



STATE OF CONNECTICUT
SENTENCING COMMISSION

Testimony of Alex Tsarkov before the Judiciary Committee on House Joint Resolution 171 – Resolution Proposing an Amendment to the State Constitution to Revise Requirements Relating to the Offering of Bail or Pretrial Release to Persons Accused of a Crime

Senator Winfield, Representative Stafstrom, Senator Flexer, Representative Quinn, Senator Kissel, Representative Fishbein, and members of the Judiciary Committee. Thank you for allowing me to provide testimony. My name is Alex Tsarkov, and I am the Executive Director of the Connecticut Sentencing Commission. I am here to testify on House Joint Resolution 261 – Resolution Proposing an Amendment to the State Constitution to Revise Requirements Relating to the Offering of Bail or Pretrial Release to Persons Accused of a Crime.

1. Connecticut Sentencing Commission – background information

First, I would like to give you some brief background information about the Connecticut Sentencing Commission. We are a permanent statutory commission consisting of Connecticut's stakeholders in the criminal justice system. Our membership includes the Commissioners of Correction, Emergency Services and Public Protection, and Mental Health and Addiction Services; the Chief State's Attorney; the Chief Public Defender; the State Victim Advocate; four judges; the chair of the Board of Pardons and Paroles; the undersecretary of the Criminal Justice Policy and Planning Division within the Office of Policy and Management; community advocates interested in the criminal justice system; as well as others vitally engaged in the criminal justice system.

2. Connecticut Sentencing Commission work on pretrial release

The Connecticut Sentencing Commission has been studying bail practices in Connecticut and other jurisdictions since 2016 when Governor Dannel Malloy requested that the Commission study Connecticut's pretrial justice system and develop recommendations for its improvement.

In response to this request, the Commission consulted national experts on pretrial justice and formed an Advisory Group on Pretrial Release and Detention. This group was composed of key stakeholders, including law enforcement, court administrators, and reform advocates. The group undertook a two-year study of Connecticut's pretrial release and detention system and alternative approaches used in other jurisdictions. As part of this study, the group met with representatives from high-performing jurisdictions in the country, studied the leading research on pretrial release, and reviewed relevant state and federal case law.

The Commission produced several reports on pretrial justice, proposed legislation to the Judiciary Committee and recommended changes to the Practice Book to the Rules Committee of the Superior Court on ten and seven percent cash bonds. The Commission continues to work to improve the pretrial justice system. This year, we are working on a report that will include information on alternative approaches to bail based on other jurisdictions.

3. Constitutional Provisions on Bail in Other Jurisdictions

While the United States constitution and many state constitutions protect against “excessive” bail, there is no federal right to bail in general. In other words, the United States Constitution does not prohibit pretrial detention without bail.

Traditionally, state constitutions protected defendants’ rights to bail upon “sufficient sureties, unless for capital offenses, where the proof is evident, or the presumption great.” Many states, including Connecticut, have retained this “traditional” right to bail in their state constitutions.

By contrast, in nine states, including New York and Massachusetts, there is no constitutional right to bail. Other states, including New Jersey and New Mexico, have amended their constitutions’ right to bail provisions to provide for additional detention eligibility beyond capital offenses. In jurisdictions with no right to bail or an amended right to bail—which includes at least 21 states, the District of Columbia, and the federal system—a defendant may be detained without bail in certain circumstances.

4. Current Proposal

House Joint Resolution 171 would allow a court to deny pretrial release to the accused under certain conditions. Article I, Section 8(a) of the Connecticut Constitution guarantees the right to be released from jail through “reasonable bail” to virtually all defendants, except in capital cases “where the proof is evident or the presumption great.” As a result, under our constitution, a judge is barred from detaining a truly dangerous defendant if the defendant has the financial resources to post a high bond.

While the goal to move to a more transparent intentional detention mechanism is laudable, what is missing is the enabling legislation that details what the system of release and detention would look like if the constitutional amendment is adopted. For instance, the state would need to make careful decisions about who would be eligible for pretrial detention without bond. There are additional questions about the legal standard for detention, what would the detention hearings look like and what kind of evidence would be accepted. Finally, there are resource and infrastructure issues that would need to be addressed to make this type of reform successful. The Sentencing Commission continues to work on these issues with its stakeholders.

Another critical question remains on the role of money bail if the Constitutional amendment is adopted. For example, the New Jersey bill that implemented its Constitutional amendment prevents the imposition of financial conditions of release to assure the safety of a person or the

community. Judges can only impose financial conditions to reasonably assure the defendant's presence at court proceedings. The District of Columbia has a similar statute. In short, to be effective, this proposed constitutional amendment would need to be supplemented by a comprehensive statutory structure.

The Commission's 2022 Report on Pretrial Justice ([2022-Report-on-Pretrial-Justice-fn.pdf](https://ctsentencingcommission.org/2022-Report-on-Pretrial-Justice-fn.pdf) (ctsentencingcommission.org)) describes possible elements of a statutory proposal. The report compiles bail constitutional provisions from every state and discusses the possibility of a constitutional amendment in Connecticut as part of a larger effort towards a risk-based system.

The report sets a framework that can serve as a blueprint for the key discussion points as state lawmakers contemplate transitioning away from a money bail system. Such a move will require close collaboration among leadership from all three branches of government, the Chief Public Defender, and the Chief State's Attorney among others. Bail reform and the elimination of financial conditions as a detention mechanism from the pretrial justice system are not simple endeavors. The Sentencing Commission stands ready to assist the Committee and asks that other criminal justice stakeholders be at the table in this effort.