STATE OF CONNECTICUT
SENTENCING COMMISSION

Testimony of Alex Tsarkov and Honorable Judge Robert Devlin before the Judiciary Committee on HB 7287, An Act Implementing the Recommendations of the Connecticut Sentencing Commission Concerning Pretrial Release and Detention

Senator Doyle, Senator Kissel, Representative Tong, Senator Winfield, Senator McLachlan, Representative Stafstrom, Representative Rebimbas and members of the Judiciary Committee. For the record, my name is Alex Tsarkov and I am the Executive Director of the Connecticut Sentencing Commission. With me is Judge Robert Devlin, chief administrative judge for criminal matters and a member of the Sentencing Commission. We are here to testify in favor of HB 7287, An Act Implementing the Recommendations of the Connecticut Sentencing Commission Concerning Pretrial Release and Detention.

We would first like to give you some brief background about the Sentencing Commission. We are a permanent commission created six years ago, consisting of all of the stakeholders in the criminal justice system of Connecticut. Our membership includes Judges; the Chief State's Attorney; the Chief Public Defender; the Victim Advocate; the commissioners of Correction, Emergency Services and Public Protection, and Mental Health and Addiction Services; community activists interested in the criminal justice system; the chair of the Board of Pardons and Paroles; municipal police chiefs; the undersecretary of the criminal justice policy and planning division; as well as others vitally engaged in the criminal justice system. We have adopted a policy of striving for consensus in our recommendations to the legislature and the governor.

Concerns with pretrial release and detention decisions are nothing new. In 1970, a *Yale Law Journal* article on the Connecticut Bail Commission noted that by that time "the use of surety bonds in pretrial release [had] been under fierce attack for a decade in the United States." The report noted further that the most appalling aspect of the bail system was the incarceration of indigent individuals based on their inability to post a bond.

Recently, a wave of advocacy and legal challenges have advanced the momentum to fundamentally rethink how the pretrial justice system operates in the United States. The issues surrounding money bail are receiving much more attention nationally. An increasing number of jurisdictions across the country are in the process of evaluating their pretrial processes to ensure that pretrial detention is limited to the most dangerous defendants, that defendants are not detained because they are too poor to post their bond, and to allow for individualized bail determinations. The Connecticut Sentencing Commission's study of the pretrial process is part of that effort.

On November 5, 2015, Governor Dannel Malloy asked the Connecticut Sentencing Commission to conduct a comprehensive evaluation of Connecticut's pretrial justice system and investigate the possibility for its reform. Specifically, the governor requested that the Commission focus on the non-violent, low- level, pretrial population, given his concern that these individuals may be detained solely because they do not have the financial resources to post bond. The governor also requested that the Commission provide "an analysis of potential ways Connecticut can focus pretrial incarceration efforts on individuals who are dangerous and/or a flight risk." The governor's directive, therefore, included consideration of both the release and the detention aspects of Connecticut's pretrial justice system.

The Commission spent many hours examining Connecticut's pretrial justice system over the last year, reviewing the substantial literature in this area, and conferring with a broad range of subject matter experts and stakeholder groups. This study of the state's pretrial system raised many questions. We expect even more questions to emerge as we continue to examine these complicated issues. Some of the issues may be answered with data analysis, while others will require policy makers to make difficult decisions among competing policy priorities.

Based on the Commission's analysis and deliberations to date, we make the following observations. Some 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. Unlike many jurisdictions across the country, there is a right to counsel at defendants' first appearance. 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. Connecticut's present pretrial justice system is, to an extent, resource-based. When financial conditions of release are imposed, a defendant's ability to secure release before trial depends upon the defendant's ability to obtain sufficient funds to meet those conditions. Thus, Connecticut's present system results in (1) the detention of poor defendants who present manageable risks of pretrial misconduct and (2) the release of more affluent defendants who present more severe and at times less manageable risks of pretrial misconduct.

The data indicates 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 noncapital defendants the right "to be released on bail upon sufficient security," some defendants who pose a high risk to 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 our initial report on pretrial release and detention is on defendants who face relatively minor charges and have been assessed as posing a low risk of re-arrest and failure to appear. The recommendations contained in our 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. This legislation is the product of our recommendations.

Under HB 7287, the superior court judges will be required to make a finding on the record before imposing secured financial conditions in misdemeanor cases. If the crime charged is a 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 (1) fail to appear in court as required; (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 in court as required. The intent of this provision 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 recommendation unanimously, certain commissioners (Judge White, Attorney Farr, and Attorney Pierre) raised the possibility of including in this provision a proposal that the court consider "public safety" in setting bond for all violent misdemeanors, not just those misdemeanors involving family violence offenses. The Commission agreed to include in its report for the General Assembly (including this committee) to consider the issue as raised by Judge White, Attorney Farr, and Attorney Pierre.

Another provision of the bill shortens the bail review period for individuals charged with a misdemeanor who remain detained after the imposition of secured financial conditions. 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 of release for defendants charged with a family violence misdemeanor 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 in court as required; (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. Upon the defendant's return to court, the

court must remove the monetary condition of release for defendants charged with a non-family violence misdemeanor 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.

Finally, this legislation if enacted would permit a defendant to deposit 10% of the bond amount with the court whenever a surety bond of $10,000 or less is imposed. An arrestee may also 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. 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.

We urge the Committee members to read the Sentencing Commission complete report on pretrial release and detention, which could be found here: http://www.ct.gov/ctsc/lib/ctsc/Pretrial_Release_and_Detention_in_CT_2.14.2017.pdf . The Commission's findings and recommendations incorporate an important emphasis on public safety, the rights of victims, and the rights of the accused. The Commission's membership, structure, and commitment to this matter can continue to bring together the interested stakeholders to evaluate Connecticut's pretrial justice system, identify any deficiencies, and develop any necessary and appropriate solutions.

We thank the Committee for raising this important legislation and urge the Committee's JOINT FAVORABLE Report.