephen Grant (Retired March 2017)

Executive Director

Court Support Services Division

Appointed by: Chief Justice of the Supreme Court

Gary Roberge

Executive Director

Court Support Services Division

Appointed by: Chief Justice of the Supreme Court

Sarah Russell

Professor of Law

Quinnipiac University

Appointed by: Governor

Vivien K. Blackford

Phoenix Association

Appointed by: President Pro Tempore of the Senate

William R. Dyson

William A. O'Neil Endowed Chair

Central Connecticut State University

Appointed by: Speaker of the House of Representatives

Maureen Price-Boreland

Executive Director

Community Partners in Action (CPA)

Appointed by: Majority Leader of the House of Representatives

Thomas Kulhawik

Chief of Police

Norwalk Police Department

Appointed by: Majority Leader of the Senate

Robert Farr

Attorney (Retired)

Appointed by: Minority Leader of the House of Representatives

Thomas J. Ullmann

Public Defender (Retired)

Judicial District of New Haven

Appointed by: President of the Connecticut Criminal Defense Lawyers Association

David Shepack

State's Attorney

Judicial District of Litchfield

Appointed by: Chief State's Attorney; Qualification: State's Attorney

Mark A. Palmer

Chief of Police

Coventry Police Department

Appointed by: President of the CT Police Chiefs Association

Kevin Kane

Chief State's Attorney

Ex officio: Chief State's Attorney

Susan O. Storey (Retired September 2017)

Chief Public Defender

Ex officio: Chief Public Defender

Christine Rapillo

Chief Public Defender

Ex officio: Chief Public Defender

Miriam Delphin-Rittmon, Ph.D.

Commissioner

Department of Mental Health and Addiction Services

Ex officio: Commissioner of the Department of Mental Health and Addiction Services

Dora B. Schriro

Commissioner

Department of Emergency Services & Public Protection

Ex officio: Commissioner of Emergency Services & Public Protection

Scott Semple

Commissioner

Department of Correction

Ex officio: Commissioner of the Department of Correction

Natasha Pierre

State Victim Advocate

Ex officio: State Victim Advocate

Carleton Giles

Chair

Board of Pardons and Paroles

Ex officio: Chair of the Board of Pardons and Paroles

Committee & Work Group Members

Steering Committee

Name	Affiliation
Robert J. Devlin, Jr., <i>Chair</i>	Chief Administrative Judge for Criminal Matters
Michael Lawlor	Office of Policy & Management
Maureen Price-Boreland	Community Partners in Action
Kevin Kane	Office of the Chief State's Attorney
John Santa	Malta Justice Initiative
Vivien Blackford	Phoenix Association
Patrick Carroll	Chief Administrative Judge
Thomas Ullmann	Division of Public Defender Services

Pretrial Release and Detention Advisory Group

Name	Affiliation
Theresa Dalton	Division of Public Defender Services
Robert J. Devlin, Jr., <i>Chair</i>	Chief Administrative Judge for Criminal Matters
Thomas Kulhawik	Norwalk Police Department
Karl Lewis	Department of Correction
Natasha Pierre	Office of the Victim Advocate
Gary Roberge	Judicial Branch Court Support Services Division
Sarah Russell	Quinnipiac University School of Law
John Santa	Malta Justice Initiative
David Shepack	Litchfield State's Attorney's Office
Bryan Sperry	Judicial Branch Court Support Services Division
Alex Tsarkov	Connecticut Sentencing Commission

Special Committee on Sex Offenders

Name	Affiliation
Brian Austin	Office of the Chief State's Attorney
Vivien Blackford	Phoenix Association
Linda J. Cimino	Office of Victim Services
Laura Cordes	Connecticut Alliance to End Sexual Violence
David D'Amora	Council of State Governments
Robert Devlin	Chief Administrative Judge for Criminal Matters
Robert Farr, <i>Co-chair</i>	Board of Pardons and Paroles (<i>Retired</i>)
Stephen Grant, <i>Co-chair</i>	Judicial Branch Court Support Services Division
Karen Martucci	Department of Correction
David McGuire	American Civil Liberties Union
Mark Palmer	Coventry Police Department
Natasha Pierre	Office of the Victim Advocate
David Rentler	Board of Pardons and Paroles
Lisa Tepper Bates	Connecticut Coalition to End Homelessness
Thomas Ullmann	Division of Public Defender Services
Antoinette Webster	Department of Emergency Services and Public Protection

Subcommittee on Sex Offender Sentencing

(Reports to Special Committee on Sex Offenders)

Name	Affiliation
Brian Austin, <i>Co-chair</i>	Office of the Chief State's Attorney
Laura Cordes	Connecticut Alliance to End Sexual Violence
Robert Devlin	Chief Administrative Judge for Criminal Matters
Amy Eppler-Epstein	New Haven Legal Assistance Association
Deborah Fuller	Judicial Branch Court Support Services Division
Lee-Ann Gomes	City of Norwich
Karen Martucci	Department of Correction
Erin Miller	CT Fair Justice
Sarah Russell	Quinnipiac University School of Law
John Smriga	Fairfield State's Attorney's Office
Deborah Del Prete Sullivan	Division of Public Defender Services
Thomas Ullmann, <i>Co-chair</i>	Division of Public Defender Services

Subcommittee on Sex Offender Assessment and Management

(Reports to Special Committee on Sex Offenders)

Name	Affiliation
Vivien Blackford	Phoenix Association
Laura Cordes	Connecticut Alliance to End Sexual Violence
Alison Cunningham	Columbus House
David D'Amora	Council of State Governments
Eric Ellison	Department of Correction
Matthew Garcia	Connecticut State Police
Catherine Heffernan	Division of Public Defender Services
Natasha Pierre	Office of the Victim Advocate
David Rentler, <i>Co-chair</i>	Board of Pardons and Paroles
Gary Roberge, <i>Co-chair</i>	Judicial Branch Court Support Services Division
Robert Santoemma	Judicial Branch Court Support Services Division
Lisa Tepper Bates	Connecticut Coalition to End Homelessness

Subcommittee on Community and Victim Needs

(Reports to Special Committee on Sex Offenders)

Name	Affiliation
Thomas Canny	Judicial Branch Court Support Services Division
Linda J. Cimino	Office of Victim Services
Laura Cordes, <i>Co-chair</i>	Connecticut Alliance to End Sexual Violence
Matthew Garcia, <i>Co-chair</i>	Connecticut State Police
Stephen Grant	Judicial Branch Court Support Services Division
Gail Hardy	Hartford State's Attorney's Office
Karen Jarmoc	Connecticut Coalition Against Domestic Violence
David McGuire	American Civil Liberties Union
Frank Mirto	Department of Correction
Mark Palmer	Coventry Police Department
Robert Santoemma	Judicial Branch Court Support Services Division
David Snyder	Department of Correction
Richard Sparaco	Board of Pardons and Paroles
Thomas Ullmann	Division of Public Defender Services
Antoinette Webster	Department of Emergency Services and Public Protection

Advisory Committee on the Collateral Consequences of Criminal Conviction

Name	Affiliation
Brian Austin	Office of the Chief State's Attorney
Deborah Del Prete Sullivan	Division of Public Defender Services
Robert Devlin	Chief Administrative Judge for Criminal Matters
Maureen Price-Boreland, <i>Vice-Chair</i>	Community Partners in Action
Christine Rapillo	Chief Public Defender
Gary Roberge, (or designee, Michael Hines)	Judicial Branch Court Support Services Division
Sarah Russell	Quinnipiac University School of Law
John Santa, <i>Chair</i>	Malta Justice Initiative

Reorganization of Statutes Concerning Illegal Sale of Drugs Work Group

Name	Affiliation
Brian Austin	Office of the Chief State's Attorney
Deborah Del Prete Sullivan	Division of Public Defender Services
Robert Devlin	Chief Administrative Judge for Criminal Matters
Robert Farr	Board of Pardons and Paroles (Retired)
Richard Taff	Chief Attorney (Retired), Legislative Commissioners' Office

Commission Staff

Alex Tsarkov
Executive Director

Andrew Clark
Commission Advisor

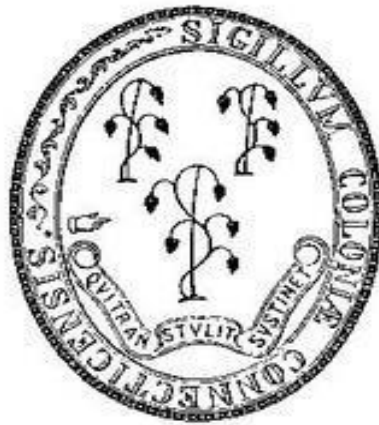
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Research Consultant

Gus Marks-Hamilton
Intern

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Student worker

Samantha Oden
Intern



I. Executive Summary

In another year marked by increased growth and activity, the Commission's accomplishments in 2017 were significant.

After accepting Governor Dannel Malloy's request to evaluate Connecticut's current bail bond system, the Commission partnered with the National Institute of Corrections (NIC), a federal agency within the U.S. Department of Justice, and solicited the expertise of academics and practitioners both statewide and nationally. It completed its initial report in February 2017 and proposed legislation on pretrial justice reform. The Commission's proposal on bail was combined by the Judiciary Committee with a proposal from Governor Malloy, which led to the passage of HB 7044, *An Act Concerning Pretrial Justice Reform* (PA 17-145).

The Commission continues to examine the state's bail practices to maximizing the release of bailable defendants, public safety and court appearance. Partnering with the National Center for State Courts and the Pretrial Justice Institute, a delegation of Commission members traveled to New Jersey to learn about their move away from the money-based bail system. The Commission also hosted a symposium on pretrial release and detention at the University of

Connecticut School of Law.

The Commission proposed two other bills in the 2017 legislative session both of which were passed and signed into law. *An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Victim Notification* (PA 17-17) requires the court to provide more information to crime victims about sentencing and proposed plea bargains. *An Act Implementing The Recommendations Of The Connecticut Sentencing Commission Concerning A Technical Reorganization Of Statutes Involving The Illegal Sale Of Controlled Substances* (PA 17-217) makes technical and clarifying changes by restructuring the statutes on illegal drug sales.

The Commission completed its two-year study on the registration, management, and sentencing of sex offenders in Connecticut as required by Special Act 15-2. In a major proposal, the Commission is advocating that the legislature enact reforms to the sex offender registry to change it from a charge-based to a risk-based system.

This annual report provides details on the Commission's activities, efforts, and achievements over the past year. It describes the status of ongoing studies and projects, including legislative proposals for the 2018 session of the Connecticut General Assembly.

II. Mission and Membership

The Connecticut Sentencing Commission was established on February 1, 2011 by Public Act 10-129. Its mission, as stated in the statute, is to “review the existing criminal sentencing structure in the state and any proposed changes thereto, including existing statutes, proposed criminal justice legislation and existing and proposed sentencing policies and practices and make recommendations to the Governor, the General Assembly and appropriate criminal justice agencies” (see Appendix A for the text of the public act, codified at CGS § 54-300).

The Commission works at the state level to create policy changes that will improve Connecticut's criminal justice system. The Commission draws upon its members' expertise and experience and works closely with elected officials and state agency leaders to ensure comprehensive policies that enhance public safety, hold the offender accountable, and ultimately reduce criminal activity overall.

During each session of the Connecticut General Assembly, the Commission takes an active role in drafting legislation, organizing testimony, and educating the general public on its proposals. After the public has been informed and had an opportunity to provide feedback, Connecticut law requires that the Commission submit its recommendations to the Joint Committee on Judiciary.

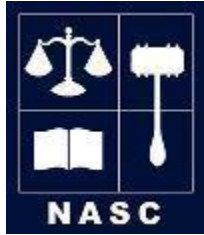
The Consensus Process

The Commission utilizes a consensus decision-making process when considering new proposals. The Commission strives for consensus on all recommendations.

The Commission consists of 23 voting members, including judges, prosecutors, criminal defense counsel, the commissioners of the departments of Correction, Emergency Services and Public Protection, and Mental Health and Addiction Services, the victim advocate, the executive director of the Court Support Services Division of the Judicial Branch, a municipal police chief, the chairperson of the Board of Pardons and Paroles, the undersecretary of the Criminal Justice Policy and Planning Division of the Office of Policy and Management and members of the public appointed by the Governor and the leaders of the General Assembly.

In 2017, Chief Justice Chase Rogers appointed Judge Robert J. Devlin, Jr. as chair of the Sentencing Commission, replacing John Santa who had been serving as interim chair. Due to retirements, ex-officio commission members Susan O. Storey, the Chief Public Defender, and Stephen Grant, Executive Director of the Judicial Branch's Court Support Services Division, were replaced on the commission by Christine Rapillo and Gary Roberge, respectively.

III. National Overview



NATIONAL ASSOCIATION OF SENTENCING COMMISSIONS (NASC)

NASC

The National Association of Sentencing Commissions (“NASC”) is a non-profit organization whose mission is “to facilitate the exchange and sharing of information, ideas, data, expertise, and experiences and to educate individuals on issues related to sentencing policies, guidelines,

and commissions.

NASC does not endorse any single sentencing structure but rather supports the development of rational and effective sentencing policy, which can be achieved in various forms. NASC membership includes states with or without sentencing guidelines, states with presumptive or voluntary guidelines, and states with determinate or indeterminate sentencing practices. It is not the structure of the sentencing system but rather the goals of that system that are important to the development of good sentencing policy

NASC concentrates on providing its membership with the tools to develop a sentencing system that reflects the priorities and values of individual states. By sharing research findings on topics associated with sentencing policy, such as the use of intermediate punishment options, the effectiveness of substance abuse treatment, and recidivism rates, states are able to incorporate these findings into the development of a sentencing system that appropriately addresses specific areas of concern or need.

In addition, NASC provides a forum to exchange experiences among the states regarding both successes and failures in sentencing reform. Seldom does a state face a problem that has not been dealt with in some fashion or form by another state. Sharing information and learning from one another has been the primary focus of NASC activities since its inception. Additional information about NASC is available at <http://www.thenasc.org/aboutnasc.html>.

Connecticut Sentencing Commission’s executive director, Alex Tsarkov, has been appointed to the NASC Executive Committee for a term that expires in 2020. In that role, Mr. Tsarkov provides direction and input for the national commission’s activities and conference program offerings.

2017 Annual Conference

The National Association of Sentencing Commissions' annual conference was hosted by the New Mexico Sentencing Commission in Santa Fe, August 27-29, 2017. The conference, *In Search of Effective Sentencing and Criminal Justice Policies*, featured presentations on promising innovations, research, and policy development designed to deliver effective sentencing and criminal justice policies.

Alex Tsarkov, the Connecticut Sentencing Commission's executive director, attended the conference and participated as a panelist in the session "Trending Now: Pretrial Services and Bail Reform," along with presenters Justice Daniels from the New Mexico Supreme Court and Judge Kenneth Spanagel from Ohio. Sara Andres, director of the Ohio Criminal Sentencing Commission, moderated the panel.

Conference Highlights

The two-day conference brought together a diverse group of criminal justice professionals, researchers, and academics from across the country. The conference consisted of a keynote and six plenary sessions, and four breakout sessions. Below is a list of the topics addressed during the conference.

Keynote and Plenary Sessions

- Reviving the War on Drugs?
- Using Data Analytics to Improve Ohio's Public Safety and Criminal Justice Outcomes
- Data Innovations in the States
- Updates on Major Policy Issues Facing Member Jurisdictions and Sentencing Commissions
- The Model Penal Code for Sentencing: A Users' Guide
- Effective Sanctions
- The Promise and Perils of Using Risk Assessment at Sentencing

Breakout Sessions

- DC Voluntary Guidelines Ten-Year Evaluation
- Criminal Justice Reform in Alaska
- Trending Now: Pretrial Services and Bail Reform
- How Sentencing Commissions Partner with the Community to Research and Evaluate Sentencing and Criminal Justice Policies

IV. Activities of the Commission



Photo credit to Michelle Lee

In 2017, the Sentencing Commission focused its work on the following issues:

- Enactment of legislation pursuant to its study of pretrial release and detention and implementation of its other recommendations including sponsorship of a symposium on October 19 at the University of Connecticut School of Law and a delegation site visit to New Jersey on October 16 and 17 to learn about their newly implemented pretrial justice reforms. An Advisory Group on this issue continues to meet in an effort to improve the state's pretrial justice.
- Completion of its two-year study of the registration, management, and sentencing of sex offenders and approval of its final report and recommendations on December 19 ([A Study of the Sex Offender Sentencing, Registration, and Management System](#)). (See Appendix B for a summary.)
- Formation on September 14 of the Advisory Committee on Collateral Consequences of Criminal Conviction to study the impact of convictions related to issues such as licensure laws and housing that can affect rehabilitation and public safety.
- Draft and passage of a proposed technical revision to reorganize and clarify statutes concerning the illegal sale of drugs ([PA 17-17](#)).
- Final passage of its 2016 proposal on victim notification ([PA 17-217](#)) and further study of the impact of expanded disclosure of information on juvenile sex offenders as proposed and requested by Senator McLachlan ([SB 1040](#)).

Commission Meetings

By law, the Commission must meet at least four times a year. In 2017, the Commission held five regular meetings on February 2, April 12, June 8, September 14, and December 14.

In addition,

- the Steering Committee met six times;
- the Pretrial Release and Detention Advisory Group met twice;
- the Advisory Committee on Collateral Consequences of Criminal Conviction met four times; and
- the Special Committee on Sex Offenders and its three subcommittees and work groups met a total of 24 times.

Presentations

On [April 12, 2017](#), Jessica Bullard of the Board of Pardons and Paroles presented to the Commission on the implementation and progress of PA 15-84 ([Implementation of PA 15-84, An Act Concerning Lengthy Sentences for Crimes Committed by a Child or Youth](#)).

PA 15-84 made a number of changes related to sentencing and parole release of offenders who were under age 18 when they committed crimes. The legislation amended Connecticut statutes to comply with U.S. Supreme Court rulings. The act also required the Sentencing Commission to study how to notify victims of the parole eligibility laws and release mechanisms available to people sentenced to more than two years in prison.

In *Graham v. Florida*, the U.S. Supreme Court ruled that the Eighth Amendment's prohibition against cruel and unusual punishment prohibits states from sentencing defendants under age 18 to life without parole for non-homicide crimes (130 S.Ct. 2011 (2010)). In *Miller v. Alabama*, the Court held that the Eighth Amendment prohibits courts from automatically imposing life without parole sentences on offenders who committed homicides while they were juveniles (under 18). (132 S. Ct. 2455 (2012)).

On [May 25](#), Ivan Kuzyk of the Office of Policy and Management's Criminal Justice Division gave a presentation on sex offenders' recidivism ([Notes on OPM's 2017 Sex Offenders Recidivism Study](#)).

On [June 8](#), Attorney Sarah Russell gave a presentation to the Commission on *Maranda Lynn O'Donnell v. Harris County, Texas*, a federal district court case filed as a class action suit by plaintiffs claiming that the bail system violated the Equal Protection and Due Process clauses of the Constitution (4:16-CV001414, U.S. District Ct. TX).

And on [June 29](#), Dr. Robin Wilson presented on his findings of the management and treatment models of sex offenders in Connecticut. This study was part of the Commission's comprehensive review of policies and practices in the state, specifically focused on ensuring evidence-based assessment and treatment services and the promotion of best practices.

Public Hearings

In 2017, the Commission held two public hearings. On Wednesday, January 25, 2017, the Commission held a public hearing as part of its sex offender registration study evaluating: (1) existing state sentencing laws for sex offenses; (2) current and best practices regarding the management of convicted sex offenders and the sex offender registry; (3) victims needs throughout sentencing and management of offenders; (4) the consequences of policies and management practices on ex-offenders.

The Commission and its committees solicited testimony on the criminal justice system's current capacity to reduce offender recidivism; provide for offender rehabilitation (if appropriate); and provide accurate, timely, and pertinent information to members of the public and law enforcement regarding offender risk to victim and community safety. This public hearing was open to subject matter experts wishing to comment on emerging research, best practices and innovative approaches for consideration. The public hearing broadcast is at [CT-N](#).

On Monday, December 11th, 2017, the Connecticut Sentencing Commission held a public hearing on several of its potential legislative proposals:

1. Reform of the Sex Offender Registry and other recommendations of the Special Committee on Sex Offenders.
2. Proposed Constitutional Amendment on Pretrial Release and Detention that would (a) permit denial of release for high-risk defendants and (b) deny detention of defendants for lack of funds to buy a bail bond.
3. Four proposals from the Sentencing Commission's Advisory Group on Collateral Consequences of Criminal Conviction.

Click [here](#) to read testimony.

Click [here](#) to see the public hearing.

Click [here](#) for additional information.

Advisory Committees and Work Groups

Steering Committee

The Steering Committee is established in the Commission's bylaws (Article VI, Section 6.1) to supervise the Commission's affairs between its regular meetings. Eight members of the Commission serve on the Steering Committee. Generally, it supervises the Commission's budget and administration, sets the schedule and agenda, oversees projects and subcommittee research activities, and approves recommendations and legislation for the entire Commission to consider.

The Steering Committee met six times in 2017. It reviewed the pretrial release and detention report and approved its submission to the full Commission. It did the same for the sex offender registry study and report.

The Steering Committee initiated the suggestion to make technical revisions to drug statutes and asked Attorney Rick Taff to develop a draft. Steering Committee members followed the Commission's legislative proposals and other bills affecting the Commission and made plans for Commission-sponsored hearings, the symposium on pretrial justice and the site visit to New Jersey to observe that state's changes to its bail system.

Pretrial Release and Detention

In 2017, the Commission completed its initial report on pretrial release and detention, voted to approve the final report and recommendations, submitted its recommendations for legislation to the General Assembly, testified on its bill ([HB 7287](#)) and on Governor Malloy's proposals, and sponsored a symposium on the subject to further study pretrial reform and legal challenges going forward. The General Assembly passed the governor's bill, An Act Concerning Pretrial Justice Reform (HB 7044, [PA 17-145](#)), which was based on the study and incorporated most of the Commission's recommendations.

Pursuant to Governor Malloy's November 2015 request, the Commission had established a Pretrial

Release and Detention Advisory Group to oversee the development of its study scope, research, and analysis for the bail bond system evaluation. On February 2, 2017, the Commission approved and adopted the [Pretrial Release and Detention in Connecticut](#) report for submission to the governor and the General Assembly (Appendix B). In addition, on February 8, 2017, the Judiciary Committee voted to raise a bill, An Act Concerning Recommendations of the Connecticut Sentencing Commission with Respect to Pretrial Release and Detention. The governor's bill (HB 7044) was also referred to the Judiciary Committee and became the vehicle for the reform legislation that passed.

On October 16-17, 2017, 11 members of the Commission made a site visit to the New Jersey Administrative Office of the Courts in Trenton to discuss and observe operation of that state's criminal justice reform statute and pretrial detention proceedings. They met with officials from the pretrial services office, the offices of the attorney general and the public defender as well as court administrators and judges. In addition to these interviews, they observed pretrial detention motions and decisions in the courtroom.

On October 19, 2017, the Commission sponsored a symposium on the topic: "Pretrial Justice: Legal and Evidence-Based Practices." Sessions included a keynote address by New Mexico Supreme Court Justice Charles Daniels and presentations on (1) the Consequences of Pretrial Incarceration, (2) Prosecutor and Public Defender Perspectives on Pretrial Reform; (3) Legal Challenges to Pretrial Practices across the Nation, and (4) Lessons for the Path Ahead. View the [Symposium Agenda](#).

Attendance at the symposium (120) included judges, practitioners, other state officials, law school students and faculty. It was funded in part by grants from the State Justice Institute Pretrial Justice and the State Courts Initiative.

A pretrial release and detention advisory committee met three times to oversee the staff's research and analysis, consider data presentations, and develop recommendations. It continues to discuss and analyze reform proposals that include a constitutional amendment and implementing legislation that would (1) permit the denial of release for high-risk defendants and (2) deny detention of defendants for lack of funds to secure a bail bond.

Sex Offender Registry

Special Act 15-2 (Appendix C) required the Commission to take a comprehensive look at the registration, management, and sentencing of sex offenders in Connecticut and submit reports to the General Assembly on February 1, 2016 and December 15, 2017.

In response, the Commission formed the Special Committee on Sex Offenders to assist with the study, develop recommendations, and report its findings to the Commission. The Special Committee is comprised of 16 individuals with a broad base of knowledge of and experience with sex offender laws and defendants in Connecticut. The executive director of the Judicial Branch's Court Support Services Division and the former chair of the Board of Pardons and Paroles serve as committee co-chairs.

In 2017, the Special Committee on Sex Offenders held five special committee meetings. Its subcommittees met as follows: (1) Assessment and Management—six times, (2) Community and Victim Needs—six times (and work groups for this subcommittee met twice), and (3) Sentencing—three times. The full Commission scheduled a subject matter public hearing for January 25, 2017.

On November 3, 2017, the Special Committee on Sex Offenders approved and forwarded its report and recommendations to the entire Commission.

The final report was approved by the Sentencing Commission on December 14 (see Appendix D for a summary and recommendations) and its legislative recommendations will be submitted to the General Assembly's 2018 session.

Collateral Consequences of Criminal Conviction

This working group began meeting in July 2017 to study the impact of a conviction related to issues such as licensure laws and housing that can affect rehabilitation and public safety. The full Commission approved the advisory committee on September 14, 2017. It has considered four issues:

1. the maximum sentence for misdemeanor convictions (at the request of Representative William Tong, co-chair of the legislature's Judiciary Committee, as it relates to immigrant status);
2. the Adoption and Safe Families Act (in particular, amendments to the state's child welfare law to address the safety and best interests of children with incarcerated parents);
3. the erasure of criminal records; and
4. family impact statements in court proceedings prior to sentencing.

The Commission approved submitting a misdemeanor sentencing proposal to the Judiciary Committee for the 2018 session and a child welfare proposal (see "2018 Legislative Session Proposed Commission Bills" below).

Evidence-Based Sentencing

To conduct this non-funded study, the Commission issued an Invitation for Proposals on October 5, 2015, with a due date of December 4, 2015. On January 12, 2016, the Research, Measurement, and Evaluation Committee considered the findings of the proposal review committee and voted to forward its recommendation to the Steering Committee. On March 10, the full Commission voted to adopt Resolution 2016-01 that approved the University of Maryland's proposal to study an evidence-based assessment of sentencing practices in Connecticut. The Maryland researchers in the Department of Criminology and Criminal Justice are evaluating the potential impact of needs- and risk-based sentencing.

Their draft report for this study is expected in late January 2018.

Certificates of Employability Program Evaluation

On October 1, 2014, the Board of Pardons and Paroles (BOPP) and JB-CSSD were authorized to award certificates of employability to eligible individuals. Pursuant to the same act that authorized the program, the Commission is required to collect and disseminate data on the program and conduct a four-year longitudinal evaluation of its effectiveness. The act also required the Commission to submit three annual reports due in January 2016, 2017, and 2018.

respectively. The first report, presented to the Commission and approved at its June 9, 2016 regular meeting provided an overview of JB-CSSD and BOPP policies and program implementation and a data-driven description of the applicants and certificate holders. The report contained the Commission staff's findings and recommendations based on the program's first year.

The 2017 preliminary report for this project was completed in July 2017. Combined with the third year's data and analysis, the study's final report with recommendations is expected in 2018.

Reorganization of Statutes Concerning Illegal Sale of Drugs WorkGroup

An *ad hoc* working group met to develop and recommend enactment of a technical recodification of state statutes dealing with the illegal sale of drugs. At a November 22, 2016 meeting, Attorney Rick Taff, formerly of the General Assembly's Legislative Commissioners' Office, presented to the Steering Committee a draft proposal to prepare a revision of the state's drug laws. On December 8, 2016, the full Commission approved Resolution 2016-02 to recommend that the General Assembly enact the technical corrections legislation proposed by the work group.

That bill passed and was signed by the governor (PA 17-217).

Pretrial Diversionary Programs

The Commission has (1) developed and approved a scope for this study, (2) summarized the details of the 10 diversionary programs that are the subject of the evaluation, and (3) requested from the JB-CSSD and the Department of Mental Health and Addiction Services the data required to analyze program outcomes on participants' rate of recidivism. Once the data analysis is complete, the Commission will review the findings and make its recommendations.

2017 and 2018 Proposed Legislation and Status



Photo credit to Sage Ross

The Commission proposed three bills for the General Assembly's consideration during the 2017 session. They were referred to the Judiciary Committee, which approved them for consideration by the Senate and House.

2017 Legislative Session Commission Bills

Bill (Public Act) Number	Title (and originating Commission recommendation)
Senate Bill 1032 (PA 17-217)	An Act Implementing The Recommendations Of The Connecticut Sentencing Commission Concerning A Technical Reorganization Of Statutes Involving The Illegal Sale Of Controlled Substances makes technical and clarifying changes by restructuring the statutes on illegal drug sales.
House Bill 7262 (PA 17-17)	An Act Concerning the Recommendations of the Connecticut Sentencing Commission with Respect to Victim Notification requires the court to provide more information to crime victims about sentencing and proposed plea bargains. The act also requires the Department of Correction to make general offender sentencing information available to the public. This recommendation was approved by the Commission's Resolution 2015-04.
House Bill 7287 (Did not pass, but considered in combination with Governor's bill, An Act Concerning Pretrial Justice Reform, House Bill 7044, enacted as PA 17-145)	An Act Implementing the Recommendations of the Connecticut Sentencing Commission Concerning Pretrial Release and Detention proposed the changes recommended in the Commission's January 2017 report to the Governor and General Assembly (see Appendix B).

2018 Legislative Session Proposed Commission Bills

The Sentencing Commission will submit two proposals to the Judiciary Committee. They are:

1. The legislative recommendations on reforming the sex offender sentencing, registration, and management system as proposed by the Special Committee on Sex Offenders.
2. An addition to the penal code concerning misdemeanor sentences, making offenses punishable by imprisonment up to one year punishable for a period not to exceed 364 days.

V. Next steps

Summary

As required by law, the Commission will meet at least once during each calendar quarter in 2018. Information about the meetings, materials from those meetings, and information regarding the work of the Commission, its committees and working groups can be found on the Commission's web site at www.ct.gov/ctsc.

Committees and Working Groups

The Commission continues to support the ongoing work of its steering and standing committees.

Ongoing Areas of Study

The Commission is committed to furthering its recent studies of bail and the sex offender registry as described in its original recommendations.

Pretrial Release and Detention

At its December 2017 meeting, members of the Commission reviewed a draft of a state constitutional amendment that would remove - secured financial conditions as a detention mechanism prior to a trial and permit detainment only after a hearing in the case of the likelihood of the accused will flee or commit a serious or violent crime while on pretrial release.

Members agreed that before submitting such a proposed resolution to the Judiciary Committee, they want to review the implementing statutory system and procedures that would accompany the constitutional revision. They agreed to study these necessary conforming changes for submission along with the proposed constitutional amendment at a future legislative session.

Sex Offender Registration

The Sentencing Subcommittee of the Special Committee on Sex Offenders has been charged with reviewing the state's child pornography statutes and making recommendations. The subcommittee is drafting its proposal, but it will not be completed in time to submit legislative changes to the 2018 General Assembly.

Other

The Commission must complete its study of pretrial diversionary programs (see study scope, Appendix E). It has an agreement with JB-CSSD for data on the 10 programs that are the subject of this review and analysis. A complete description of those programs and their effectiveness will support the Commission's eventual findings and recommendations.

The Commission will continue its work evaluating the Certificates of Employability program. The Commission will continue to evaluate the program through 2017 and into 2018.

In addition, the Steering Committee has initiated a subcommittee to study sentence review, sentence modification and motions to correct an illegal sentence. Judge Gary White is the chair and Thomas Ullmann is the vice-chair of this working group that will include representatives from the divisions of Criminal Justice and Public Defender Services.

Certificates of Employability

The Commission will complete and approve its second and third reports on the program authorizing award of certificates of employability.

Proposed Legislation 2018

On December 14, 2017, the Commission voted to submit for the Judiciary Committee's consideration two proposals that would amend:

1. Chapter 969 of the Connecticut General Statutes to implement changes to the state's sex offender registration system and
2. the penal code to reduce the misdemeanor sentence from one year to 364 days.

As required by CGS § 54-300 (h), the Judiciary Committee must hold a public hearing on the Commission's proposals.

The Sentencing Commission will follow and support enactment of these proposals.

VI. Appendices

Appendix A: C.G.S. § 54-300

Appendix B: Pretrial Release and Detention in Connecticut, Executive Summary and Recommendations

Appendix C: Special Act §15-2

Appendix D: A Study of the Sex Offender Sentencing, Registration, and Management System, Executive Summary and Recommendations

Appendix E: Pretrial Diversionary Programs Study Scope

Appendix A

§ 54-300 Sentencing Commission

- (a) There is established, within existing budgetary resources, a Connecticut Sentencing Commission which shall be within the Office of Policy and Management for administrative purposes only.
- (b) The mission of the commission shall be to review the existing criminal sentencing structure in the state and any proposed changes thereto, including existing statutes, proposed criminal justice legislation and existing and proposed sentencing policies and practices and make recommendations to the Governor, the General Assembly and appropriate criminal justice agencies.
- (c) In fulfilling its mission, the commission shall recognize that: (1) The primary purpose of sentencing in the state is to enhance public safety while holding the offender accountable to the community, (2) sentencing should reflect the seriousness of the offense and be proportional to the harm to victims and the community, using the most appropriate sanctions available, including incarceration, community punishment and supervision, (3) sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment and the provision of meaningful and effective rehabilitation and reintegration of the offender, and (4) sentences should be fair, just and equitable while promoting respect for the law.
- (d) The commission shall be composed of the following members:
- (1) Eight persons appointed one each by: (A) The Governor, (B) the Chief Justice of the Supreme Court, (C) the president pro tempore of the Senate, (D) the speaker of the House of Representatives, (E) the majority leader of the Senate, (F) the majority leader of the House of Representatives, (G) the minority leader of the Senate, and (H) the minority leader of the House of Representatives, all of whom shall serve for a term of four years;
 - (2) Two judges appointed by the Chief Justice of the Supreme Court, one of whom shall serve for a term of one year and one of whom shall serve for a term of three years;
 - (3) One representative of the Court Support Services Division of the Judicial Branch appointed by the Chief Justice of the Supreme Court, who shall serve for a term of two years;
 - (4) The Commissioner of Correction, who shall serve for a term coterminous with his or her term of office;
 - (5) The Chief State's Attorney, who shall serve for a term coterminous with his or her term of office;
 - (6) The Chief Public Defender, who shall serve for a term coterminous with his or her term of office;
 - (7) One state's attorney appointed by the Chief State's Attorney, who shall serve for a term of three years;
 - (8) One member of the criminal defense bar appointed by the president of the Connecticut Criminal Defense Lawyers Association, who shall serve for a term of three years;
 - (9) The Victim Advocate, who shall serve for a term coterminous with his or her term of office;
 - (10) The chairperson of the Board of Pardons and Paroles, who shall serve for a term coterminous with his or her term of office;
 - (11) The Commissioner of Emergency Services and Public Protection, who shall serve for a term coterminous with his or her term of office;

(12) A municipal police chief appointed by the president of the Connecticut Police Chiefs Association, who shall serve for a term of two years;

(13) The Commissioner of Mental Health and Addiction Services, who shall serve for a term coterminous with his or her term of office;

(14) The undersecretary of the Criminal Justice Policy and Planning Division within the Office of Policy and Management, who shall serve for a term coterminous with his or her term of office; and

(15) An active or retired judge appointed by the Chief Justice of the Supreme Court, who shall serve as chairperson of the commission and serve for a term of four years.

(e) The commission shall elect a vice-chairperson from among the membership. Appointed members of the commission shall serve for the term specified in subsection (d) of this section and may be reappointed. Any vacancy in the appointed membership of the commission shall be filled by the appointing authority for the unexpired portion of the term.

(f) The commission shall:

(1) Facilitate the development and maintenance of a state-wide sentencing database in collaboration with state and local agencies, using existing state databases or resources where appropriate;

(2) Evaluate existing sentencing statutes, policies and practices including conducting a cost-benefit analysis;

(3) Conduct sentencing trends analyses and studies and prepare offender profiles;

(4) Provide training regarding sentencing and related issues, policies and practices;

(5) Act as a sentencing policy resource for the state;

(6) Preserve judicial discretion and provide for individualized sentencing;

(7) Evaluate the impact of pretrial, sentencing diversion, incarceration and post-release supervision programs;

(8) Perform fiscal impact analyses on selected proposed criminal justice legislation; and

(9) Identify potential areas of sentencing disparity related to racial, ethnic, gender and socioeconomic status.

(g) Upon completing the development of the state-wide sentencing database pursuant to subdivision (1) of subsection (f) of this section, the commission shall review criminal justice legislation as requested and as resources allow.

(h) The commission shall make recommendations concerning criminal justice legislation, including proposed modifications thereto, to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary which shall hold a hearing thereon.

(i) The commission shall have access to confidential information received by sentencing courts and the Board of Pardons and Paroles including, but not limited to, arrest data, criminal history records, medical records and other non-conviction information.

(j) The commission shall obtain full and complete information with respect to programs and other activities and operations of the state that relate to the criminal sentencing structure in the state.

(k) The commission may request any office, department, board, commission or other agency of the state or any political subdivision of the state to supply such records, information and assistance as may be necessary or appropriate in order for the commission to carry out its duties. Each officer or employee of such office, department, board, commission or other agency of the state or any political subdivision of the state is authorized and directed to cooperate with the commission and to furnish such records, information and assistance.

(l) The commission may accept, on behalf of the state, any grants of federal or private funds made available for any purposes consistent with the provisions of this section.

(m) Any records or information supplied to the commission that is confidential in accordance with any provision of the general statutes shall remain confidential while in the custody of the commission and shall not be disclosed. Any penalty for the disclosure of such records or information applicable to the officials, employees and authorized representatives of the office, department, board, commission or other agency of the state or any political subdivision of the state that supplied such records or information shall apply in the same manner and to the same extent to the members, staff and authorized representatives of the commission.

(n) The commission shall be deemed to be a criminal justice agency as defined in subsection (b) of section 54-142g.

(o) The commission shall meet at least once during each calendar quarter and at such other times as the chairperson deems necessary.

(p) Not later than January 15, 2012, and annually thereafter, the commission shall submit a report, in accordance with the provisions of section 11-4a, to the Governor, the General Assembly and the Chief Justice of the Supreme Court.

Appendix B

THE CONNECTICUT SENTENCING COMMISSION Report to the Governor and the General Assembly on Pretrial Release and Detention in Connecticut

EXECUTIVE SUMMARY

Objective

The Sentencing Commission has been tasked with investigating Connecticut's current system of pretrial detention and release, with a view to making recommendations as to how to justly and fairly maximize (1) public safety; (2) appearance in court; and (3) the release of bailable defendants.

This report is a preliminary one. The goal to identify the most fair and equitable pretrial release and detention practices will require more intensive data analysis and policy deliberation. Based on the analysis and deliberations of the Commission to date, the following observations can be made.

Many elements of Connecticut's pretrial justice system stand out as exemplary. Compared to many other jurisdictions in the United States, our state's rate of pretrial detention is low. The Judicial Branch Court Support Services Division (JB-CSSD) is the only statewide pretrial agency in the country that has been accredited by the National Association of Pretrial Agencies (NAPSA). Unlike many other jurisdictions in the United States, Connecticut utilizes a risk assessment instrument that has been validated to establish a correlation with defendants' court appearance and re-arrest outcomes.

However, the Commission recognizes that there are ways in which to improve our system. It appears that many defendants remain detained before trial because they lack sufficient resources to post financial bond, while other similarly-situated defendants are released because they are financially able to post bond. At the same time, because the state constitution guarantees to all non-capital defendants the right "to be released on bail upon sufficient security," some defendants who pose a high risk of public safety are released because they are able to post bond. Another concern with the state's current approach to pretrial justice is the lack of common standards to guide police departments' decisions with respect to the conditions of pretrial release.

The main focus of this initial report is on defendants who face minor charges and have been assessed as posing a low risk of re-arrest and failure to appear. The recommendations contained in this report are designed to empower decision makers to release bailable defendants. The recommendations aim to (1) reduce the duration of pretrial detention, (2) reduce disparities in pretrial release and detention arising from ability to post bond, and (3) realize the benefits of reduced recidivism and enhanced public safety that come from evidence-based practices of pretrial release and detention.

Recommendations

Recommendation 1.

Legislation should be enacted requiring the court to make a finding on the record before imposing secured financial conditions in misdemeanor cases.

The Commission recommends that the General Assembly enact legislation requiring a sitting superior court judge to make a finding before ordering secured financial conditions of release in misdemeanor cases.

The Commission recommends that the following proposal for consideration:

If the crime charged is a misdemeanor, then no monetary condition may be imposed unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will:

- (1) “fail to appear as required in court;”
- (2) “obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror,” or
- (3) “engage in conduct that threatens the safety of another person.”

If the crime charged is a non-family violence misdemeanor, then no monetary condition may be imposed unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will fail to appear as required in court.

This recommendation would prevent the imposition of monetary conditions at the first appearance in misdemeanor cases unless there are specific findings that the condition is justified. The intent of the recommendation is to create a higher burden than exists under current law for the imposition of monetary conditions in misdemeanor cases.

While the Commission adopted this report unanimously, certain commissioners (Judge White, Attorney Farr, and Attorney Pierre) raised the possibility of including in Recommendation 1 a proposal that “public safety” be considered by the court in setting bond for all misdemeanors, not just those misdemeanors involving family violence offenses. The Commission agreed to submit with this report for consideration by the General Assembly the issue as raised by Judge White, Attorney Farr, and Attorney Pierre.

Recommendation 2.

The bail review period should be shortened and modified for certain individuals who remain detained after the imposition of secured financial conditions.

The Commission recommends adopting a shortened bail review period for certain individuals held on secured financial conditions along with a requirement that the defendant be released absent a finding justifying the continued detention.

The Commission recommends that, if a defendant is charged with a misdemeanor offense, then the defendant must return to court if still detained 14 days after the first appearance.

Upon the defendant's return to court, the court must remove the monetary condition on release unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will:

- (1) "fail to appear as required in court,"
- (2) "obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror" or
- (3) "engage in conduct that threatens the safety of another person."

This recommendation provides for review after two weeks of monetary conditions imposed in misdemeanor cases that have caused a defendant to remain detained. In these circumstances, to support the continued imposition of the monetary condition, the court must make specific findings that justify the condition. This recommendation is designed to work in conjunction with Recommendation 2 to reduce the unnecessary pretrial detention of low-risk, indigent defendants.

Recommendation 3.

Legislation should be enacted permitting a defendant to deposit 10% of the bond amount with the court whenever a surety bond of \$10,000 or less is imposed.

The proposal should provide that:

- A deposit of 10% of the bond amount in cash will automatically satisfy bonds of \$10,000 or under. That is, a defendant with an imposed bond of \$10,000 or less will be able to post that bond with a bail bondsmen or by posting 10% with the court.
- An arrestee may utilize this 10% option while detained at the police station after arrest and before court appearance.

Currently, the Practice Book permits judges to enter an order allowing a bond to be satisfied by the deposit of 10% of the bond amount in cash with the clerk. If the bond is not forfeited, the money is returned at the end of the case. See Connecticut Practice Book 38-8. ("When 10 percent cash bail is granted, upon the depositing in cash, by the defendant or any person in his or her behalf other than a paid surety, of 10 percent of the surety bond set, the defendant shall thereupon be admitted to bail in the same manner as a defendant who has executed a bond for the full amount. If such bond is forfeited, the defendant shall be liable for the full amount of the bond. Upon discharge of the bond, the 10 percent cash deposit made with the clerk shall be returned to the person depositing the same, less any fee that may be required by statute.")

Currently, if a judge does not enter an order permitting the 10% cash option, the option is not available. The 10% cash option is not available at all to arrestees at police stations prior to the first court appearance.

Recommendation 4.

Judicial Branch bail staff should have adequate opportunity to review and make release decisions following every warrantless custodial arrest.

The Commission recommends that the legislature increase access to bail commissioners during booking to allow for pretrial screening and risk-based release decision making shortly after each warrantless arrest. The Commission recommends that the relevant provision of the Connecticut General Statutes be amended as follows:

- The police may release someone without a bond or may release on a non-surety bond. However, police may not set surety bond amounts.
- The police must contact JB-CSSD promptly after an arrest and processing. A bail commissioner must interview an arrestee promptly (which can be done either in person or by video-conference).
- Bail commissioners may release an arrestee with no bond or set a bond amount.
- If the police disagree with the decision of the bail commissioner, the state's attorney can be contacted and can override the bail commissioner's decision.

Currently, the police may release someone without a bond or may set a bond amount. Bail staff from the Judicial Branch Court Support Services Division may access arrestees while they are detained at police stations (prior to their first court appearance) and conduct interviews and risk assessments. Bail commissioners may change the bond amount set by the police (or may eliminate the bond). If the police disagree with the decision of the bail commissioner, the state's attorney can be contacted and can override the bail commissioner's decision. Many arrestees are bonded out from police stations prior to interviews with bail commissioners.

The Commission is mindful of the limited resources of the police departments, the Judicial Branch, and municipalities. This proposal cannot be an unfunded mandate and can only succeed if funding is provided for (1) the necessary videoconferencing equipment in every police station for bail staff to promptly interview arrestees or (2) additional JB-CSSD bail staff to travel to police departments around the state.

Recommendation 5.

The Commission should continue to evaluate the effectiveness and fairness of Connecticut's pretrial justice system.

The Commission recommends a continuing evaluation of Connecticut's pretrial justice system. Although the current evaluation and this report are comprehensive, the research conducted by the Commission revealed several significant areas that can benefit from further analysis. The Commission recommends that a mandate be enacted directing the Commission to continue its evaluation and submit annual reports on the state of pretrial justice system in Connecticut to the General Assembly and the governor by January 2018, January 2019 and January 2020.

Recommendation 6.

Lawyers, judges, and other stakeholders should receive regular training on current best practices in the area of pretrial release and detention decision making.

The Commission recommends that to police officers, state's attorneys, public defenders, judges and other court staff who are part of the pretrial decision-making process should receive

regular training on pretrial release and detention decision making. More specifically, the Commission recommends that:

- An education plan and training be developed for police departments, public defenders, prosecutors and judges. The educational plan should include (but not be limited to):
 - The purpose and history of bail
 - Constitutional principles
 - Risk principles and the methodology behind the risk assessment tool.
- The Commission host (within available resources) an annual one-day summit on the latest developments in pretrial justice, research and best practices and invite participation from all stakeholders (law enforcement, prosecutors, state's attorneys, public defenders, members of the defense bar, legislators, and other interested parties).

Recommendation 7.

The Division of Criminal Justice should have adequate support and opportunity to establish screening and intake units. The Division of Public Defender Services should have adequate attorney, investigator, and a social work staff and resources to investigate defendant's individual circumstances for purposes of making comprehensive bail and diversion arguments at arraignment. In addition, the Judicial Branch should have the personnel and resources to accommodate implementation of this recommendation.

These units will be able to (1) make decisions about whether incoming cases are appropriately charged and identify those cases which should be *nolled*, dismissed or diverted at or prior to the first court appearance and (2) make informed and considered bail recommendations. The decision on whether to prosecute can be informed by input from defense attorneys, bail staff, and others including police and victims. Defense attorneys need time to interview defendants and discuss alternatives with prosecutors who can make more informed recommendations to the court. The Judicial Branch (which includes the Division of Public Defender Services) would need resources to support the implementation of this recommendation, which presumably could result in fewer cases going to court and the savings associated with that outcome.

Recommendation 8.

The Commission should continue to investigate the feasibility of a carefully limited preventive detention system.

The Commission recommends that it continue to evaluate the feasibility of creating a carefully limited preventive detention model to keep the most dangerous defendants in jail. In order to ensure that the most dangerous defendants stay in jail during their pretrial process, it may eventually require a constitutional amendment to substitute preventive detention for the current practice of imposing high-dollar bonds on defendants. A high-dollar bond may keep some

individuals in jail. However, some individuals who have access to funds for posting a bond can be released into the community. In addition, the Connecticut Supreme Court has continuously recognized that “the excessive bail clause of article first, § 8, prevents a court from fixing bail in an unreasonably high amount so as to accomplish indirectly what it could not accomplish directly, that is, denying the right to bail.” Thus, keeping a defendant in jail on purpose using money bail is unconstitutional.

Preventive detention, if used properly as part of a compressive set of bail laws that contain a statutory presumption and culture of release, can be reserved for a small category of defendants who present a serious risk of a dangerous re-offense. This intellectually honest practice will ensure that, after an adversarial hearing, the defendants that the state deems too dangerous to reasonably assure public safety and their court appearance will not be released into the community.

The Commission recognizes that preventive detention may lead to over- incarceration if not planned carefully and thoroughly. A high legal standard should be put in place to assure that only the most dangerous and risky defendants are preventively detained.

The Commission also recognizes that preventive detention hearings require funding and resources that are in short supply given the state’s current fiscal difficulties. The Commission will continue to evaluate preventive detention. If the state moves forward to provide funding for this model, the Commission respectfully requests that it be included in the deliberations for developing an implementation plan for preventive detention.

Appendix C

Special Act 15-2

AN ACT CONCERNING A STUDY OF THE SEXUAL OFFENDER REGISTRATION SYSTEM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective October 1, 2015*) (a) The Connecticut Sentencing Commission established pursuant to section 54-300 of the general statutes shall study: (1) The sentencing of sexual offenders; (2) the risk assessment and management of sexual offenders; (3) the registration requirements and registry established under chapter 969 of the general statutes; (4) the information available to the public and law enforcement regarding sexual offenders; (5) the effectiveness of a tiered classification system based on the risk of reoffense; (6) methods to reduce and eliminate recidivism by individuals convicted of a sexual offense; (7) housing opportunities and obstacles for sexual offender registrants; (8) options for post-sentence appeals concerning the registry status of a sexual offender registrant; (9) sexual offender management; and (10) victim and survivor needs and services and community education.

(b) The commission shall submit, in accordance with section 11-4a of the general statutes, an interim report not later than February 1, 2016, and a final report not later than December 15, 2017, on such study to the joint standing committee of the General Assembly having cognizance of matters relating to the judiciary. Each report shall contain recommendations for legislation, if any.

Approved May 26, 2015

Appendix D

A Study of the Sex Offender Sentencing, Registration, and Management System

EXECUTIVE SUMMARY

Special Act 15-2 required the Sentencing Commission to investigate Connecticut's current system of assessment, management, treatment, and sentencing of sex offenders. The Commission appointed a Special Committee on Sex Offenders to execute this mandate. Over the course of two years, that Committee undertook a comprehensive, multi-disciplinary review of policies and practices dealing with individuals convicted of sex offenses and analyzed relevant data to develop recommendations based on best and promising evidence-based practices around registration, management, and sentencing of sex offenders. This subcommittee reported back to the Sentencing Commission.

Unlike many other states, Connecticut has taken a comprehensive approach to the management and treatment of offenders on probation and parole through the development of specialized sex offender supervision and management units throughout the state. Each unit, utilizes officers, treatment providers and sexual assault victim advocates to build both treatment and supervision plans and conditions based on each individual offender's risk. This is a nationally recognized model which has contributed to a low rate of recidivism among offenders in our state.

With a risk based approach in mind, Connecticut does not impose blanket residency restrictions for sex offenders, which have been found to inhibit offender's reintegration in the community, nor are there laws requiring the registration of juveniles for the sex offender registry, unless they were convicted as adults.

However, the Commission has determined that there are ways to improve Connecticut's approach to managing with sex offenders, and by doing so, to enhance public safety. All members of the Special Committee shared the goal of reviewing current policy and practice in Connecticut with the aim of identifying opportunities to reduce sexual violence in our state. Our recommendations include strengthening the sex offender registry to increase public safety by evaluating offender risk of reoffending, reducing technical violations of probation and parole supervision, and improving coordination between treatment providers in correctional facilities and the community.

The focus of this initial report is on the sex offender registry. Enactment of sex offender registration laws are among the most significant criminal policy initiatives undertaken in recent decades. Their primary purpose is laudable: to reduce sex offender recidivism and ensure public safety. A close examination of these laws, however, reveals that registries are often structured in a manner that lacks empirical support.

While risk is a factor utilized within supervision and treatment programs in Connecticut,

our state's current registry requirements are based on the offense of conviction and not on an individual's risk level. The Commission studied the current model and risk-based registry systems throughout the country and recommends that Connecticut move to a system that tailors registry requirements to an individual sex offender's risk of re-offending. Under the new system, the offenses that require registration would remain the same, but (1) the length of time a person is required to be on the registry and (2) whether the person's information is available to the public or only to law-enforcement agencies would depend on the individual's risk of re-offending and potential danger to the community. A new eight-member Sex Offender Registration Board would determine the person's level of risk. Registrants could petition the Board for reclassification or the Superior Court for removal from the registry under specified circumstances. Victims would be notified of such requests and have the opportunity to provide comment on the request.

While the focus of this initial report is on the sex offender registry, additional recommendations have been adopted to reduce technical violations on probation and parole supervision, increase coordination of the treatment provided to offenders in correctional facilities and supervision programs; increase trauma informed responses and support for victims and survivors of sexual assault throughout the criminal justice system, and to promote education and information programs for landlords and community members regarding sexual violence prevention, and myths and facts related to individuals who perpetrate sexual assault crimes.

The Commission also proposes to analyze the sentences given to individuals convicted of sex offenses and to further evaluate the supervision and management of such persons. Continual research and evaluation of the new process can provide evidence of its effectiveness in reducing recidivism. The Commission is committed to ongoing evaluation of sex offender management, sentencing, and registration to achieve the goals of minimizing the risk that sex offenders pose to the person or persons they harmed and members of the public, while providing a system that is more tailored to an individual's risk level and criminogenic needs.

Part I of this report presents the Commission's recommendation to move from an offense-based to a risk-based system for offender placement on the sex offender registry, and lists the additional recommendations that were developed through this study. Part II describes the Special Committee's charge, structure, and activities. Part III reviews risk-based registry systems. Part IV provides a profile of the sex offender registry population, including their criminal history, focusing on new registrants between January 1, 2007 and December 31, 2016. Part V describes Connecticut sex offender registration law and its history, the evolution of federal law, and major court rulings on this issue. Part VI includes discussion of the research and issues that the Special Committee considered in determining its recommendations.

I. RECOMMENDATIONS

A. Registry Proposal

The proposal to amend Chapter 969 of the Connecticut General Statutes both strengthens and focuses the Connecticut sex offender registry. Under current law, the crime that the offender was convicted of determines the requirement to register and the length of time the person will be on the registry.

Under this proposal, the categories of sex offenders who must register with the Department of Emergency Services and Public Protection (DESPP) based on the crime for which they were convicted remain the same. However, the length of time on the registry and whether it is a public registry or a law enforcement-only registry will be determined by evaluating the registrant's risk of reoffending.

This proposal will eventually result in fewer offenders on the public sex offender registry; those higher-risk offenders who warrant the focused attention of probation and parole, law enforcement, and the public. Validated actuarial risk assessment instruments will be used to determine a person's likelihood of reoffending.

The current registry has no reward for a registrant's appropriate behavior and no sanction for a registrant's inappropriate behavior, other than the failure to report a change of address, which is a class D felony. Changes to the registry are based on the recognition that placement on the public registry can impede the registrant's successful reentry into society by making it more difficult to find housing or employment. This proposal will penalize registrant's inappropriate behavior and reward appropriate behavior. All registrants will have an opportunity to petition to shorten their registration period or apply for removal from the public registry. In order to do so, registrants will have to show, by their conduct, that they have reduced their risk to the community.

Under the new system, some registrants will be on the registry for shorter periods than under the current system, and others will be on for longer periods. However, that determination will be based on the registrant's risk to the community. The registrants will have an opportunity to lower their risk profile by participating in programming for behavioral health, vocational training, and other services designed to enhance community reintegration and by avoiding rearrest for any new criminal activity.

1. Current Law

Under current law, certain categories of sex offenders must register for a specified period following their release into the community. The requirement applies to persons convicted, or acquitted by reason of mental disease or defect, of three types of offenses, including persons convicted or acquitted by reason of mental disease or defect of a similar offense in another jurisdiction, for the duration stated below:

- criminal offenses against a victim who is a minor: generally 10 years for a first conviction or lifetime for a subsequent conviction;
- nonviolent sex offenses: generally 10 years for a first conviction or lifetime for a subsequent conviction; and
- sexually violent offenses: lifetime.

In addition, the court may require registration for 10 years for an offender convicted, or acquitted by reason of a mental disease or defect, of any felony that the court determines was committed for a sexual purpose.

Connecticut is one of the few jurisdictions that does not permit removal from the registry.

Under current state law, if a court finds that public dissemination of a sex offender's registration information is not required for public safety, access is limited to law enforcement agencies. This applies to only a small group of individuals. The court may grant this access restriction to persons who committed second-degree sexual assault in a spousal or cohabiting relationship (CGS § 54-255(a)). Similarly, if a court finds that public dissemination is not required for public safety, it may restrict registry dissemination for persons who committed offenses against a minor, nonviolent sex offenses, or sexually violent offenses, where the victim was a relative of the person (CGS § 54-255(b)).

Select categories of sex offenders are exempt from registration requirements. Specifically, a court may exempt a person if registration is not required for public safety and the person was (1) convicted of having sexual intercourse with a victim age 13 to 15 (second-degree sexual assault) and (2) under age 19 when the crime was committed (CGS § 54-251(b)).

A court may also exempt a person convicted or found not guilty by reason of mental disease or defect of having sexual contact with another person without consent or nonconsensual voyeuristic recording of a person. In both cases, the court must find that registration of the person is not required for public safety (CGS § 54-251(c)).

2. Prospective Changes to the Registry

The following changes would apply prospectively to individuals who are convicted on or after the effective date of legislation. The registration requirement would be based on an assessment of the risk an individual poses to reoffend, rather than on the current system based on the offense.

i. Sex Offender Registration Board

- An independent Sex Offender Registration Board of experts would be authorized to determine whether an offender who is required to register should be placed on the public registry or law enforcement registry. Specifically:
 - The lowest-risk offenders, based on an actuarial risk assessment, shall presumptively be placed on the law enforcement registry for 10 years.
 - The moderate-risk offenders, based on an actuarial risk assessment, shall be placed on either the public registry for life or the law enforcement registry for 20 years, based on the Board's decision rather than a presumption (see below).
 - The highest-risk offenders, based on an actuarial risk assessment, shall presumptively be placed on the public registry for life.
- In making such a classification, the Board shall use the scoring from validated actuarial risk assessment instruments, with the exception of moderate risk scoring. In addition, the Board may override the tier classification based on other factors

including the nature and circumstance of the offense, any other aggravating or mitigating factors, and the impact to the victim, if known, and the community.

- The Board is within the executive branch.
- The Board's decision to place an offender on the law enforcement registry is not subject to appeal.
- The Board's decision to place an offender on the public registry may be appealed when the registrant requests a hearing before the Board.
- There shall be a presumption that an offender who scored high risk on the actuarial assessment will be placed on the public registry.
- For any offender who scored moderate risk on the actuarial assessment, the Board shall determine placement on the public or law enforcement registry by considering the factors set forth above in addition to the actuarial assessment. Given the extremely wide range of individuals who fall into a moderate range of risk (from just slightly above low risk to just slightly below high risk) and the extensive research on decision-making bias when there are no specific standards and guidelines in place, the registration board shall develop a set of evidence-based criteria to utilize a structured decision-making tool that takes into account the factors relevant to determine whether a moderate level individual would be best placed on the public or the law enforcement registry. There would be no statutory presumption of assignment to either the public registry for life or the law enforcement registry for 20 years.
- There shall be a presumption that an offender who scored low on the actuarial assessment will be placed on the law enforcement registry.
- After ten years on the public registry, an offender may petition the Board to be moved to the 20-year law enforcement registry.
- Victims shall be notified and may provide input when an offender petitions the Board for reclassification from the public registry to the law enforcement registry.
- An offender requesting a change in registration requirements shall be in compliance with the registry at the time of the request. A probation or parole officer or the state's attorney may make a recommendation at the time of the request regarding an offender who is or has been under probation or parole supervision.
- At any time, a probation or parole officer or the state's attorney may request that an offender on the law enforcement registry be moved to the public registry because of the registrant's failure to meet conditions of parole or probation or new criminal activity.

ii. Removal Mechanism

- After 10 years on the law enforcement registry for 20-year registrants, an offender may petition the Superior Court to be removed from the registry.
- After five years on the law enforcement registry for 10-year registrants, an offender may petition the Superior Court to be removed from the registry.
- An offender is not eligible for removal directly from the public registry, but must be placed on the law enforcement registry first.
- A registrant would not be eligible to petition the court for removal sooner than (1) five years after the conviction for a felony offense not requiring registration, (2) three years

after the conviction for a class A misdemeanor offense not requiring registration, or (3) one year after conviction for any other misdemeanor offense not requiring registration.

- The Superior Court shall hold a hearing for a petitioning offender eligible for removal. The court shall notify the Office of Victim Services within the Judicial Branch, the Victim Services Unit within the Department of Correction, the Office of the Chief Public Defender, and the appropriate state's attorney of the hearing date.
- The Office of the Chief Public Defender shall assign counsel for an indigent offender.
- The Superior Court shall order that a risk assessment be conducted unless the requirement is waived for good cause. The Superior Court may also refer the case to the Sex Offender Registration Board for assessment and recommendation.
- At the hearing, the court shall permit the registrant and the state's attorney to present evidence and allow the victim to make a statement. The victim shall also be allowed to submit a statement in writing.
- The court may order an offender's removal from the registry if, in the opinion of the court, such removal shall assist the offender in reintegration into the community and shall be consistent with public safety. In making this determination, the court shall consider the nature of the offense and the petitioner's conduct since the offense, including (1) the offender's history of sex offender and/or behavioral health treatment; (2) the results of any relevant risk assessments and evaluations by behavioral health professionals; (3) the offender's history of employment and education; (4) the offender's compliance with the terms of parole, probation, and the requirements of the sex offender registry; and (5) any other factors bearing on the offender's reintegration into the community. The registrant shall have the burden of proof by a preponderance of the evidence.
- If the court orders an offender removed from the registry, the court shall notify the DESPP; the Court Support Services Division, if applicable; and the Office of Victim Services within the Judicial Branch; the Parole and Community Services Division, if applicable; and the Victim Services Unit within the Department of Correction; and the local police department or the state police troop having jurisdiction over the registrant's address.
- The registrant and the state's attorney shall have the right to appeal the decision of the Superior Court and the decision of the court shall be subject to review for abuse of discretion.

3. Retroactive Changes to the Registry

i. "Grandfathered" Registrants

Offenders who were retroactively placed on the registry at the time the registry went into effect (i.e., offenders who were convicted prior to January 1, 1998, without knowledge that they would be subject to a registry) shall be eligible to petition the Superior Court for removal. Also eligible to petition the court for removal are offenders who would no longer be required to register but for the retroactive changes in law (i.e., the increase in the length of time an offender is required to register for an offense).

Victims shall be notified and have the opportunity to provide a statement as set forth above.

The Superior Court shall hold a hearing according to the procedures and criteria for

removal set forth above. After the hearing, the court may (1) completely remove an offender from the registry or (2) move the offender to the law enforcement registry. In making such a determination, the court may refer the case to the Sex Offender Registration Board for assessment and recommendation.

If a request for removal is denied after a hearing, subsequent petitions may be filed 10 years after such a decision. For good cause shown, the Superior Court may permit a subsequent petition to be filed before the 10-year period.

ii. Other Offenders Currently on the Registry

Other offenders currently on the registry (i.e., those who were convicted after the creation of the registry) shall not be eligible to petition the court for removal from the registry. However, these offenders would be eligible to petition the Sex Offender Registration Board to move from the public to the law enforcement registry. The Board would use the criteria set forth above to determine whether to grant the request. If moved to the law enforcement registry, registrants shall continue to serve the remainder of their registration term as they are not eligible for removal. Victims shall be notified and have the opportunity to provide a statement if a registrant petitions to be moved to the law enforcement registry.

Offenders required to register for 10 years may petition the Board to move to the law enforcement registry after five years. Those required to register for life may petition after 10 years.

4. Further Details

Entities making classification decisions

- Sex Offender Registration Board
- Superior Court

Sex Offender Registration Board Membership

The Sex Offender Registration Board shall be comprised of eight members. The members of the Board shall be appointed as follows:

1. The Governor shall appoint two people with substantial experience in providing sexual assault victims with victim advocacy services.
2. Three clinicians who meet the criteria for clinical membership in the Connecticut Association for the Treatment of Sexual Offenders (CATSO) or the Association for the Treatment of Sexual Abusers (ATSA) and who have at least five years of experience in the assessment of sex offenders, nominated by the Chief Court Administrator and appointed by the Governor.
3. Three persons with at least five years of experience in sex offender management and supervision who have received training in evidence-based supervision of sex offenders, nominated by the Chief Court Administrator and appointed by the Governor.

Members of the Sex Offender Registration Board shall serve on a part-time per diem basis.

A panel consisting of three members of the Board, at least one of whom shall be from each of the above categories, shall meet to review and determine the classification of each registrant or make a recommendation for removal for each applicant.

Registry Tiers

- Public registry (High Risk)
- Law enforcement registry or public registry (Moderate Risk)
- Law enforcement registry (Low Risk)

Length of Registration Requirement

- Lifetime public registration
- 20 year law enforcement registration
- 10 year law enforcement registration

Residence Address Verification

- Quarterly for offenders on the public registry, plus an annual in-person verification of residence address by law enforcement or a probation or parole officer.
- Semiannually for offenders on the law enforcement registry for 20 years
- Annually for offenders on the law enforcement registry for 10 years.

Victim Notification

Victims would receive notification of (1) placement on the registry whether public or law enforcement and (2) the registrant's address for the law enforcement registry.

Victims shall be permitted to provide input (1) when an offender petitions the Board or the Superior Court for reclassification from the public registry to the law enforcement registry and (2) when an offender petitions the Superior Court for removal from the registry.

The process for victim notification shall be developed in collaboration with victim advocacy services.

Proposed Changes to Connecticut's Registration of Sex Offenders Law

<i>Tier</i>	<i>Access to the Registration</i>	<i>Duration on the Registry</i>	<i>Address Verification Requirement</i>	<i>Victim Notification*</i>	
				Initial Placement	Offender Address
High Risk	Public	Lifetime	Quarterly	Yes	Public
Moderate Risk	Law enforcement only or public	20 years	Semiannually	Yes	Upon request
Low Risk	Law enforcement only	10 years	Annually	Yes	Upon request

*A victim may provide input to the Board when an offender petitions for reclassification from the public registry to the law enforcement registry or petitions the Superior Court for removal from the registry.

B. Additional Recommendations

1. Review (a) child pornography statutes and (b) the law on sexual assault in the second degree as it applies to those under age 21 to determine possible revisions related to sex offender registration requirements.
2. Continue the Sentencing Commission's study of sex offender sentencing, management, and registration to:
 - a. monitor and evaluate the effects of the change to the risk-based system;
 - b. ensure that supervision conditions are tailored to meet the person's criminogenic risk and need areas;
 - c. examine behavioral health issues related to sex offender management;
 - d. examine compliance with registry requirement and the consequences of technical violations;
 - e. require the Judicial Branch, in collaboration with the DESPP, to produce an annual report, enumerating the number of sexual assault cases presented in Connecticut criminal courts, including initial charge, plea, conviction, sentence, and indicating whether the person was on the sex offender registry at the time of the offense; the report shall also include Sex Offender Registry data as it pertains to conviction and registration terms; and
 - f. encourage the Judicial Branch to collaborate with the Department of Correction (DOC) to review recidivism rates for offenders convicted of a sex offense.
3. Consider adding conviction for human trafficking offenses to the list of violations that require registration.
4. To comply with federal sex offender registry requirements, amend the statutes to require registrants to notify DESPP (at least 21 days in advance) of any intention to travel outside the United States.
5. Oppose general housing and zoning residency restrictions for sex offenders other than appropriate limitations imposed as an individualized supervision condition, which will increase public safety and strengthen supervision of persons in the community.
6. To enhance the efficiency and proficiency of assessment, treatment and supervision services across the Judicial Branch and DOC:
 - a. maximize funding allocated to sex offender treatment and supervision,
 - b. maximize sex offender assessment and treatment resources by eliminating redundancy,
 - c. reduce technical violations of parole and probation supervision, and
 - d. deploy a more consistent and uniform sex offender treatment process throughout the system.
7. Maximize the communication and collaboration between the Judicial Branch and DOC's Parole and Community Services Division when transitioning sex offender supervision between agencies. This will:
 - a. increase public safety,

- b. eliminate redundancy with respect to assessment and treatment services, and
 - c. ensure the timely and informed transfer of community supervision.
- 8. Coordinate sex offender assessment and supervision training efforts between the Judicial Branch and DOC to ensure all agencies, treatment and supervision staff adhere to established best practices and maximize training resources.
- 9. Build capacity and training among law enforcement officers and prosecutors to utilize trauma-informed interviewing techniques and improve investigation and prosecution of sexual assault cases.
- 10. Increase staffing and fully fund services for sexual assault victims, both of juvenile and adult offenders, and their supporters including pre- and post-conviction community and court-based victim advocacy services.
- 11. Require any proposed registry change to include establishing a multidisciplinary advisory group to plan for the implementation of the changes in ways that would minimize the impact on victims and prepare the law enforcement community for new procedures.
- 12. Increase staffing in post-conviction community and court-based advocacy services for sexual assault victims to ensure proper victim notification of registry-based hearings and support for submitting testimony or appearing at such hearings, before making prospective changes to the sex offender registry.
- 13. Any removal mechanism of sex offenders from the registry should be prospective and not retroactive to avoid the re-victimization of victims who believed at the time of sentencing that the sentence and the registry requirements were fixed.
- 14. Restructure and add additional information to the registry's public website, including:
 - Highlighting resources for victims of sexual assault such as the statewide sexual assault crisis hotlines, and the Judicial Branch's CT SAVIN.
 - Adding information regarding the offender's probation or parole status as well as stipulations
 - Making statutes pertaining to sex crimes available in clear and easy to understand language.
 - Creating "Statute FAQs" to describe in plain language the elements of each crime.
 - Creating a link to information for landlords and realtors regarding housing of offenders
 - Including a link to resources describing Connecticut's collaborative model for supervision and treatment and supports available to offenders re-entering the community.
- 15. Expand the notifications provided through the Judicial Branch's CT SAVIN to include certain sex offender supervision classifications and sex offender registry statuses.
- 16. Maintain the collaborative model of supervision, treatment, and victim advocacy to support victims, increase community safety, and reduce recidivism among offenders.

17. Create material for landlords and public housing authorities to encourage them to rent to offenders.
18. Propose substantive changes to CGS § 54-261 "Community Response Education Program" to include proactive prevention education program and materials offered to municipalities and members of the public to understand Connecticut's collaborative model of supervision and treatment for offenders who have committed sex offenses and are reentering the community. The educational component should include information about interventions based on assessed risk, need, and protective factors in order to prevent new sex offenses. Materials and program should be created to encourage school districts to meet the K-12 educational requirements outlined in PA 14-196 "An Act Concerning a Statewide Sexual Abuse and Assault Awareness Program for Connecticut," which went into effect on October 1, 2016.

Appendix E:

Connecticut Sentencing Commission Scope of Study *Connecticut Pretrial Diversionary Programs*

Introduction

This research will examine the overall effect of pretrial diversion programs on defendants and the criminal justice system and the profile of participating defendants. The primary focus will be on determining if there are any differences in the intended public policy objectives versus the actual use and outcomes of the programs. The Connecticut Sentencing Commission will review pretrial diversion programs as an option within the state's criminal sentencing framework.

This research also serves to address the request by Governor Dannel P. Malloy (dated November 5, 2015) for the Connecticut Sentencing Commission to study the state's jail diversionary programs. Citing several concerns raised by criminal justice system stakeholders, the Governor questioned whether the pretrial diversion programs are meeting the needs of the state and its citizens.

Pretrial Diversionary Programs in Connecticut

For the purposes of this study, pre-trial is defined as a person's legal status after an arrest, but before entering a plea or adjudication of the pending criminal charges. Diversion from court is, for this study, limited to the 10 statutory pre-trial programs intended to provide an alternative disposition to the criminal court process for defendants.

The underlying principle of the pre-trial programs is that diverting certain defendants from the traditional criminal court process allows the root causes of a person's criminal behavior to be addressed; thus, reducing the likelihood the person will reoffend in the future. Successful participation in pretrial diversion programs ultimately results in the dismissal of the criminal charges against the defendant and thereby removes the arrest and possible conviction from the defendant's record.

Pretrial diversion programs are voluntary options to traditional criminal justice processing. While each program has a unique focus, the programs share some common characteristics. Pretrial diversion programs use established criteria to determine which defendants are eligible to participate in the program, e.g., first time offenders and/or defendants engaged in specific behavior or charged with specific offenses. These programs are also characterized by standardized supervision and service delivery including, but not limited to drug testing and treatment, counseling, education, and community service. The third

shared characteristic of pretrial diversion programs is that successful completion of a program results in dismissal of the charges.

Eligibility criteria for pretrial diversion programs differ, but most have at least one requirement related to: (1) prior criminal history; (2) current charge(s); (3) substance abuse history; (4) mental health history; (5) victim approval; or (6) restitution repayment. These programs typically target nonviolent offenders. Pretrial diversion programs are intended for defendants who would be better served through community restitution and/or treatment rather than traditional criminal sanctions.

Connecticut law authorizes, and the Judicial Branch or the Department of Mental Health and Addiction Services (DMHAS) currently administer, the following 10 pretrial diversion programs.

1. *Accelerated Pretrial Rehabilitation (AR)*: Available to defendants who are charged with certain crimes or motor vehicle violations who do not have any other criminal conviction. Persons may use AR only once.
2. *Youthful Offender (YO)*: Available to 16- or 17-year-old defendants charged with certain crimes who do not have any other criminal conviction. Persons may use YO only once.
3. *Pretrial Alcohol Education Program*: Available to defendants charged with operating a motor vehicle or boat under the influence of alcohol or drugs. Eligible defendants attend treatment and education programs.
4. *Drug Education and Community Service Program*: Available to defendants charged with violating certain drug possession or drug paraphernalia laws. Defendants are required to participate in drug education and/or substance abuse treatment and perform community service.
5. *Pretrial Family Violence Education Program*: Available to defendants charged with crimes involving family (domestic) violence. Eligible defendants are required to attend programs that provide education about family violence.
6. *School Violence Prevention Program*: Available to public or private school students charged with an offense involving the use or threatened use of physical violence in or on school property. Defendants attend a one-year school violence prevention program.
7. *Supervised Diversionary Program*: Available to defendants with psychiatric disabilities or who are veterans with a mental health

condition charged with certain offenses or motor vehicle violations. Defendants are provided with treatment.

8. *The Suspended Prosecution for Illegal Sale, Delivery, or Transfer of Pistols or Revolvers Program:* Available to defendants charged with the illegal sale, delivery, or transfer of pistols or revolvers. The program is open to defendants whom the court believes will probably not commit more crimes in the future.
9. *Treatment of Defendants who are Dependent on Drugs or Alcohol:* Available to defendants charged with certain crimes and who are dependent on drugs or alcohol. Defendants are required to participate in treatment programs.
10. *Jail Diversion/Court Liaison Program:* Available to certain defendants who would benefit from mental health assessment, referral and links to community-based mental health services in an effort to prevent pre-trial incarceration. DMHAS clinicians work with clients in the 20 arraignment courts throughout the state. This program is also available to certain convicted offenders, but these will not be included in the sample.

Focus of the Study

The population of interest in this study is adult defendants who are eligible to participate in pretrial diversion programs in Connecticut. Information on these defendants' program participation and criminal histories will come from the Judicial Branch, DMHAS, and the contracted provider organizations. Information will also be obtained from criminal justice system stakeholders, victim advocates and offender groups.

The outcomes of interest in this study are (1) whether pretrial diversion programs are used as intended; (2) whether defendants successfully complete the programs; (3) whether defendants were rearrested after program completion; and (4) whether these programs offer a benefit to the state in management of the criminal justice system and supervision of the offender population.

Methodology

This study will determine the overall effect of pretrial diversion program on defendants and the criminal justice system. To do this, the study will focus on the following questions.

1. Are pretrial diversion programs effective based on program-specific outcomes, dosage, and rate of reoffending? What are the measures of effectiveness?

2. What program features are associated with successful program completion and outcomes?
3. Are there differences in defendants' demographics and residency, court location, utilization, etc. among the defendants participating in the programs?
4. Is there disproportionate minority contact in utilization of the programs?
5. What is the usage rate of pretrial diversion programs and has attendance and program completion varied over time? How often do defendants participate in multiple diversion programs (e.g., shifting from one program to another)?
6. Are screening and risk assessment tools effective in identifying eligible defendants and do the programs meet identified needs of program participants? What is the overlap between program eligibility and program selection and does that impact program effectiveness? Is current program capacity adequate to accommodate the number of eligible participants?
7. How do prosecutors, defense attorneys, and the court use pretrial diversion programs?
8. Is there a cost-benefit to pretrial diversion programs?
9. Are the existing pretrial program options sufficient?

To address the research questions, this study will be conducted in four stages. Each stage allows a different layer of information to be gathered to assist with the assessment of pretrial diversion programs. In the first stage, the details of the programs available to defendants will be gathered. For each program, the descriptions of services and dosage will be reviewed and the intended population for each program will be identified. Information will also be gathered to determine trends in program use, completion and outcomes. Information will be collected on the program providers including the contracting for, managing and auditing of provider organizations.

In the second stage, data will be requested on defendants and offenders and the pretrial diversion programs they attended

The third stage will seek to understand how eligibility for each program is determined and how eligible defendants are assessed and selected into various programs. To obtain this information, interviews will be conducted with prosecutors, defense attorneys, judges, probation officers and bail commissioners as well as provider organizations. The goal is to detail how different factors, such as risk assessments, presentence investigations, criminal histories and previous program participation, are considered leading up to

program placement. This information will increase understanding about how similarly situated defendants are granted or denied placement in a program as well as how the programs operate with defendants with varying need levels.

The fourth and final stage of this study will be a statistical analysis reviewing data on programs and outcomes. Client-level and program data collected in the second stage will be used to categorize participants by needs and charges in addition to risk level and criminal history. The analysis will provide information on the frequency and prevalence of program use and comparisons will be conducted to compare and contrast several characteristics (i.e., age, race, gender, identified need, charges, etc.) of the programs participants. The Judicial Branch will be able to provide data on subsequent offending that will be used to measure recidivism of the defendants and offenders during a specified follow-up period. Multiple measures of recidivism will be considered: re-arrest for the same crime, re-arrest for a new crime, and new convictions. Additional analyses will be conducted to determine what program features, behavioral indicators and participant demographics are associated with program completion and recidivism.

As part of this analysis, the Sentencing Commission will collaborate with the Results First Initiative⁵ administered by the Institute for Municipal and Regional Policy (IMRP). Results include programs' First uses a sophisticated econometric model to analyze the costs and benefits of evidence-based programs across a wide variety of social policy areas, including adult criminal justice. The model applies the best available national rigorous research on program effectiveness to predict the programmatic and fiscal outcomes of the evidence-based programs under review in this study. To the extent that agencies can provide the necessary data on program costs, participation level, and benefits, the study will cost-benefit analyses.

Limitations of the Study

Although general information on each pretrial diversion program is available, the researchers have yet to determine what client-level and programmatic data exists that would provide information on dosage, what services are offered, whether those services achieved their intended goals, or whether the services or goals changed over time. The researchers are

5 The Pew-MacArthur Results First Initiative, a project of The Pew Charitable Trusts and the John D. and Catherine T. MacArthur Foundation, works with states to implement an innovative cost-benefit analysis approach that helps them invest in policies and programs that are proven to work. Results First has also received support from the Annie E. Casey Foundation.

committed to working with agencies and service providers to create a network of information that best address these study questions.

Areas Not Under Review

This study does not include pre-trial diversion programs that are not established in state law. The screening or assessment tools used by the Judicial Branch, Department of Mental Health and Addiction Services and private program providers to determine eligibility of defendants or offenders for specific programs will not be validated. The focus of this study does not extend beyond defendants participating in 10 pretrial diversion programs and other alternative incarceration or sentencing options will not be reviewed.

Timeline for Study

April-July 2016	Compile information about the programs. Request data from Judicial Branch, DMHAS, and provider organizations. Interview criminal justice system stakeholders and provider organization administrators and staff. Review literature and best practices for pretrial diversion programs and administration.
August-October 2016	Conduct statistical analyses
September 2016	Staff briefing presentation to commission
November 2016	Staff final report and presentation to commission
December 2016	Commission final action on staff report
January 13, 2017	Submit final report to the Governor

May 19, 2016