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**Written Testimony Supporting Senate Bill 307, An Act Concerning  
Prosecutorial Accountability and Priority Given to Cases Prosecuted**

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

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am here to testify in support of Senate Bill 307, An Act Concerning Prosecutorial Accountability and Priority Given to Cases Prosecuted.

The ACLU-CT believes that mass incarceration is the liberation struggle that defines our era in United States history. We have come to a point where approximately three out of every ten adults in the U.S. has a criminal record of some kind,<sup>1</sup> and over half of the people in this country have a close family member who has been incarcerated.<sup>2</sup> We believe that everyone has a role to play in ending the pervasive system of mass incarceration. That is especially true for 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.

Prosecutions 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, licensure,

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<sup>1</sup> Jo Craven McGinty, *How Many Americans Have a Police Record? Probably More Than You Think*, WALL ST. J., (Aug. 7, 2015), available at <https://www.wsj.com/articles/how-many-americans-have-a-police-record-probably-more-than-you-think1438939802>.

<sup>2</sup> 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-memberincarcerated-infographic/?sh=3330e2eb3e4f>.

education, and other opportunities,<sup>3</sup> 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 19-59<sup>4</sup> in 2019, prosecution in Connecticut is incrementally 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 were 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 thirteen judicial districts.<sup>5</sup> The report also found that prosecutors "used their discretionary decision-making to tailor responses based on [that widely varying] caseload."<sup>6</sup> Preliminary data indicate that outcomes for people caught up in the justice system will change depending on where they are prosecuted.

The data collected pursuant to P.A. 19-59 also illuminates the persistent racial disparities in our criminal justice system.<sup>7</sup> While Black and Latinx people make up 11 percent and 17 percent of the state's population, they account for 28 percent and 26 percent of disposed cases, respectively. Black and Latinx people are overrepresented in felony cases, whereas the distribution of white defendants skews

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<sup>3</sup> National Inventory of Collateral Consequences of Conviction, available at [https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence\\_category=&narrow\\_category=&triggering\\_offense\\_category=&consequence\\_type=&duration\\_category=&page\\_number=1](https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence_category=&narrow_category=&triggering_offense_category=&consequence_type=&duration_category=&page_number=1); see also Kelan Lyons, *Council Begins Study of Discrimination Against People with Criminal Records*, CT MIRROR (Aug. 22, 2019), available at <https://ctmirror.org/2019/08/22/council-begins-study-of-discrimination-against-people-with-criminal-records/>.

<sup>4</sup> Conn. Pub. Act. 19-59 (2019), available at <https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00059-R00SB-00880-PA.pdf>.

<sup>5</sup> See generally *First Analysis of Prosecutor Data (PA 19-59): 2020 Report to the Criminal Justice Commission*, OFF. POL'Y & MGMT. CRIM. JUST. POL'Y & PLAN. DIV. (July 14, 2020), available at <https://business.ct.gov/media/OPM/CJPPD/CjAbout/PA-19-59-presentation-as-presented-7-14-20.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> See Marc Pelka & Kyle Baudoin, *First Analysis of Prosecutor Data (PA 19-59): 2020 Report to the Criminal Justice Commission*, slides 24–26 (July 14, 2020), available at <https://portal.ct.gov/media/OPM/CJPPD/CjAbout/PA-19-59-presentation-as-presented-7-14-20.pdf>.

toward misdemeanor cases.<sup>8</sup> The data gathered under PA 19-59 demonstrates that prosecutors play a critical role in deciding who enters the criminal legal system and provides the perfect opportunity to apply that data to assessing the thirteen judicial districts' successes and growth areas, as proposed in this legislation.

Overall, the COVID-19 pandemic demonstrates the need to protect our most vulnerable populations. People who are incarcerated face close quarters, poor sanitation and ventilation, and inadequate medical care. During the pandemic, the Department of Corrections's (DOC) population declined below 10,000 incarcerated people—a thirty year low.<sup>9</sup> This drop was “overwhelmingly the result of fewer prisoners entering the system.”<sup>10</sup> Between March 1 and June 1, 446 people entered incarceration.<sup>11</sup> That number is just 25 percent of the people imprisoned during the same period in 2019.<sup>12</sup> During the same period, arrests were also down significantly compared with the previous year.<sup>13</sup> 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,<sup>14</sup> 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. In Connecticut, though, structural barriers exist to creating a prosecution system dedicated to ending mass incarceration. Taken together, the data demonstrates the rate of people entering the criminal legal system can dramatically reduce incarceration overall. DCJ has a wealth of power over the inflows, but there are no mandatory uniform

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<sup>8</sup> *Id.*

<sup>9</sup> Kaitlyn Krasselt, *As CT Prison Population Nears 30-Year Low, Fewer Intakes Drive Declines*, MIDDLETOWN PRESS (June 4, 2020), available at <https://www.middletownpress.com/news/coronavirus/article/As-CT-prison-population-nears-milestones-fewer15315989.php>.

<sup>10</sup> *Id.*

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

<sup>12</sup> *Id.*

<sup>13</sup> 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/>.

<sup>14</sup> See, e.g., David Lat, *How Tough-on-Crime Prosecutors Contribute to Mass Incarceration*, N.Y. TIMES, (Apr. 8, 2019), available at <https://www.nytimes.com/2019/04/08/books/review/emily-bazelon-charged.html>.

policies to ensure fairness and eliminate biases both in the pandemic and normal times.

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 the prosecution's key role in mass incarceration and the need to diagnose the problem. Other barriers persist, though.

The second barrier is that the 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 victims of crimes 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 307 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.<sup>15</sup> 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's going wrong—and

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<sup>15</sup> See Marc Pelka & Kyle Baudoin, *First Analysis of Prosecutor Data (PA 19-59): 2020 Report to the Criminal Justice Commission* (July 14, 2020), available at: <https://portal.ct.gov/-/media/OPM/CJPPD/CiAbout/PA-19-59-presentation-as-presented-7-14-20.pdf>

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;<sup>16</sup> (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, a process that is currently lacking.

Senate Bill 307 also provides a policy solution for the existing disparities between judicial districts in Connecticut. As data gathered pursuant to Public Act 19-59 indicates, prosecutors in different judicial districts treat similar crimes and similar people differently. The ACLU-CT believes that justice should not be dependent on your zip code or who happens to prosecute your case. The process for establishing uniform standards proposed by this bill is one step towards making justice more even across Connecticut. Rather than dictating particular uniform policies, Senate Bill 307 asks the parties most involved—the Chief State’s Attorney, the Chief Public Defender, and the Chief Court Administrator—to come to the table and 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 themselves, they can ensure that prosecutors retain sufficient flexibility to incorporate important case specifics into their decision-making. Having guardrails around those determinations ensures that justice does not vary wildly across the state while avoiding the downfalls that come with rigid constraints.

Senate Bill 307 also strengthens the oversight and independence of the Criminal Justice Commission. First, the CJC is designated as an independent body within the Executive Department, with administrative support provided by OPM, in order to insulate it from DCJ, the very body which the CJC oversees. Second, the CJC’s

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<sup>16</sup> *First Analysis of Prosecutor Data (PA 19-59): 2020 Report to the Criminal Justice Commission*, at 11, OFF. POL’Y & MGMT. CRIM. JUST. POL’Y & PLAN. DIV. (July 14, 2020), available at <https://business.ct.gov//media/OPM/CJPPD/CjAbout/PA-19-59-presentation-as-presented-7-14-20.pdf>.

disciplinary powers would be expanded to include the chief state's attorney in addition to the deputy chief state's attorneys and state's attorneys. Third, the uniform policies that will result from Senate Bill 307 are mandated to include the articulation of a strong code of ethics specific to state's attorneys. These advancements are necessary to ensure strict adherence to professional ethical standards and to guarantee that the CJC can be a strong safeguard against misconduct. Strong public trust in our criminal legal systems is essential to the effective administration of justice.

If Senate Bill 307 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 may 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. More frequent check-ins with the CJC means that the state's attorneys will have a better picture of what is expected of them, directly from the body with the 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 decisions of the prosecutions in their judicial district, removing unnecessary ambiguity for the lawmakers 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 while making the ethical expectations of our state's attorneys clear.

If Senate Bill 307 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 2008<sup>17</sup> while continuing on a trend towards better community safety and lower crime.<sup>18</sup> Transparency and accountability from state's attorneys is a necessary step for ending mass incarceration and Senate Bill 307 lays out the map to get Connecticut there. If this bill is passed, Connecticut will 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.

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<sup>17</sup> Kelan Lyons, *Connecticut Prison Population Almost Halved Since 2008 Peak as Pandemic Continues*, CT MIRROR (June 25, 2020), available at <https://ctmirror.org/2020/06/25/connecticut-prison-population-almost-halved-since-2008-peak-as-pandemiccontinues/>.

<sup>18</sup> 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/>.