

To: Incarceration and Collateral Consequences Subcommittee,  
Connecticut Sentencing Commission  
From: Jake G. Keanna and Sarah Russell,  
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Subject: Cost-of-Incarceration Statute in Connecticut  
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Under current Connecticut law, incarcerated individuals are assessed for the cost of their incarceration, and the state has a claim against these individuals for this cost. This memorandum examines Connecticut's cost-of-incarceration statute, compares Connecticut's law to other states, and provides recommendations for reform.

## I. CONNECTICUT'S COST OF INCARCERATION STATUTE

By statute, the Connecticut Department of Correction ("DOC") is required to adopt regulations "concerning the assessment of inmates of correctional institutions or facilities for the costs of their incarceration."<sup>1</sup> The State "shall have a claim against each inmate for the costs of such inmate's incarceration" for which the state has not been reimbursed.<sup>2</sup>

### A. Lawsuit Proceeds

When a person who owes the cost of his or her incarceration ("COI") receives proceeds from a lawsuit within 20 years of release from prison, the state has a lien against the lawsuit proceeds in the amount of the COI, or 50% of the proceeds received (after payment of expenses), whichever is less.<sup>3</sup> There are obligations on the plaintiff's attorney to pay the DOC in accordance with lien, depending on timing and notice requirements.<sup>4</sup>

### B. Inheritances

When a person who owes the cost of his or her incarceration receives an inheritance within 20 years of release from prison, the state has a lien against the inheritance in the amount

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<sup>1</sup> Conn. Gen. Stat. § 18-85a(a) (2021).

<sup>2</sup> *Id.* § 18-85a(b). Certain property is exempt from the state's claim, including most property acquired after release. However, the state's claim extends to post-release lottery winnings, inheritances and lawsuit proceeds in accordance with § 18-85b and § 18-85c, and funds from federal, state or municipal pension, annuity or insurance contracts as set forth in § 52-321a(b).

<sup>3</sup> *Id.* § 18-85b.

<sup>4</sup> See Conn. Gen. Stat. § 18-85b(a) ("The state's lien shall constitute an irrevocable direction to the attorney for such person to pay the Commissioner of Correction or the commissioner's designee in accordance with its terms . . ."). The lien "shall have priority over all other claims, including any lien of the state for repayment of public assistance, except (1) attorney's fees for the cause of action, (2) expenses of suit, (3) costs of hospitalization connected with the cause of action by whomever paid over and above hospital insurance or other such benefits, and, for such period of hospitalization as was not paid for by the state, physicians' fees for services during any such period as are connected with the cause of action over and above medical insurance or other such benefits, (4) child support obligations pursuant to subsection (d) of section 17b-93, (5) restitution or payment of compensation to a crime victim ordered by a court of competent jurisdiction, and (6) payment of a civil judgment rendered in favor of a crime victim by a court of competent jurisdiction." Conn. Gen. Stat. § 18-85b(a).

of the COI, or 50% of the assets of the estate payable to such person, whichever is less.<sup>5</sup> The probate court is required to accept a lien notice from the DOC commissioner and the court must order distribution to the extent the inheritance has not already been distributed.

In addition, when a person who owes the cost of incarceration dies within 20 years of release from prison, the state can sue the estate to claim payment of the lien “to the extent that the amount which the surviving spouse, parent or dependent children of the decedent would otherwise take from such estate is not needed for their support.”<sup>6</sup> This claim has priority over “all unsecured claims against the estate,” including repayment of public assistance, but not including certain other specified obligations.<sup>7</sup>

### **C. Legislative History and Recent Proposals**

Connecticut first enacted legislation relating to the cost of incarceration in 1995; the original statute merely gave DOC the authority to adopt regulations concerning the assessment of individuals for the cost of their incarceration.<sup>8</sup> Legislation enacted in 2001 created cost-of-incarceration liens regarding lawsuit proceeds and inheritances, and gave the state the right to take up to 50% of these funds to satisfy the liens.<sup>9</sup> Legislation enacted in 2004 provided that the state may bring claims in superior court against individuals for the cost of incarceration within two years of their release, and excluded certain types of property from being used to satisfy such claims.<sup>10</sup> The 2004 legislation also placed a 20-year time limitation on the state’s ability pursue lawsuit proceeds and inheritances.<sup>11</sup>

A bill proposed in 2021, HB 6338, would have reduced the authorized amount of a lien against lawsuit proceeds from 50% to 25%, and shortened the time period from 20 years to 7 years after release to apply the lien.<sup>12</sup>

### **D. Cost of Incarceration and Collection in Connecticut**

The State of Connecticut collected in assessed incarceration costs \$5,669,687 in FY15; \$5,728,194 in FY16; \$4,778,428 in FY17; and \$6,465,907 in FY18.<sup>13</sup> The money is collected by the Department of Administrative Services (DAS) and goes into the General Fund. We are unsure of how much is expended by DAS and others to collect these funds. Regulations define the per-day cost of incarceration at DOC facilities as the amount computed using the same

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<sup>5</sup> Conn. Gen. Stat. § 18-85b(b).

<sup>6</sup> Conn. Gen. Stat. § 18-85c.

<sup>7</sup> *Id.* In particular, the state must allow the estate to retain (1) \$375 towards “final sickness” (medical bills related to cause of death); (2) funeral expenses up to \$1350 (per § 17b-84); (3) child support obligations; (4) restitution payment to crime victim; (5) payment of a civil judgment rendered in favor of a crime victim; and (6) certain administrative expenses (probate fees, taxes, etc.).

<sup>8</sup> Public Act 95-235.

<sup>9</sup> Public Act 01-129, §§ 1-2.

<sup>10</sup> Public Act 04-234, §§ 17-19.

<sup>11</sup> *Id.*

<sup>12</sup> H.B. 6338 (Conn. 2021), <https://www.cga.ct.gov/2021/TOB/H/PDF/2021HB-06338-R00-HB.PDF>.

<sup>13</sup> Katherine Dwyer, Office of Legislative Research, *Inmates Paying the Cost of their Incarceration*, Connecticut General Assembly, (Nov. 5, 2018) (citing information from the Office of Fiscal Analysis), <https://www.cga.ct.gov/2018/rpt/pdf/2018-R-0269.pdf>

accounting procedures the comptroller uses to calculate such costs for state humane institutions. It appears that the per-day cost depends on the institution where someone was incarcerated. As of yet, we have not obtained the per-day/per-inmate amounts currently in use.

According to a 2015 report from the Vera Institute of Justice, Connecticut was one of eight states that had a cost per incarcerated individual above \$50,000.<sup>14</sup> Connecticut's incarceration rate, as of 2019, was the highest in New England and in the tristate area.<sup>15</sup> However, rates have dropped during the pandemic. As of September 1, 2021, Connecticut's prison population was 9,272. (The population of just under 9,000 in April 2021 was the lowest the population had been in more than thirty years).<sup>16</sup> DOC closed Northern Correctional Institution in June 2021 (projected to save \$11.75 million) and will close Radgowski Correctional Institution by year's end (projected to save \$7.3 million).<sup>17</sup>

### **E. Recent Connecticut Case Law Concerning Incarceration Cost Liens**

Connecticut's cost-of-incarceration statute has been subject to recent challenges in court. In *Williams v. Marinelli*, a jury found Connecticut state officials liable for violating an incarcerated man's Eighth Amendment rights and awarded \$300,000 in damages.<sup>18</sup> The State took nearly half of the judgment pursuant to the cost-of-incarceration statute, which granted the state a lien on the lawsuit proceeds. The U.S. Court of Appeals for the Second Circuit held that the state's action in taking the proceeds was preempted by the federal civil rights statute, 42 U.S.C. § 1983. The Court reasoned: "We conclude that the State's actions here conflict sufficiently sharply with § 1983's goals, particularly the goal of deterring state officers from abusing prisoners in their charge in violation of their constitutional rights, to justify the district court's conclusion that the State's attempt to discharge [the defendant's] judgment obligations while recouping more than half the judgment through its cost-recovery statutes is preempted by § 1983, and the judgment against [the defendant] remains outstanding."<sup>19</sup> Other plaintiffs are seeking to use the holding of *Williams* to avoid the cost-of-incarceration lien when defendants are governmental employees. *See, e.g., Granger v. Santiago*, No. 3:19-cv-60 (MPS), ECF 98 (Sept. 10, 2021) (deferring decision on plaintiff's request for a permanent injunction preventing DOC defendants from using § 18-85b and a declaratory judgment that use of § 18-85 is preempted by § 1983).

## **II. COST OF INCARCERATION STATUTES IN OTHER STATES**

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<sup>14</sup> Vera Institute for Justice, *Prison Spending in 2015*, <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>.

<sup>15</sup> The Sentencing Project, *State-by-State Data* (2020), <https://www.sentencingproject.org/the-facts/#rankings> (citing U.S. Bureau of Justice Statistics, 2019).

<sup>16</sup> Connecticut Department of Correction, Monthly Statistics (Sept. 1, 2021), <https://portal.ct.gov/-/media/DOC/Pdf/MonthlyStat/Stat09012021.pdf>; Rick Lessard, *Inmate Population Drops to 30-year Low*, Fox 61 Local News (Mar. 22, 2021), <https://www.fox61.com/article/news/local/cts-inmate-population-drops-to-30-year-low/520-0aa717bc-025f-49e8-8873-18473de2ad86> ("On April 16, 1990, the incarcerated population was 8,972 inmates. That number rose over the next 20 years, peaking at an all-time high at 19,894 inmates by 2008.").

<sup>17</sup> Julia Bergman, *State to Close Montville Prison*, NewsTimes (Sep. 8, 2021), <https://www.newstimes.com/news/article/State-to-close-Montville-prison-16444238.php>

<sup>18</sup> *Williams v. Marinelli*, 987 F.3d 188, 192 (2d Cir. 2021).

<sup>19</sup> *Id.*

A 2015 report from the Brennan Center found that at least 43 states had laws authorizing “room and board” fees.<sup>20</sup> Within New England, only Connecticut and Maine authorize general room and board charges for incarcerated people. Massachusetts and New Hampshire do not have these charges at all, whereas in Rhode Island and Vermont individuals participating in work release programs can have costs deducted from earnings.<sup>21</sup> In New York, a person can be required to pay a fee of up to \$1 per week to help defray costs. New Jersey does not authorize room and board charges.<sup>22</sup> In Pennsylvania, county jails are authorized to collect a reasonable amount from individuals incarcerated only on weekends or other short periods each week.<sup>23</sup>

Many of these “pay-to-stay” statutes nationwide were enacted in the 1990s. There have been recent reforms in some states aimed at eliminating these statutes. For example, in 2019, both New Hampshire and Illinois eliminated pay-to-stay statutes.<sup>24</sup> Illinois, like Connecticut, had targeted individuals who had received a settlement or an inheritance and advocates observed that substantial resources had been expended trying to recover cost-of-incarceration charges.<sup>25</sup> In Michigan, in 2021, Washtenaw County forgave over half a million dollars in debt owed by more than 31,000 people who have been incarcerated at their facilities within the past eight years.<sup>26</sup>

### III. REASONS FOR REFORM

A number of reasons support repealing Connecticut’s cost of incarceration statute.

First, as noted above, Connecticut has seen a substantial decrease in its prison population—down to just over 9,000 individuals from a high of almost 20,000 individuals in 2008. With this lower population and costs of running the system down, the need for Connecticut to impose cost of incarceration liens is reduced.

Second, formerly incarcerated individuals are already disadvantaged in Connecticut. Cost-of-incarceration liens create barriers to successful reentry and require formerly incarcerated people to carry the burden of their incarceration with them for twenty years.

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<sup>20</sup> See Lauren-Brooke Eisen, Brennan Center for Justice, *Charging Inmates Perpetuates Mass Incarceration* (2015), [https://www.brennancenter.org/sites/default/files/2019-08/Report\\_Charging\\_Inmates\\_Mass\\_Incarceration.pdf](https://www.brennancenter.org/sites/default/files/2019-08/Report_Charging_Inmates_Mass_Incarceration.pdf). As of 2015, at least 35 states authorized medical fees to be charged to individuals in either state or county correctional facilities. *Id.* The Brennan Center’s website displays a map indicating which states authorize room and board or medical fees. It appears that the information was last updated in 2019. See Brennan Center for Justice, *Is Charging Inmates to Stay in Prison Smart Policy?* (Sept. 9 2019), <https://www.brennancenter.org/our-work/research-reports/charging-inmates-stay-prison-smart-policy>

<sup>21</sup> Brennan Center for Justice, *Is Charging Inmates to Stay in Prison Smart Policy?* (Sept. 9 2019).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> HB 518-FN (N.H. 2019); Pub. Act. 101-0235 (Ill. 2019). See Caitlin Andrews, ‘Pay to stay’ law charging prisoners for their incarceration faces repeal, *Concord Monitor* (Jan. 25, 2019), <https://www.concordmonitor.com/State-House-bill-remove-inmate-care-cost-statute-23000648>

<sup>25</sup> Greg Bishop, New Criminal Justice Laws Include Barring State from Suing for Cost of Incarceration, *Center Square Illinois* (Dec. 15, 2019), [https://www.thecentersquare.com/illinois/new-criminal-justice-laws-include-barring-state-from-suing-for-cost-of-incarceration/article\\_835221de-1dda-11ea-8323-1fa3cfb707e2.html](https://www.thecentersquare.com/illinois/new-criminal-justice-laws-include-barring-state-from-suing-for-cost-of-incarceration/article_835221de-1dda-11ea-8323-1fa3cfb707e2.html)

<sup>26</sup> Angie Jackson, *Washtenaw County forgives \$509K in jail debt for more than 31,000 people*, *Detroit Free Press*, (Feb. 4, 2021), <https://www.freep.com/story/news/local/michigan/2021/02/04/washtenaw-county-jail-debt/4388377001/>.

Third, cost-of-incarceration liens disproportionately impact Black and Latino residents of Connecticut. White non-Hispanic residents in Connecticut represent approximately two-thirds of the state's general population but only about 28% of the state's incarcerated population. African Black and Latino individuals make up more than 71% percent of Connecticut's prison population.<sup>27</sup>

Fourth, lien statutes interfere with estate planning and generational distribution of wealth. Taking half of inheritances (given or received) to satisfy cost-of-incarceration liens promotes intergenerational poverty and undermines the wishes and intentions of deceased individuals. People incarcerated or previously incarcerated who receive an inheritance from a parent or other loved one are already grieving that loss. By taking 50% of the inheritance, the state diminishes any chance of a fresh start for an individual struggling to reenter society. The law also prevents formerly incarcerated people from accumulating and passing on wealth to their children. Children who have had a parent incarcerated have already faced emotional challenges and a lack of financial support in their lives. With a parent's death, these children then suffer an additional hardship of losing 50% of an inheritance they would have otherwise received. The law makes it difficult for families to break the cycle of poverty. The impact of mass incarceration in this state will be felt by generations to come if the state continues to impose liens on inheritances in this manner.

Fifth, a settlement or judgment from a lawsuit is not a "windfall," but rather is just compensation for injuries suffered by a plaintiff. The cost-of-incarceration liens prevent plaintiffs' attorneys from achieving just compensation for their clients, and discourage lawyers and clients from seeking redress for harm done.

Finally, Connecticut's application of a cost-of-incarceration lien was been deemed preempted by the federal civil rights statute in a case against a state defendant, and we can expect more court challenges in the future if the statute remains in place.

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<sup>27</sup> See U.S. Census Bureau, Quick Facts, <https://www.census.gov/quickfacts/fact/map/US/RHI825218>; Connecticut Department of Correction, Monthly Statistics (September 1, 2021), <https://portal.ct.gov/-/media/DOC/Pdf/MonthlyStat/Stat09012021.pdf>.