

Honorable Andrew McDonald
Chair, Superior Court Rules Committee
Connecticut Supreme Court
231 Capitol Avenue
Hartford, CT
06106

March 26, 2020



Re: Emergency request to temporarily alter Practice Book §§ 38-3, -4, -14, -17, and -18 during the pandemic

Dear Justice McDonald:

The ACLU of Connecticut writes to request that the Rules Committee temporarily alter the rules of pretrial release in order to greatly reduce the number of people facing detention during the pandemic.

Both the executive and judicial branches of Connecticut's government have responded to the declaration of the COVID-19 public health and civil preparedness emergency¹ by aggressively reducing the occasions on which people can come into close proximity. Since the declaration, for example, the executive branch has concluded that "living in congregate settings" poses an "increased risk of rapid spread of COVID-19."² As such, it has ordered restrictions on nursing home visitors,³ canceled school statewide,⁴ and recognized "a compelling state interest in restricting visitation" to nursing homes, chronic disease hospitals, and residential care homes.⁵ Shortly thereafter, the executive branch concluded that "the accelerating spread of the disease in Connecticut requires additional, extraordinary mitigation and social distancing measures."⁶ It then imposed increasingly granular restrictions on human contact, including those as small as in-person transactions at the Department

¹ Gov. Ned Lamont, Letter to the Secretary of the State (Mar. 10, 2020), *available at* <https://tinyurl.com/wptdlw6>.

² Gov. Lamont Exec. Order No. 7 at 1 (Mar. 12, 2020), *available at* <https://tinyurl.com/vs4ubsq>. *See also* Gov. Lamont Exec. Order No. 7a at 2 (Mar. 13, 2020), *available at* <https://tinyurl.com/wmxafpm>; Gov. Lamont Exec. Order No. 7b at 1 (Mar. 14, 2020), *available at* <https://tinyurl.com/qw54vuu>.

³ Gov. Lamont Exec. Order No. at 1.

⁴ *Id.* at 2.

⁵ Gov. Lamont Exec. Order 7a at 2.

⁶ Gov. Lamont Exec. Order No. 7f at 2 (Mar. 18, 2020), *available at* <https://tinyurl.com/u5u4dok>.

of Motor Vehicles and interviews of applicants for temporary assistance for needy families.⁷ For its part, the judiciary has also aggressively reduced the risk of spreading the virus through human contact by closing courthouses, trimming its docket to only “Priority 1 Business Functions,” canceling jury service, and minimizing the number of people who may enter its facilities.⁸

While the judiciary has systemically attempted to mitigate the danger to judges, court staff, and lawyers, it has not yet done so with respect to criminal defendants. Specifically, the ACLU of Connecticut is gravely concerned that people charged with crimes continue to be given pre-trial financial obligations, frequently resulting in their detention in one of the densest congregate living arrangements in existence: prison. As of today, about 3,000 people are detained in Connecticut’s prison system for inability to meet bond.

According to the physicians we have consulted, the COVID-19 pandemic renders prison exceedingly dangerous both for those reporting to it for the first time and those already in it.⁹ Cycling pre-trial detainees in and out of the state’s prisons increases the likelihood of COVID-19 transmission, both for the pre-trial detainee who could be exposed while inside, and for the sentenced person who could be exposed to the virus brought in by a detainee. Moreover, in prison, it is not possible to shut down the viral transmission avenues that the State has otherwise worked hard to eradicate. Physical distancing is impossible, frequent handwashing is impossible, and quickly masking and isolating people with symptoms is impossible. Worse, Connecticut’s prisons have a large number of people who are at risk for serious illness from the virus. These include people who are over the age of fifty (as of today, there are 400 such pre-trial detainees alone), who have compromised immunity, or who have a respiratory illness. The consequences of the viral spread in prison will be acutely felt by Connecticut’s hospitals, because none of the state’s prisons has the personnel or equipment to treat serious complications of COVID-19. Any prisoner falling ill with the virus will have to be transferred to a community hospital, all of which are experiencing unprecedented strain.

⁷ Gov. Lamont Exec. Order No. 7b at 4.

⁸ Connecticut Judicial Branch, *Judicial Branch Response to COVID-19*, <https://www.jud.ct.gov/COVID19.htm> (accessed Mar. 26, 2020).

⁹ We have enclosed a letter from those physicians to assist the Committee, and note that some of the signatories are willing to appear before the Committee—telephonically or electronically—to answer any questions it might have about the extreme transmissibility of COVID-19 in prisons.

The ACLU of Connecticut believes that the judiciary's temporary reconfiguration of its rules of practice ought to account for the extreme danger to life now posed by the dense environment of prison. As such, we ask that the Rules Committee exercise its emergency powers under Practice Book § 1-9B to immediately modify the rules governing release conditions by bail commissioners and the superior court, and those governing modifications to conditions. We have enclosed the changes that we suggest. The amendments can be summarized as follows:

§ 38-3 (release by bail commissioner): Permit the imposition of financial conditions of release only if (1) unusual circumstances presented by the person outweigh the public health presumption against confinement during the pandemic, (2) nonfinancial conditions will not suffice to ensure the person's attendance at court, (3) the person has not been diagnosed with the virus, (4) the person is not showing symptoms of the virus, and (5) none of the CDC risk factors of heightened illness are present.

§ 38-4 (release by the judicial authority): Unify all release conditions procedures into a single set, and permit the imposition of financial conditions upon satisfaction of the same criteria set for bail commissioners, with such findings made on the record.

§ 38-14 (motion for bail modification): Add a basis for modification, when a defendant asserts that (1) there are no unusual facts or circumstances requiring their detention during the pandemic, (2) one or more nonfinancial conditions are sufficient to ensure attendance at court, (3) they have been diagnosed with the virus or are showing symptoms of the virus, or (4) they have any of the CDC risk factors for heightened illness.

§ 38-17 (hearing on motion for modification): Add that motions made on the basis of the pandemic be heard within forty-eight hours, and delete the recitation of acceptable conditions in favor of referring to § 38-4.

§ 38-18 (review of detention): Shorten the time for review to seven days regardless of charged offense, and mandate that subsequent seven-day reviews occur automatically thereafter.

The ACLU of Connecticut greatly appreciates the Committee's consideration of this request in the unusual, life-threatening circumstances of the pandemic. We are at the Committee's disposal to provide whatever information it requires during its deliberations.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Dan Barrett', with a long horizontal stroke extending to the right.

Dan Barrett
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cc: *Joseph Del Ciampo, counsel to the Committee*

Honorable Andrew J. McDonald
Connecticut Supreme Court
Chair, Superior Court Rules Committee
231 Capitol Avenue
Hartford, CT
06106

March 27, 2020

Dear Justice McDonald,

We are medical professionals and experts in infectious disease and/or prison populations, based in Connecticut. Many of us are personally familiar with Connecticut's prisons from experience working in them and with affected populations, while others of us have served as correctional health staff in the prison systems of neighboring states. We are also familiar with the recent news that at least two cases of COVID-19 have been discovered among prison staff—one at Garner Correctional Institution in Newtown and one at Corrigan-Radgowski Correctional Center in Uncasville—as well as with the Connecticut Department of Correction's (CDOC) recent guidance on measures it will be taking to minimize the disease's danger.¹

We are writing to you to provide a medical perspective on the ongoing COVID-19 epidemic and its likely effect on Connecticut's prisons. Signatories to this letter are willing to testify before the committee on this topic.

I. Heightened Risk of Epidemics in Jails and Prisons

The risk posed by infectious diseases in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected. There are several reasons this is the case, as delineated further below.

Globally, outbreaks of contagious diseases are all too common in closed detention settings and are more common than in the community at large. Prisons and jails are not isolated from communities. Staff, visitors, contractors, and vendors pass between communities and facilities and can bring infectious diseases into facilities. Moreover, rapid turnover of jail and prison populations means that people often cycle between facilities and communities. People often need to be transported to and from facilities to attend court and move between facilities. Prison health is public health.

Reduced prevention opportunities: Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those passed by

¹ *Department of Correction Employee Tests Positive for COVID-19*, NBC Connecticut (March 23, 2020), <https://www.nbcconnecticut.com/news/local/department-of-correction-employee-tests-positive-for-covid-19/2243815/>; *Second DOC Employee Tests Positive for Coronavirus*, NBC Connecticut (March 25, 2020); <https://www.nbcconnecticut.com/news/local/second-doc-employee-tests-positive-for-the-coronavirus/2245193/>; *The Department of Correction Continues Essential Operations While Managing Reentry Planning and Routine Offender Releases Without Disruption*, CDOC (March 24, 2020), <https://portal.ct.gov/-/media/DOC/Pdf/Coronavirus-3-20/Press-Release-DOC-reentry-032420.pdf?la=en>.

droplets through coughing and sneezing. When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are greater. When infectious diseases are transmitted from person to person by droplets, the best initial strategy is to practice social distancing. When jailed or imprisoned, people have much less of an opportunity to protect themselves by social distancing than they would in the community. Spaces within jails and prisons are often also poorly ventilated, which promotes highly efficient spread of diseases through droplets. Placing someone in such a setting therefore dramatically reduces their ability to protect themselves from being exposed to and acquiring infectious diseases.

Disciplinary segregation or solitary confinement is not an effective disease containment strategy. Beyond the known detrimental mental health effects of solitary confinement, isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death. Isolation of people who are ill using solitary confinement also is an ineffective way to prevent transmission of the virus through droplets to others because, except in specialized negative pressure rooms (rarely in medical units if available at all), air continues to flow outward from rooms to the rest of the facility. Risk of exposure is thus increased to other people in prison and staff.

Reduced prevention opportunities: During an infectious disease outbreak, people can protect themselves by washing hands. Jails and prisons do not provide adequate opportunities to exercise necessary hygiene measures, such as frequent handwashing or use of alcohol-based sanitizers when handwashing is unavailable. Jails and prisons are often under-resourced and ill-equipped with sufficient hand soap and alcohol-based sanitizers for people detained in and working in these settings. High-touch surfaces (doorknobs, light switches, etc.) should also be cleaned and disinfected regularly with bleach to prevent virus spread, but this is often not done in jails and prisons because of a lack of cleaning supplies and lack of people available to perform necessary cleaning procedures.

Moreover, a containment strategy requires people who are ill with symptoms to be isolated and that caregivers have access to personal protective equipment, including gloves, masks, gowns, and eye shields. Jails and prisons are often under-resourced and ill-equipped to provide sufficient personal protective equipment for people who are incarcerated and caregiving staff, increasing the risk for everyone in the facility of a widespread outbreak.

Increased susceptibility: People incarcerated in jails and prisons are more susceptible to acquiring and experiencing complications from infectious diseases than the population in the community.² This is because people in jails and prisons are more likely than people in the community to have chronic underlying health conditions, including diabetes, heart disease, chronic lung disease, chronic liver disease, and lower immune systems from HIV.

Jails and prisons are often poorly equipped to diagnose and manage infectious disease outbreaks. Some jails and prisons lack onsite medical facilities or 24-hour medical care. The medical facilities at jails and prisons are almost never sufficiently equipped to handle large outbreaks of

² *Active case finding for communicable diseases in prisons*, 391 *The Lancet* 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext).

infectious diseases. To prevent transmission of droplet-borne infectious diseases, people who are infected and ill need to be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms if any, and these may be already in use by people with other conditions (including tuberculosis or influenza). Resources will become exhausted rapidly and any beds available will soon be at capacity. This makes both containing the illness and caring for those who have become infected much more difficult.

Jails and prisons lack access to vital community resources to diagnose and manage infectious diseases. Jails and prisons do not have access to community health resources that can be crucial in identifying and managing widespread outbreaks of infectious diseases. This includes access to testing equipment, laboratories, and medications.

Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. During an epidemic, this will not be possible, as those outside facilities will likely be at or over capacity themselves.

Health safety: As an outbreak spreads through jails, prisons, and communities, medical personnel become sick and do not show up to work. Absenteeism means that facilities can become dangerously understaffed with healthcare providers. This increases a number of risks and can dramatically reduce the level of care provided. As health systems inside facilities are taxed, people with chronic underlying physical and mental health conditions and serious medical needs may not be able to receive the care they need for these conditions. As supply chains become disrupted during a global pandemic, the availability of medicines and food may be limited.

Safety and security: As an outbreak spreads through jails, prisons, and communities, correctional officers and other security personnel become sick and do not show up to work. Absenteeism poses substantial safety and security risk to both the people inside the facilities and the public.

These risks have all been borne out during past epidemics of influenza in jails and prisons. For example, in 2012, the CDC reported an outbreak of influenza in two facilities in Maine, resulting in two inmate deaths.³ Subsequent CDC investigation of 995 inmates and 235 staff members across the 2 facilities discovered insufficient supplies of influenza vaccine and antiviral drugs for treatment of people who were ill and prophylaxis for people who were exposed. During the H1N1-strain flu outbreak in 2009 (known as the “swine flu”), jails and prisons experienced a disproportionately high number of cases.⁴ Even facilities on “quarantine” continued to accept new intakes, rendering the quarantine incomplete. These scenarios occurred in the “best case” of influenza, a viral infection for which there was an effective and available vaccine and antiviral medications, unlike COVID-19, for which there is currently neither.

³ *Influenza Outbreaks at Two Correctional Facilities — Maine, March 2011*, Centers for Disease Control and Prevention (2012),

<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6113a3.htm>.

⁴ David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

II. Profile of COVID-19 as an Infectious Disease⁵

The novel coronavirus, officially known as SARS-CoV-2, causes a disease known as COVID-19. The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing) but may also survive on inanimate surfaces. People seem to be most able to transmit the virus to others when they are sickest but it is possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. In China, where COVID-19 originated, the average infected person passed the virus on to 2-3 other people; transmission occurred at a distance of 3-6 feet. Not only is the virus very efficient at being transmitted through droplets, everyone is at risk of infection because our immune systems have never been exposed to or developed protective responses against this virus. A vaccine is currently in development but will likely not be able for another year to the general public. Antiviral medications are currently in testing but not yet FDA-approved, so only available for compassionate use from the manufacturer. People in prison and jail will likely have even less access to these novel health strategies as they become available.

Most people (80%) who become infected with COVID-19 will develop a mild upper respiratory infection but emerging data from China suggests serious illness occurs in up to 16% of cases, including death.⁶ Serious illness and death is most common among people with underlying chronic health conditions, like heart disease, lung disease, liver disease, and diabetes, and older age.⁷ Death in COVID-19 infection is usually due to pneumonia and sepsis. The emergence of COVID-19 during influenza season means that people are also at risk from serious illness and death due to influenza, especially when they have not received the influenza vaccine or the pneumonia vaccine.

The care of people who are infected with COVID-19 depends on how seriously they are ill.⁸ People with mild symptoms may not require hospitalization but may continue to be closely monitored at home. People with moderate symptoms may require hospitalization for supportive care, including intravenous fluids and supplemental oxygen. People with severe symptoms may

⁵ This whole section draws from Brooks J. Global Epidemiology and Prevention of COVID19, COVID-19 Symposium, Conference on Retroviruses and Opportunistic Infections (CROI), virtual (March 10, 2020); *Coronavirus (COVID-19)*, Centers for Disease Control, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; Brent Gibson, *COVID-19 (Coronavirus): What You Need to Know in Corrections*, National Commission on Correctional Health Care (February 28, 2020), <https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>.

⁶ *Coronavirus Disease 2019 (COVID-19): Situation Summary*, Centers for Disease Control and Prevention (March 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

⁷ *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*. The Lancet (published online March 11, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)

⁸ *Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*, Centers for Disease Control and Prevention (March 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

require ventilation and intravenous antibiotics. Public health officials anticipate that hospital settings will likely be overwhelmed and beyond capacity to provide this type of intensive care as COVID-19 becomes more widespread in communities.

COVID-19 prevention strategies include containment and mitigation. Containment requires intensive hand washing practices, decontamination and aggressive cleaning of surfaces, and identifying and isolating people who are ill or who have had contact with people who are ill, including the use of personal protective equipment. Jails and prisons are totally under-resourced to meet the demand for any of these strategies. As infectious diseases spread in the community, public health demands mitigation strategies, which involves social distancing and closing other communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease. Jails and prisons are unable to adequately provide social distancing or meet mitigation recommendations as described above.

The time to act is now. Data from other settings demonstrate what happens when jails and prisons are unprepared for COVID-19. News outlets reported that Iran temporarily released 70,000 prisoners when COVID-19 started to sweep its facilities.⁹ To date, few state or federal prison systems have adequate (or any) pandemic preparedness plans in place.¹⁰ Systems are just beginning to screen and isolate people on entry and perhaps place visitor restrictions, but this is wholly inadequate when staff and vendors can still come to work sick and potentially transmit the virus to others.

III. Risk of COVID-19 in Connecticut's Prisons

Based on the publicly available information, our experience working on public health in Connecticut's jails and prisons and our review of the relevant literature, it is our professional judgment that these facilities are dangerously under-equipped and ill-prepared to prevent and manage a COVID-19 outbreak, which would result in severe harm to detained individuals, jail and prison staff, and the broader community. The reasons for this conclusion are detailed as follows.

The delays in access to care that already exist in normal circumstances will only become worse during an outbreak, making it especially difficult for the facilities to contain any infections and to treat those who are infected.

Failure to provide individuals with continuation of the treatment they were receiving in the community, or even just interruption of treatment, for chronic underlying health conditions will result in increased risk of morbidity and mortality related to these chronic conditions.

⁹ *Iran temporarily releases 70,000 prisoners as coronavirus cases surge*, Reuters (March 9, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>.

¹⁰ Luke Barr & Christina Carrega, *State prisons prepare for coronavirus but federal prisons not providing significant guidance, sources say*, ABC News (March 11, 2020), <https://abcnews.go.com/US/state-prisons-prepare-coronavirus-federal-prisons-providing-significant/story?id=69433690>.

Failure to provide individuals adequate medical care for their underlying chronic health conditions results in increased risk of COVID-19 infection and increased risk of infection-related morbidity and mortality if they do become infected.

People with underlying chronic mental health conditions need adequate access to treatment for these conditions throughout their period of detention. Failure to provide adequate mental health care, as may happen when health systems in jails and prisons are taxed by COVID-19 outbreaks, may result in poor health outcomes. Moreover, mental health conditions may be exacerbated by the stress of incarceration during the COVID-19 pandemic, including isolation and lack of visitation.

Failure to keep accurate and sufficient medical records will make it more difficult for the facilities to identify vulnerable individuals in order to both monitor their health and protect them from infection. Inadequate screening and testing procedures in facilities increase the widespread COVID-19 transmission.

Language barriers will similarly prevent the effective identification of individuals who are particularly vulnerable or may have symptoms of COVID-19. Similarly, the failure to provide necessary aids to individuals who have auditory or visual disabilities could also limit the ability to identify and monitor symptoms of COVID-19.

The commonplace neglect of individuals with acute pain and serious health needs under ordinary circumstances is also strongly indicative that the facilities will be ill-equipped to identify, monitor, and treat a COVID-19 epidemic.

The failure of these facilities to adequately manage single individuals in need of emergency care is a strong sign that they will be seriously ill-equipped and under-prepared when a number of people will need urgent care simultaneously, as would occur during a COVID-19 epidemic.

For individuals in these facilities, the experience of an epidemic and the lack of care while effectively trapped can itself be traumatizing, compounding the trauma of incarceration.

IV. Conclusion and Recommendations

For the reasons above, it is our professional judgment that individuals placed in Connecticut's prisons are at a significantly higher risk of infection with COVID-19 as compared to the population in the community and that they are at a significantly higher risk of harm if they do become infected. These harms include serious illness (pneumonia and sepsis) and even death.

Reducing the size of the population in CDOC facilities, and avoiding introducing new people to the system, is crucially important to reducing the level of risk both for those within those facilities and for the community at large. Based on current staffing levels in CDOC (including correctional health staffing levels), and based on our experience working within correctional facilities and with affected populations, we do not believe that screening, social distancing, and quarantining measures can be sufficiently employed within CDOC facilities to combat the spread of this virus. Simply put, they will not be enough to stop the devastating toll of this disease.

As such, from a public health perspective, it is our strong opinion that individuals who can safely and appropriately remain in the community not be placed in Connecticut's prisons at this time. We are also strongly of the opinion that individuals who are already in those facilities should be evaluated for release.

This is more important still for individuals with preexisting conditions (e.g., heart disease, chronic lung disease, chronic liver disease, suppressed immune system, diabetes) or who are over the age of 60. They are in even greater danger in these facilities, including a meaningfully higher risk of death.

It is our professional opinion that these steps are both necessary and urgent. The horizon of risk for COVID-19 in these facilities is a matter of hours, not days. Once a case of COVID-19 identified in a facility, it will likely be too late to prevent a widespread outbreak.

Health in jails and prisons is community health. Protecting the health of individuals who are detained in and work in these facilities is vital to protecting the health of the wider community.

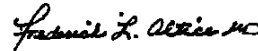
Sincerely,



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Benjamin A. Howell, MD, MPH, MHS
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1 **Connecticut Rules for the Superior Court § 38-3**
2 **Release by Bail Commissioner or Intake,**
3 **Assessment and Referral Specialist**
4

5 (a) Upon notification by a law enforcement officer
6 that an arrested person has not posted bail, a bail
7 commissioner or an intake, assessment and
8 referral specialist shall promptly conduct an
9 interview and investigation and, based upon
10 release criteria established by the court support
11 services division, shall, ~~except as provided in~~
12 ~~subsection (e) of this section,~~ promptly order the
13 release of the arrested person on:

14
15 (1) their execution of a written promise to appear,
16 without special conditions or with nonfinancial
17 conditions; or, in extraordinary cases,
18

19 (2) their execution of a bond without surety in no
20 greater amount than necessary, deposit with
21 the clerk of the court of an amount of cash
22 equal to 10 percent of the amount of the surety
23 bond set pursuant to Section 38-8, or execution
24 of a bond with surety in no greater amount
25 than necessary; but only where:

26 (A) articulated, unusual facts or
27 circumstances presented by the person
28 outweigh the public health presumption
29 against confinement in prison during
30 the COVID-19 virus emergency, such
31 that either:

32 (i) a financial condition will not
33 expose the person to pre-trial
34 confinement, or,

35 (ii) a financial condition will expose
36 the person to pre-trial
37 confinement, but such
38 confinement is absolutely
39 necessary,

40 (B) no condition, or combination of
41 conditions, short of a financial one is
42 sufficient to ensure the person's
43 attendance at court,

44 (C) the person has not been diagnosed with
45 the virus,

46 (D) the person is not showing symptoms of
47 the virus,

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- (E) none of each of the following factors identified by the Centers for Disease Control as presenting a heightened risk of death or serious illness to the person is present:
- (i) being at or over the age of sixty,
 - (ii) being pregnant,
 - (iii) having the Human Immunodeficiency Virus (HIV),
 - (iv) having asthma, chronic pulmonary obstructive disorder, emphysema, or another respiratory condition,
 - (v) having cancer or having had systemic immunotherapy during a course of treatment for cancer,
 - (vi) being immunocompromised because of treatment with immunosuppressant therapy or medication, having an autoimmune disorder, or suffering from a severe chronic medical condition, or
 - (vii) having had had a solid organ transplant.

* * * *

78 **Connecticut Rules for the Superior Court § 38-4**
79 **Release by Judicial Authority**
80

81 (a) ~~Except as provided in subsection (c) of this section,~~
82 ~~w~~When any defendant is presented before a judicial
83 authority, such authority shall, in bailable offenses,
84 promptly order the release of such defendant on:
85

86 (1) The defendant's execution of a written promise
87 to appear, without special conditions or with
88 nonfinancial conditions; or, in extraordinary
89 cases,
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91 (2) The defendant's execution of a bond without
92 surety in no greater amount than necessary,
93 deposit with the clerk of the court of an amount
94 of cash equal to 10 percent of the amount of the
95 surety bond set pursuant to Section 38-8, or
96 execution of a bond with surety in no greater
97 amount than necessary; but only where the
98 judicial authority finds on the record that:

99 (A) articulated, unusual facts or
100 circumstances presented by the
101 defendant outweigh the public health
102 presumption against confinement in
103 prison during the COVID-19 virus
104 emergency, such that either:

105 (i) a financial condition will not
106 expose the defendant to pre-trial
107 confinement, or,

108 (ii) a financial condition will expose
109 the defendant to pre-trial
110 confinement, but such
111 confinement is absolutely
112 necessary,

113 (B) no condition, or combination of
114 conditions, short of a financial one is
115 sufficient to ensure the defendant's
116 attendance at court;

117 (C) the defendant has not been diagnosed
118 with the virus,

119 (D) the defendant is not showing symptoms
120 of the virus,

121 (E) none of each of the following factors
122 identified by the Centers for Disease
123 Control as presenting a heightened risk

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of death or serious illness to the
defendant is present:

- (i) being at or over the age of sixty,
- (ii) being pregnant,
- (iii) having the Human
Immunodeficiency Virus (HIV),
- (iv) having asthma, chronic
pulmonary obstructive disorder,
emphysema, or another
respiratory condition,
- (v) having cancer or having had
systemic immunotherapy during
a course of treatment for cancer,
- (vi) being
immunocompromised from
treatment with
immunosuppressant therapy or
medication, having an
autoimmune disorder, or
suffering from a severe chronic
medical condition, or
- (vii) having had a solid organ
transplant.

In no event shall the judicial authority prohibit a bond from being posted by surety.

152 (b) The judicial authority may, in determining what
153 conditions of release will reasonably ensure the appearance
154 of the defendant in court pursuant to ~~subsection (a)~~ of this
155 section, consider the following factors:

- 156 (1) The nature and circumstances of the offense;
157 (2) The defendant's record of previous convictions;
158 (3) The defendant's past record of appearance in court;
159 (4) The defendant's family ties;
160 (5) The defendant's employment record;
161 (6) The defendant's financial resources, character and
162 mental condition; ~~and~~
163 (7) The defendant's community ties; and
164 (8) for any defendant charged with a serious felony
165 enumerated in General Statutes § 54-64a(b)(1), or a
166 family violence crime:
167 (A) The number and seriousness of the charges
168 pending against the defendant;
169 (B) The weight of evidence against the defendant;
170 (C) The defendant's history of violence;
171 (D) Whether the defendant has previously been
172 convicted of similar offenses while released on bond;
173 (E) The likelihood based upon the expressed intention
174 of the defendant that he or she will commit another
175 crime while released;
176 (F) The likelihood that the defendant will obstruct or
177 attempt to obstruct justice, or threaten, injure or
178 intimidate, or attempt to threaten, injure or
179 intimidate a prospective witness or juror; or
180 (G) The likelihood that the defendant will engage in
181 conduct that threatens the safety of himself or herself
182 or another person.

183
184
185 (c) ~~When any defendant charged with a serious felony~~
186 ~~enumerated in General Statutes § 54-64a(b)(1) or a family~~
187 ~~violence crime is presented before a judicial authority, such~~
188 ~~authority shall, in bailable offenses, promptly order the~~
189 ~~release of such defendant upon the first of the following~~
190 ~~conditions of release found sufficient to reasonably ensure~~
191 ~~the defendant's appearance in court and that the safety of~~
192 ~~any other person will not be endangered:~~

- 193 (1) ~~The defendant's execution of a written promise to~~
194 ~~appear without special conditions;~~
195 (2) ~~The defendant's execution of a written promise to~~
196 ~~appear with nonfinancial conditions;~~
197 (3) ~~The defendant's execution of a bond without surety in~~
198 ~~no greater amount than necessary;~~

199 (4) The defendant's deposit with the clerk of the court of
200 an amount of cash equal to 10 percent of the amount of
201 the surety bond set, pursuant to Section 38-8;

202 (5) The defendant's execution of a bond with surety in no
203 greater amount than necessary.

204 In no event shall the judicial authority prohibit a bond from
205 being posted by surety.

206

207 (d) The judicial authority may, in determining what
208 conditions of release will reasonably ensure the appearance
209 of the defendant in court and that the safety of any other
210 person will not be endangered pursuant to subsection (c) of
211 this section, consider the following factors:

212 (1) The nature and circumstances of the offense;

213 (2) The defendant's record of previous convictions;

214 (3) The defendant's past record of appearance in court
215 after being admitted to bail;

216 (4) The defendant's family ties;

217 (5) The defendant's employment record;

218 (6) The defendant's financial resources, character and
219 mental condition;

220 (7) The defendant's community ties;

221 (8) The number and seriousness of the charges pending
222 against the defendant;

223 (9) The weight of evidence against the defendant;

224 (10) The defendant's history of violence;

225 (11) Whether the defendant has previously been convicted
226 of similar offenses while released on bond; and

227 (12) The likelihood based upon the expressed intention of
228 the defendant that he or she will commit another crime
229 while released.

230 When imposing conditions of release under subsection (c) of
231 this section, the court shall state for the record any factors
232 under subsection (d) of this section that it considered and
233 the findings that it made as to the danger, if any, that the
234 defendant might pose to the safety of any other person upon
235 the defendant's release that caused the court to impose the
236 specific conditions of release that it imposed.

237

238

239 (e) If the defendant is charged with no offense other than a
240 misdemeanor, the court shall not impose financial
241 conditions of release on such person unless:

242 (1) The defendant is charged with a family violence crime;

243 (2) The defendant requests such financial conditions; or

244 (3) The judicial authority makes a finding on the record
245 that there is a likely risk that:

246 (A) The defendant will fail to appear in court, as
247 required;
248 (B) The defendant will obstruct or attempt to obstruct
249 justice, or threaten, injure or intimidate, or attempt to
250 threaten, injure or intimidate a prospective witness or
251 juror; or
252 (C) The defendant will engage in conduct that
253 threatens the safety of himself or herself or another
254 person.

255
256 In making such finding, the judicial authority may consider
257 past criminal history, including any prior record of failing to
258 appear as required in court that resulted in any conviction
259 for failure to appear in the first degree, in violation of
260 General Statutes § 53a-172, or any conviction during the
261 previous ten years for failure to appear in the second degree,
262 in violation of General Statutes § 53a-173, and any other
263 pending criminal cases.

264
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* * * *

271 **Connecticut Rules for the Superior Court § 38-14**
272 **Motion of Parties for Bail Modification**

273

274

275 Whenever the prosecuting authority or the defendant alleges
276 that:

277 (a) any bond with or without surety is excessive or
278 insufficient in amount or security,

279 (b) the written promise of the defendant to appear is
280 inadequate, or

281 (c) during the COVID-19 virus emergency, the public
282 health presumption that confinement in prison
283 will spread the virus to the defendant or others
284 outweighs the necessity for the defendant's
285 continued detention because:

286 (1) there are no unusual facts or circumstances
287 presented by the defendant requiring their
288 detention during the emergency, and, one
289 or more nonfinancial conditions are
290 sufficient to ensure the defendant's
291 attendance at court,

292 (2) the defendant has been diagnosed with the
293 virus or is showing symptoms of the virus,

294 (3) any of the following factors identified by the
295 Centers for Disease Control as presenting a
296 heightened risk of death or serious illness to
297 the defendant is present:

298 (i) being at or over the age of sixty,

299 (ii) being pregnant,

300 (iii) having the Human
301 Immunodeficiency Virus (HIV),

302 (iv) having asthma, chronic pulmonary
303 obstructive disorder, emphysema, or
304 another respiratory condition,

305 (v) having cancer or having had systemic
306 immunotherapy during a course of
307 treatment for cancer,

308 (vi) being immunocompromised because
309 of treatment with
310 immunosuppressant therapy or
311 medication, having an autoimmune
312 disorder, or suffering from a severe

313 chronic medical condition, or

314 (vii) having had a solid organ transplant.

315

316

317

318 **Connecticut Rules for the Superior Court § 38-17**
319 **Hearing on Motion or Application for Modification**
320 **of Bail**

321
322 (a) Upon the filing and service of such motion or
323 application, the judicial authority shall, with reasonable
324 promptness or, if made pursuant to § 38-14(c) during the
325 COVID-19 virus emergency, within forty-eight hours,
326 conduct a hearing to determine whether the terms and
327 conditions of release should be continued, modified or set.
328 The judicial authority shall release the defendant subject to
329 and in accordance with ~~the provisions of Section 38-4(a)~~
330 ~~upon the first of the following conditions of release found~~
331 ~~sufficient to provide reasonable assurance of the appearance~~
332 ~~of the defendant in court and:~~

- 333 (1) ~~The defendant's execution of a written promise to~~
334 ~~appear;~~
335 (2) ~~The defendant's execution of a bond without~~
336 ~~surety in no greater amount than necessary;~~
337 (3) ~~The defendant's deposit with the clerk of the court~~
338 ~~of an amount equal to 10 percent of the surety bond~~
339 ~~set, pursuant to Section 38-8;~~
340 (4) ~~The defendant's execution of a bond with surety in~~
341 ~~no greater amount than necessary.~~

342
343 (b) If, after such hearing, the judicial authority relieves a
344 surety of his or her undertaking on a bond, it may enter such
345 order contingent upon the return of such portion of the bond
346 fee as it deems equitable.

347

348 **Connecticut Rules for the Superior Court § 38-18**
349 **Review of Detention Prior to Arraignment, Trial or**
350 **Sentencing**

351
352 (a) No person shall be detained in a correctional facility
353 for arraignment, sentencing or trial ~~for an offense not~~
354 ~~punishable by death~~ during the COVID-19 virus
355 emergency for longer than ~~forty-five~~ seven days,
356 unless at the expiration of such ~~forty-five~~ seven days
357 such person is presented to the judicial authority
358 having cognizance of the offense. On each such
359 presentment, the judicial authority ~~may reduce,~~
360 ~~modify or discharge~~ shall reconsider such bail in
361 accordance with § 38-4. On the expiration of each
362 successive ~~forty-five~~ seven day period, such person
363 ~~may~~ shall again ~~by motion~~ be presented to the judicial
364 authority for such purpose.

365
366 (b) ~~If the offense is classified as a class D felony or as a~~
367 ~~misdemeanor, the time period under this section shall~~
368 ~~be thirty days, except with regard to a person charged~~
369 ~~with a crime in another state and detained pursuant~~
370 ~~to chapter 964 of the General Statutes or a person~~
371 ~~detained for violation of his parole pending a parole~~
372 ~~revocation hearing.~~