

Judiciary Committee JOINT FAVORABLE REPORT

Bill No.: HB-5390

AN ACT REPEALING STATUTORY PROVISIONS THAT IMPOSE LIABILITY ON AN INDIVIDUAL FOR REPAYMENT OF COSTS INCURRED WHEN THE

Title: INDIVIDUAL WAS INCARCERATED.

Vote Date: 3/29/2022

Vote Action: Joint Favorable

PH Date: 3/25/2022

File No.:

***Disclaimer:** The following JOINT FAVORABLE Report is prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and does not represent the intent of the General Assembly or either chamber thereof for any purpose.*

SPONSORS OF BILL:

Judiciary Committee

Co-Sponsors:

Sen. Gary A. Winfield, 10th Dist.

Rep. Bobby A. Gibson, 15th Dist.

Rep. Anthony L. Nolan, 39th Dist.

Rep. Joshua M. Hall, 7th Dist.

Rep. Travis Simms, 140th Dist.

Rep. Michael A. Winkler, 56th Dist.

Rep. Geraldo C. Reyes, 75th Dist.

Rep. David Michel, 146th Dist.

Rep. Minnie Gonzalez, 3rd Dist.

Rep. Andre F. Baker, 124th Dist.

Rep. Brian T. Smith, 48th Dist.

Rep. Hubert D. Delaney, 144th Dist.

Rep. Jillian Gilchrest, 18th Dist.

Rep. Steven J. Stafstrom, 129th Dist.

Rep. Jason Doucette, 13th Dist.

Rep. Anne M. Hughes, 135th Dist.

Rep. Patricia A. Dillon, 92nd Dist.

Sen. Will Haskell, 26th Dist.

Rep. Robyn A. Porter, 94th Dist.

Rep. Matt Blumenthal, 147th Dist.

Rep. Maria P. Horn, 64th Dist.

Rep. Maryam Khan, 5th Dist.

Rep. Christopher Rosario, 128th Dist.

REASONS FOR BILL:

This bill seeks to discontinue the State practice of collecting pay-to-stay fees from incarcerated individuals following their release. Pay-to-stay fees create an additional barrier for those attempting to reenter society following a prison sentence and have been found to disproportionately affect Black and Latino residents, who represent one third of the general population and approximately 71% of the prison population in Connecticut. These fees also have a detrimental affect on intergenerational wealth and harm family members who have loved ones that have served their prison sentence.

RESPONSE FROM ADMINISTRATION/AGENCY:

State of Connecticut Division of Criminal Justice

The Division of Criminal Justice supports the bill as successful reentry of incarcerated individuals into society benefits everyone, and the bill aids in that endeavor. The Division voted in favor of this initiative in the Connecticut Sentencing Commission. They appreciate the opportunity to provide input on this matter and would be happy to provide any additional information the Committee might require.

State of Connecticut Division of Public Defender Services, Deputy Assistant Public Defender, Benedict R. Daigle

The Office of Chief Public Defender (OCPD) supports the bill as it would remove counterproductive collateral consequences which hamper individuals' successful rehabilitation and reentry into the community after incarceration. Sentences and collateral consequences needlessly hinder an individual's ability to provide for themselves and their loved ones and be a productive, engaged member of society. Taking just compensation from individuals burdens colorable individuals who are working to recover from harm, build a better life, and leave something to their children. Given the historical context of the criminal legal system and the persistent disparities therein, it is time to stop the counterproductive extraction from individuals. Our society shares a moral, social, and economic interest in the success of returning citizens. OCPD supports the bill as it would remove one barrier from reentry into society for those who have served their sentence.

NATURE AND SOURCES OF SUPPORT:

American Civil Liberties Union of Connecticut, Policy Counsel, Jess Zaccagnino

Jess Zaccagnino, Policy Counsel for the American Civil Liberties Union of Connecticut (ACLU-CT), is in strong support of the bill. State prisons currently cost \$249 per day, or \$90,885 per year. This is more than an in-state student would pay in 2.5 years for attendance at the University of Connecticut including tuition, housing, food, and books. The ACLU-CT believes that once people finish their sentence, they should have the same opportunity to support themselves and their families as anyone else. Prison debt harms those trying to build a new life as well as their loved ones. The ACLU-CT supports the bill as prison debt is inhumane, unjust, and morally repugnant. They encourage the Committee to go even further and completely abolish the practice of charging for prison debt in its entirety.

American Civil Liberties Union, Smart Justice Leader, Brian K. Sullivan Sr.

Brian K Sullivan Sr., a Smart Justice Leader with the American Civil Liberties Union (ACLU), fully supports the bill because people who have served their time and paid their debt to society have completed their sentence. He believes it is wrong, unjust and oppressive to attempt to charge people for prison debt. Having been incarcerated in Connecticut for 31 years, Mr. Sullivan has been home since 2019. However, he notes that the past two years have been a challenge. Despite his work ethic and attitude along with the great references he has, his criminal record continues to be held against him. On top of this, he has prison debt hanging over him and a risk of being sued by the state. If the state charged him the current rate of around \$90,000 per year, he would owe \$2.7 million. This means that the state could potentially sue him for half of that, nearly \$1.3 million. He would like to be able to pass on what he has earned to his children to help them be successful in their lives as they should not be vulnerable and suffer further from his incarceration. Passing this bill would end an

excessively punitive and unfair practice of pay-to-stay fees and give members of our society a fair and equal chance to lead successful lives.

Barbra Fair

Barbra Fair, a West Haven resident, strongly supports the bill which would repeal the incarceration lien. Individuals who are released from jails and prisons carry the burden of overcoming the inhumanities and degradation associated with their prison stays, adverse mental and physical health effects, possible loss of family connection, housing, employment and opportunities for successful reentry. Ms. Fair believes that to add an additional burden is unconscionable. She also notes the racial inequalities seen within the prison system and a need for change. She believes that the state can begin bringing further integrity to the system of justice in Connecticut. She believes the first step in doing this is to repeal laws passed with very intentional negative outcomes. Passing this bill is a strong first step in this.

Civil Justice Clinic, Quinnipiac University School of Law, Supervising Attorney, Sarah Russell

Student Intern, Nicholas Scarlett

Student Intern, Robert Silver

Student Intern, Kylee Verrill

The Civil Justice Clinic at the Quinnipiac University School of Law supports the bill. The clinic testifies that Connecticut's current statute hinders reentry, impedes estate planning, perpetuates intergenerational poverty, disproportionately affects Black and Latinx residents, and is subject to challenges in courts. They have laid out five reasons why repealing the cost-of-incarceration statute is important. First, fines and fees associated with criminal prosecution prevent the goals of rehabilitation and reentry through creating and contributing to insurmountable cycles of debt, undercutting physical and mental health needs, and restricting economic mobility. Second, the cost-of-incarceration statute disturbs estate planning and a family's ability to distribute or receive wealth from their next of kin, in turn hindering an individual's ability to help their children financially. Third, Connecticut's cost-of-incarceration statute disproportionately affects Black and Latinx residents of Connecticut. Black and Latinx individuals make up less than one third of the population of the state, while making up more than 71% of the incarcerated population. Fourth, Connecticut's cost-of-incarceration statute has been subject to challenge in the courts and more litigation can be expected if the statute remains in place. Lastly, since 2008, Connecticut's prison population has decreased by more than 50%, reducing the need for Connecticut to utilize cost-of-incarceration liens. For all these reasons, the Civil Justice Clinic urges the General Assembly support the bill.

Commission on Women, Children, Seniors, Equity and Opportunity, African American Sub-Commission, Policy Analyst, Denise Drummond

Denise Drummond, a policy analyst for the African American Sub-Commission of the Commission on Women, Children, Seniors, Equity and Opportunity (CWCSEO), supports the bill. Ms. Drummond notes that under the current incarceration lien statute, the fear of state collection haunts formerly incarcerated individuals for up to 20 years after their release from prison. She shares that punishment for formerly incarcerated individuals continues long after their sentence ends as a criminal record can severely limit access to employment, housing, and education among other things. States around the country have been repealing pay-to-stay laws. Connecticut and Maine being the only states in New England and the Tri-State area to still impose post-incarceration lien. CWCSEO believes that it is time for Connecticut

to end this punitive practice. Passage of this bill gives members of the state a fair chance to reenter society after serving a prison sentence.

Community Resources for Justice, President and CEO, Deborah O'Brien

Deborah O'Brien, the President and CEO of Community Resources for Justice (CRJ), supports the bill. Convicted persons pay their debt to society through their incarceration. Following this debt being paid, CRJ believes it should be the state's goal to make the transition from incarceration to society easier, not more difficult. Presently there are many existing barriers for formerly incarcerated individuals reentering society including the lack of affordable housing, the need for skills-training and employment, and the need for wrap-around mental health services. Passing this bill is a step towards eliminating at least one barrier of reentry.

Connecticut Legal Rights Project, Inc., Executive Director, Kathleen Flaherty, Esq.

Kathy Flaherty, the Executive Director of Connecticut Legal Rights Project (CLRP), supports the bill with a suggested addition. CLRP support the bill as it recognized that the state's collection of these costs place obstacles in the way of people re-integrating in communities across the state upon their release from incarceration. They do ask that the committee consider addressing the similar situation faced by people held at DMHAS facilities against their will. They believe that in these situations holding someone against their will and then charging them for the cost of care they never asked for, adds insult to injury. They support the bill in its current state but ask that the committee consider amending the bill to prohibit the collection of involuntary care.

Connecticut Organized for a New Connecticut, Member, Mary Ellen R. Hagedus

Connecticut Organized for a New Connecticut, Member, Kenny Foscue

Mary Ellen R. Hagedus and Kenny Foscue, members of Connecticut Organized for a New Connecticut (CONNECT), support the bill. The current incarceration lien creates a fear of state collection that haunts formerly incarcerated people for up to 20 years after their release from prison. They support the bill because the current law places undue burden on people reentering society, the current law perpetuates intergenerational poverty, and the current law disproportionately impacts Black and Latino residents. Having passed Clean Slate Legislation, CONNECT urges the state move forward and repeal the incarceration lien and give members of society a fair and equal chance to re-enter society after being released from prison.

Connecticut Trial Lawyers Association

The Connecticut Trial Lawyers Association strongly supports the bill because passage of the bill would help integrate former inmates into society. Testimony provided by the Connecticut Trial Lawyers Association is centered around the question; when has a person who has done their time been punished enough? The lien has an impact on inheritances, has an unjust 20-year period to collect, and perpetuates the cycle of poverty. The lien also is a double taxation for inmates as the cost of incarceration is already part of the budgeting for the State of Connecticut by the imposition of personal income tax. Connecticut passed the Clean Slate Legislation in 2021. However, for Connecticut to truly be a "second chance" state, we must eliminate cost-of-incarceration liens and stop assessing people for their incarceration. The Connecticut Trial Lawyers Association believes the bill should be passed as formerly incarcerated individuals who have served their time should not have to wait 20 years for a true fresh start.

Congregations Organized for a New Connecticut, Criminal Justice Reform Team, Tri-Chairs; Dawn Grant, Philip Kent, Rodney Moore

The tri-chairs of the Criminal Justice Reform Team, Congregations Organized for a New Connecticut, strongly support the bill. The current law continues intergenerational poverty as building generational wealth becomes nearly impossible under the current provisions. They also note that Black and Latino residents are disproportionately impacted by mass incarceration. They believe that passage of this bill will aid in providing equity throughout the state.

Fines & Fees Justice Center, Co-Director, Lisa Foster

Lisa Foster, the Co-Director of the Fines and Fees Justice Center, strongly supports the bill. Pay-to-stay fees are harsh, harmful, and counterproductive. In Connecticut they are particularly harsh, with \$249 being charged per day for a stay in prison, staggeringly higher than the \$142.50 per day in California which was formerly charged in Riverside County. California has eliminated the authority of its counties to charge pay-to-stay fees in their jails, New York has lowered their charge to \$1 per week but only if the person is working and only if the charge does not cause a hardship to the person incarcerated or their families. New Jersey, Massachusetts, Texas, and Utah all no longer charge pay-to-stay fees. These fees are highly regressive taxes and most people in prison are indigent and the least likely to be able to afford to pay these fees. Pay-to-stay fees are not only harmful to individuals, but their families and communities as well. They are counterproductive, and they do not pay for the cost of incarceration. Connecticut has the highest pay-to-stay fees in the country today. This bill provides an opportunity for Connecticut to be a national leader in a positive way and eliminate pay-to-stay fees.

James P. Brennan

James P. Brennan strongly supports the bill. He aligns himself with the position taken by the Connecticut Trial Lawyers Association that incarceration liens are onerous, unfair and act to set back a felon's integration into society. Also noted is that convicted felons already forfeit numerous rights enjoyed by other citizens. Incarceration liens just further stigmatize convicted felons and further punish them in ways not intended by a just legal system, including harming their families. Mr. Brennan concludes his testimony in support of the bill by stating that justice without mercy is cruelty, and unending punishment is cruelty and does not serve society.

National Association for the Advancement of Colored People Connecticut State Conference, Criminal Justice Committee, Member, Corrie Betts

Corrie Betts, a member of the Criminal Justice committee at the National Association for the Advancement of Colored People (NAACP) Connecticut State Conference, speaking on behalf of the NAACP-CT, supports the bill. The U.S. Court of Appeals for the Second Circuit concluded that a cost of incarceration lien conflicted with federal civil rights statutes in 2021. This judgement is likely an opening for more challenges against incarceration liens. It is also pointed out that Black and Latino individuals make up more than 71% of Connecticut's prison population while representing approximately one third of the state's general population. The NAACP-CT believes if the General Assembly is committed to advancing racial equity, it should pass the bill.

North Carolina State University, Dr. April D. Fernandes

University of Southern California, Dr. Brittany Friedman

Northwestern University, Ms. Gabriela Kirk

This team of three researchers is leading the first empirical study comparing the imposition, recoupment, and consequences of "pay-to-stay" fees across states. They support the bill and believe it is paramount that Connecticut reassess the purpose, practicality, and consequences of pay-to-stay and civil recoupment strategies such as lawsuits. Lawsuits represent harm against those subject to the lawsuits punishment beyond time served, resulting in a permanent debt to the state and thus continued tethering to the criminal and civil legal systems.

One Standard of Justice, Member of the Board, Sharon Dorne

Sharon Dorne, a member of the board of One Standard of Justice, supports the bill as it recognizes the fragile financial state of returning populations and eliminates the intrusive and damaging policy of assessing liens on earnings and inheritance.

Quinnipiac University, Associate Professor of Social Work, Amber Kelly, PhD, MSW, LCSW

Amber Kelly, an active Social Worker and Associate Professor of Social Work, strongly supports the bill. As a member of the Social Welfare Action Alliance and Sex Workers and Allies Network, as well as serving as the Co-Chair of the Women's Resettlement Working Group, Ms. Kelly has seen firsthand the barriers formerly incarcerated individuals face on the path toward successful reentry into our society. The bill speaks to one of those barriers by eliminating the pay-to-stay fees. These fees ensure that individuals reentering society are less stable in rebuilding their lives and livelihoods and impedes the passing down of intergenerational resources. Through taking resources from those reentering society, the state is removing resources from the next generation of residents. This legislation presents an opportunity to stop the divestment from already under resourced returning residents and their communities through eliminating one of the many barriers one faces when rebuilding their life post incarceration.

State of Connecticut Sentencing Commission, Executive Director, Alex Tsarkov

State of Connecticut Sentencing Commission, Chair & Superior Court Judge, Judge Robin Paiva

The Honorable Judge Robin Pavia, who serves as the new chair of the Connecticut Sentencing Commission, and Sentencing Commission Executive Director, Alex Tsarkov, support the bill. The Sentencing Commission unanimously recommends the General Assembly enact a proposal to repeal statutory provisions allowing the state to assess an incarcerated individual for the cost of their incarceration. The provisions in place generate barriers to reentry and worsen the cycle of poverty present in the state.

University of Connecticut Criminal Defense Clinic, Certified Legal Intern, Luke Reynolds

Luke Reynolds strongly supports the bill as it is manifestly unjust, raises Eighth Amendment concerns, and perpetuates poverty. He believes that it is abhorrent that the state continues to confine and deprive liberty from individuals after their release. He also believes the current law is simply unjust as it imposes a looming threat and hardship against formerly incarcerated individuals, essentially creating an additional 20-year sentence. The committee should pass this bill to end the racially discriminatory and unjust nature of the lien. The law does not just punish formerly incarcerated members of society, but their families as well. It is also worth

noting that the state itself benefits little, with the revenue from the incarceration lien accounting for approximately .0003% of the state budget.

University of Connecticut's Institute for Municipal & Regional Policy, Connecticut Children with Incarcerated Parents, Director, Aileen Keays

Aileen Keays, the Director of the Connecticut Children with Incarcerated Parents (CTCIP) Initiative within the University of Connecticut's Institute for Municipal & Regional Policy, supports the bill. The state already allocates the cost of one's incarceration to relevant state agencies and families with a loved one incarcerated are already amongst the poorest in the state. CTCIP believes it is time to end the pay-to-stay lien to alleviate these families from the vicious and multi-generational cycle of poverty. They believe that the practice is counterproductive and needs to end now.

University of Connecticut School of Law, Center on Community Safety, Policing, and Inequality, Fellow and Law Student, Mumina Egal

University of Connecticut School of Law, Associate Professor and Director of the Criminal Defense Clinic, Anna VanCleave

Mumina Egal and Anna VanCleave, a student and professor at the University of Connecticut School of Law, support the bill. As policymakers across the country see that putting significant costs on poor defendants and their families is harmful and makes for bad policy, a national trend to end criminal justice fees has risen. There are many other reasons to end the practice of making Connecticut prisoners pay for their incarceration. Pay-to-Stay laws: target the most economically vulnerable communities; undermine effective criminal justice policies; are bad economic policy; and target inheritances and lawsuit awards irrationally. There is little transparency and accountability around implementation, the law stands on precarious legal grounds, and research and history do not support the original rationales behind pay-to-stay laws. For these reasons, members of the University of Connecticut Law School community hope to see the pay-to-stay lien removed in the state.

University of Connecticut School of Law, Center on Community Safety, Policing and Inequality, Faculty Director & Associate Professor, Professor Kiel-Brennan Marquez

University of Connecticut School of Law, Student & Research Assistant, Riley Breakell

Professor Kiel-Brennan Marquez and Riley Breakell support the bill as state actions to collect on civil rights judgments in accordance with pay-to-stay conflict with federal civil rights law. In addition to conflicting with civil rights law, pay-to-stay statutes conflict with the U.S. Constitution as they are excessive criminal fines, a category of punishment explicitly forbidden under the Eighth Amendment. Also, pay-to-stay offends "fair notice" principals enshrined in the Fifth and Fourteenth Amendments.

Yale Law School, Arthur Liman Center for Public Interest Law, Director, Jenny E. Carroll

Yale Law School, Student, Mila Reed-Guevara

Yale Law School, Student, Ryanne Bamieh

Professor Jenny E. Carroll along with students Mila Reed-Guevara and Ryanne Bamieh, on behalf of the Arthur Liman Center for Public Interest Law, support of the bill. The group submitted extensive testimony outlining the facts and research of their work over the last year with a coalition of community-based stakeholders to explore the effects of the lien on individuals against whom it is levied, the state and its citizens. They concluded that the application of the incarceration lien creates economic and health burdens on the state's most

vulnerable populations, serves as a barrier for re-entry for many, increases recidivism rates for some, and carried little economic benefit for the state. Additional concerns the group addressed include a lack of transparency and notice around methods of collection, assets subject to liens, and the per day cost imposed creating confusion for those impacted by the lien. This raises due process questions under the Sixth and Fourteenth Amendment as well as questions surrounding the punitive nature of the lien under the Eighth Amendment. They are in support of repealing the lien in Connecticut as it recognizes the harmful effects of incarceration-based debt and seeks to remedy that harm by eliminating this source of debt.

Yale School of Medicine Department of Psychiatry, Annie Harper

Annie Harper supports the bill, as a worker conducting research at the Yale School of Medicine Department of Psychiatry, she is choosing to share her own beliefs and does not represent the organization. Research has found that people are overwhelmed with debt including debts that they may have had proper to incarceration, bills that have gone unpaid, debts arising from the costs of legal representation and bail, and others. With this crushing debt, it is difficult to get a job and people often must borrow money from loved ones to survive. She believes that the DOC lien is a direct attack on intergenerational wealth transfers, which is the highest source of wealth in the United States. It is time to pass this bill and get rid of the DOC lien, or pay-to-stay laws, which have negative impacts on reentry, family supports, and intergenerational health and wealth.

NATURE AND SOURCES OF OPPOSITION:

None Expressed.

OTHER:

CT Resident, David Godbout

Godbout opposed the bill, stating that the virtual committee process constitutes a violation of his Fourth Amendment rights.

Reported by: Luke Tressy

Date: 04/25/2022