



Legislative Testimony  
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## Written Testimony Supporting Senate Bill 1070, An Act Concerning Prosecutorial Accountability

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 writing to testify in support of Senate Bill 1070, An Act Concerning Prosecutorial Accountability.

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.

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 housing, employment, licensure, education, and other opportunities,<sup>3</sup> prosecutors impose effective life sentences every

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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>.

<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\\_o](https://niccc.csgjusticecenter.org/database/results/?jurisdiction=260&consequence_category=&narrow_category=&triggering_o)

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, respectively, 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 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

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<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>.

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

provides the perfect opportunity to apply that data to assess the thirteen judicial districts' successes and growth areas, as proposed in this legislation.

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 law is applied 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,<sup>9</sup> meaning that outcomes for victims of crimes and defendants vary depending on people's zip codes.

Senate Bill 1070 is designed to break down these systemic barriers. First, it requires the thirteen state's attorneys to annually check in with the Criminal Justice Commission (CJC). Each year, each state's attorney would be required to go before the CJC for testimony and comment on case-level data already collected by the state's prosecutorial transparency law.<sup>10</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 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>11</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

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<sup>9</sup> See, e.g., Kelly McConney Moore, *The Death Penalty Showed Why We Need Prosecutorial Accountability*, ACLU-CT (Mar. 10, 2021), <https://www.acluct.org/en/news/death-penalty-showed-why-we-need-prosecutorial-accountability>.

<sup>10</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/CjAbout/PA-19-59-presentation-as-presented-7-14-20.pdf>

<sup>11</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>.

going off track; and (4) provide a data trail for the CJC to use when reappointment time comes, a process that is currently lacking. Second, Senate Bill 1070 would shorten the term lengths of state's attorneys from eight to five years, more in line with other positions in the Division of Criminal Justice and with national standards.

The ACLU-CT believes that justice should not be dependent on your zip code or who happens to prosecute your case. If Senate Bill 1070 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.

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 1070 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>12</sup> while continuing on a trend towards

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<sup>12</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/>.

better community safety and lower crime.<sup>13</sup> Transparency and accountability from state's attorneys is a necessary step for ending mass incarceration, and Senate Bill 1070 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>13</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/>.