



Legislative Testimony
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**Written Testimony Supporting Senate Bill 1018, An Act Concerning
Prosecutorial Accountability**

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein, and distinguished members of the Judiciary Committee:

My name is Kelly McConney Moore, and I am the interim senior policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am here to testify in support of Senate Bill 1018, An Act Concerning Prosecutorial Accountability.

The ACLU-CT believes that mass incarceration is the liberation struggle that defines our era in U.S. history. We have come to a point where approximately 3 out of every 10 adults in the U.S. has a criminal record of some kind,¹ and over half of the people in this country has a close family member who has been incarcerated.² We believe that everyone has a role to play in ending the pervasive system of mass incarceration. That is especially true of people operating within the criminal legal system, like state's attorneys, whose decisions can either perpetuate mass incarceration or begin to work towards a different model of justice.

Prosecutors hold people's lives in their hands: their decisions impact a person's freedom, fundamental rights, and entire future. In Connecticut, where being charged with a crime can lead to a lifetime of being denied for housing, employment, education, and other opportunities, prosecutors impose effective life sentences every day. For a long time, prosecution was a black box, shielding prosecutors' decisions from scrutiny and insulating prosecutors. Following the passage of the nation-leading Public Act 19-

¹ Jo Craven McGinty, "How many Americans have a police record? Probably more than you think." Wall Street Journal, Aug. 7, 2015, available at <https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think-1438939802>.

² Niall McCarthy, "Over half of Americans have had a family member incarcerated [infographic]." Forbes, Dec. 7, 2018, available at <https://www.forbes.com/sites/niallmccarthy/2018/12/07/over-half-of-americans-have-had-a-family-member-incarcerated-infographic/?sh=3330e2eb3e4f>.

59³ in 2019, prosecution on in Connecticut is becoming more transparent. That transparency is shedding light on areas where prosecution perpetuates rather than ameliorates mass incarceration.

A major finding from the first round of Public Act 19-59 data that was analyzed by the Criminal Justice Policy and Planning Division of the office of Policy and Management (OPM) was that there were significant differences among the number of cases prosecuted in each of the 13 judicial districts.⁴ The report also found that prosecutors “used their discretionary decision-making to tailor responses based on [that widely varying] caseflow.”⁵ Preliminary data indicate that outcomes for people caught up in the justice system will change depending on where they are prosecuted.

Another new piece of data highlighting the role of prosecutors in Connecticut’s system of mass incarceration comes from the COVID-19 pandemic. During the pandemic, DOC’s population declined below 10,000 incarcerated people – a 30 year low.⁶ This drop was “overwhelmingly the result of fewer prisoners entering the system.”⁷ Between March 1 and June 1, 446 people entered incarceration.⁸ That number is just 25% of the people imprisoned during the same period in 2019.⁹ During that same period, arrests were also down significantly compared with the previous year.¹⁰ COVID-19 created a laboratory in the Connecticut criminal legal system, with outcomes demonstrating that reducing the number of people coming into the criminal legal system can significantly reduce incarceration overall. Experts have long known that prosecutors are major drivers of mass incarceration,¹¹ but after 2020, we now know that they could bring about rapid and significant decreases in incarceration, if they had the will to do so.

³ Conn. Pub. Act. 19-59 (2019), *available at* <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00059-R00SB-00880-PA.pdf>.

⁴ *See generally* “First Analysis of Prosecutor Data (PA 19-59): 2020 Report to the Criminal Justice Commission.” Office of Policy & Management Criminal Justice Policy & Planning Division, Jul. 14, 2020, *available at* <https://business.ct.gov/-/media/OPM/CJPPD/CjAbout/PA-19-59-presentation-as-presented-7-14-20.pdf>.

⁵ *Id.*

⁶ Kaitlyn Krasselt, “As CT prison population nears 30-year low, fewer intakes drive declines.” Middletown Press, Jun. 4, 2020, *available at* <https://www.middletownpress.com/news/coronavirus/article/As-CT-prison-population-nears-milestones-fewer-15315989.php>.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Kelan Lyons, “FBI report: Connecticut has nation’s second largest drop in violent crime in 2019.” CT Mirror, Sept. 28, 2020, *available at* <https://ctmirror.org/2020/09/28/fbi-report-connecticut-has-nations-second-largest-drop-in-violent-crime-in-2019/>.

¹¹ *See, e.g.*, David Lat, “How tough-on-crime prosecutors contribute to mass incarceration.” New York Times, Apr. 8, 2019, *available at* <https://www.nytimes.com/2019/04/08/books/review/emily-bazelon-charged.html>.

In Connecticut, though, structural barriers exist to creating a prosecution system dedicated to ending mass incarceration.

The first barrier is one that the legislature has worked to reduce: a lack of prosecutorial transparency. When the General Assembly enacted a bill requiring tracking and public reporting of data in 2019, it signaled an understanding of prosecution's key role in mass incarceration and the need to diagnose the problem. Other barriers persist, though.

The second barrier is that state's attorneys – the top prosecutors in each judicial district, who are responsible for how criminal justice is carried out in their region – are not answerable to the public and are rarely answerable to any oversight agency.

And the third biggest barrier is that the judicial districts can and do operate independently of one another, meaning that outcomes for crime victims and defendants vary depending on people's zip codes. The lack of uniformity also stymies statewide reform efforts – even reform-minded chief state's attorneys, for example, cannot mandate coordinated changes across judicial districts.

Senate Bill 1018 is designed to break down these systemic barriers. To tackle the lack of accountability, the bill proposes two solutions. First, it requires state's attorneys to check in with the agency responsible for appointing prosecutors, the Criminal Justice Commission (CJC), every two years. These check-ins would be open to the public and would be based on data already being collected pursuant to Public Act 19-59. During these check-ins, state's attorneys can explain the trends in their judicial districts. The CJC can highlight areas for improvement or changes, if necessary. People living in the judicial district could weigh in on what is going wrong – and right – in local prosecution. These check-ins would: (1) create a formalized role for community input, in our unusual system of appointed state's attorneys;¹² (2) allow state's attorneys to explain any discrepancies or outlier data; (3) allow the CJC to course-correct any judicial districts that may be going off track; and (4) provide a data trail for the CJC to use when reappointment time comes, that is currently lacking.

¹² "First Analysis of Prosecutor Data (PA 19-59): 2020 Report to the Criminal Justice Commission" at 11. Office of Policy & Management Criminal Justice Policy & Planning Division, Jul. 14, 2020, *available at* <https://business.ct.gov/-/media/OPM/CJPPD/CjAbout/PA-19-59-presentation-as-presented-7-14-20.pdf>.

The second accountability solution in Senate Bill 1018 is to decrease the terms for state's attorneys from eight years to four. Eight-year terms make state's attorneys outliers in the division of criminal justice, where the chief state's attorney serves a five-year term¹³ and deputy chief state's attorneys serve four-year terms.¹⁴ These eight-year terms are also an outlier among the states, 47 of which have head prosecutors serving shorter terms¹⁵ than Connecticut's state's attorneys. This is not a term limit, but rather a way to provide the CJC more frequent oversight of state's attorneys. As it stands right now, state's attorneys go nearly a decade without having their performance meaningfully assessed by the CJC. If the CJC can consider each state's attorney more frequently, it can move more quickly toward ensuring that the people in those roles are working toward improving prosecution instead of retrenching mass incarceration. This measure, coupled with biennial performance reviews, will significantly improve the CJC's ability to serve as a check on state's attorneys failure to move Connecticut toward innovative, smart justice.

Senate Bill 1018 also provides a policy solution for the existing disparities between judicial districts in Connecticut. As early data gathered pursuant to Public Act 19-59 shows, prosecutors in different judicial districts treat similar crimes and similar people differently. The ACLU-CT believes that justice should not be dependent on where you happen to live or who happens to prosecute your case. The uniform standards proposed in this bill are one step towards making justice more even across Connecticut. Rather than dictating policies, Senate Bill 1018 directs the state's attorneys and chief state's attorney to work towards creating uniform policies around decisions and litigation phases where prosecutors exercise a great deal of discretion. Since those policies will be created by the state's attorneys, they can ensure that prosecutors retain sufficient flexibility to continue to incorporate important case specifics into their decision-making. Having guardrails around those decisions ensures that justice does not vary wildly across the state while avoiding the downfalls that come with rigid constraints.

¹³ Conn. Gen. Stats. § 51-278(a)(2) (2020).

¹⁴ Conn. Gen. Stats. § 51-278(b)(1)(A) (2020).

¹⁵ Tennessee's elected head prosecutors serve 8-year terms. *See* Tenn. Stat. Ann. § 16-2-506 (2020). Alaska's head prosecutors are appointed by the state Attorney General and serve indefinitely. *See, e.g.*, <https://www.akbizmag.com/right-moves/brittany-dunlop-named-as-anchorage-district-attorney/>. *See also* OLR Research Report, States that Elect Their -Chief Prosecutors. (Feb. 24, 2003), *available at* <https://www.cga.ct.gov/2003/rpt/2003-R-0231.htm>.

If Senate Bill 1018 is passed, Connecticut will have more transparent prosecution with meaningful opportunities for both oversight and public input. The sooner it is passed, the sooner we move away from the mass incarceration paradigm and into the world of building safe and healthy communities. As COVID-19 has shown, this shift can happen sooner than we think – it just requires prosecution dedicated to that goal.

This is not just a bill that helps reformers. We believe that this bill will make the work of state’s attorneys clearer and less uncertain. More frequent check-ins with the CJC means that state’s attorneys will have a better picture of what is expected of them, directly from the body with sole responsibility for reappointing them. This bill also ensures that every step of a state’s attorney’s evaluation and reappointment is data-driven, removing uncertainty and a good deal of subjectivity from the reappointment process. State’s attorneys will also have the benefit of standard policies to guide the decisions of the prosecutors in their judicial district, removing unnecessary ambiguity for the lawyers making life-altering decisions every day. Finally, prosecutors in Connecticut are already significantly insulated from political pressure by design, since they are not elected and have constitutional independence; this bill preserves that fundamental character.

If Senate Bill 1018 is enacted, prosecution will change in important but realistic ways that can serve as a model for other states. Connecticut has decreased the number of people behind bars by nearly half since 2008¹⁶ while continuing on a trend towards better community safety and lower crime.¹⁷ Transparency and accountability from state’s attorneys is a necessary step for ending mass incarceration and Senate Bill 1018 lays out the map to get Connecticut there. If this bill were passed, Connecticut would once again demonstrate its leadership in this era-defining civil rights struggle. We support this bill enthusiastically and urge this Committee to do the same.

¹⁶ Kelan Lyons, “Connecticut prison population almost halved since 2008 peak as pandemic continues.” CT Mirror, Jun. 25, 2020, *available at* <https://ctmirror.org/2020/06/25/connecticut-prison-population-almost-halved-since-2008-peak-as-pandemic-continues/>.

¹⁷ See Clarice Silber & Jake Kara, “Violent crime in Connecticut remains stagnant, murder rate goes up.” CT Mirror, Sept. 24, 2018, *available at* <https://ctmirror.org/2018/09/24/violent-crime-connecticut-remains-stagnant-murder-rate-goes/>.