



Legislative Testimony

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**Written Testimony Supporting
Governor's Bill 7044, An Act Concerning Pretrial Justice Reform
and H.B. 7287, An Act Implementing the Recommendations of the Connecticut
Sentencing Commission Concerning Pretrial Release and Detention**

Senator Doyle, Senator Kissel, Representative Tong, and distinguished members of the Judiciary Committee:

My name is David McGuire, and I am the executive director of the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in support of Governor's Bill 7044 and H.B. 7287. These bills would each take important steps to reform our state's pretrial justice system by remediating inequities and disparities.

During the past two sessions, Connecticut has passed criminal justice reforms that have served as national models. Governor's Bill 7044 presents another chance for our state to lead the way in creating a twenty-first century justice system, and to join places such as New Mexico, New Jersey, D.C., and Kentucky in reforming our pretrial justice system. By eliminating cash bail where unnecessary to truly ensure public safety, Governor's Bill 7044 will eliminate a penalty for simply being poor.

As a defender of equal justice under the law, the ACLU of Connecticut fervently endorses this bill's proposal to eliminate cash bail requirements for people charged with misdemeanors. As this bill rightfully proposes, bail should not be based on the money in someone's pocket. Justice isn't served by Connecticut's current bail system, which in some cases punishes people for being poor. In Connecticut's current pretrial system, a poor person charged with a misdemeanor, still legally innocent, could be trapped behind bars, while someone with means, charged with the same crime, could pay his or her way out of jail. In June 2016, 543 people were being held pretrial in Connecticut jails because they could not pay less than \$20,000 in bail.

Our Constitution promises equal treatment under the law, but emerging data shows that people stuck in Connecticut jails because they cannot pay bail are disproportionately minorities, and that courts set higher bail amounts for minorities than for white peers charged with the same crimes. These inequities leave the state vulnerable to legal challenges. Nationally, Black Americans are jailed at four times the rate of white Americans, and court systems issue higher bail amounts for Black and Latino Americans ages 18 through 29 than for people from other ethnic or racial groups. According to the Sentencing Commission's 2017 report, 61 percent of people held in Connecticut jails pretrial from 2012 through 2015 were Black or Latino, compared to a much smaller general population percentage. Similarly, in June 2016, 58 percent of people held in Connecticut jails pretrial on misdemeanor charges were minorities. Although eliminating cash bail will not solve the disturbing disparities in our justice system, it would offer one important step toward their remediation.

Governor Malloy has proposed significant reforms in GB 7044. This bill would prohibit money bail for people charged with a misdemeanor, except where the accused poses an immediate threat to the health or wellbeing of another person or has history of failing to appear for court dates. It would also take the profiteering out of bail by giving accused the option of depositing 10% of the bail set with the court in order to be released while awaiting trial. The interest accrued on forfeited cash bail would fund legal aid.

GB 7044 would offer a significant safeguard to excessive bail by requiring re-determination hearings to be held every fourteen days for people charged with a misdemeanor, a class D or E felony, or an unclassified felony (with a maximum term of five years), and every thirty days for people charged with a class A, B or C felony.

Significantly the bill would require judges to make a finding on the record of the accused's ability to pay the amount of bond set, and to have the arrested person complete a written statement setting forth their liabilities and assets, income and sources of such income. It is hard to believe but this is not a current requirement. Requiring judges to make bail determination findings on the record will provide additional transparency for the bail process, thus allowing the state and others to better identify and address any potential disparities after pretrial justice reforms take effect.

The Sentencing Commission's bill is a well-reasoned set of reforms that have been endorsed by many important criminal justice stakeholders. HB 7287 would require judges to make a finding on the record before imposing secured financial conditions in misdemeanor cases. If the charge is a non-family violence misdemeanor, then no monetary condition may be imposed unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will fail to appear in court as required. This safeguard would help reduce the number of people who are in jail simply because they do not have access to funds.

Another significant provision in HB 7287 would provide another safeguard by requiring people charged with a misdemeanor who remain in jail after the setting of money bail to be reviewed in court 14 days after the first appearance. The court must then remove the monetary condition of release for defendants charged with a non-family violence misdemeanor unless the court finds that the monetary condition is necessary due to a serious risk that the defendant will not return to court.

Lastly, HB 7287 would make our bail system fairer by allowing defendants to deposit 10% of the bond amount with the court on surety bonds under \$10,000. This is significant because the 10% option is rarely offered, causing many families to lose the 10% professional bail bondsman.

By setting limitations for how long Connecticut can hold someone pretrial before reconsidering his or her bail amount, Governor's Bill 7044 and H.B. 7287 would create important stopgaps that could prevent disadvantaged defendants from languishing in jails. In June 2016, 694 people had been awaiting trial in Connecticut jails for 30 weeks or more. As the Sentencing Commission's 2017 report notes, and as numerous national studies have found, spending even one day in jail can endanger someone's job, housing, and family connections, even if that person is innocent. In nearby New York, Kalief Browder was 16 years old when he was accused of stealing a backpack. When his family could not afford his \$3,000 bail amount, he was sent to Riker's Island, where he remained for 74 days without trial or conviction. Under Governor's Bill 7044, the longest that someone could be held without reassessment of his or her bail amount would be 30 days.

The hardships of unnecessary pretrial detention are not just borne by the accused; they reverberate through entire families, and they can be particularly devastating for children. A 2015 Ella Baker Center study found that 65 percent of families with an imprisoned family member struggled to make ends meet after that person's incarceration. Nationally, the majority of incarcerated people are parents. Locally, a Connecticut Department of Corrections study found that 58.3 percent of people being held pretrial in New Haven, Bridgeport, and Hartford had dependent children. A 2016 IMRP survey of parents held in jail pretrial in New Britain found that half were living with their children before imprisonment, and the vast majority were providing financial support for their children. An unequal bail system that punishes poor parents can therefore perpetuate the cycle of poverty by jeopardizing children's financial and emotional wellbeing. This bill's limitations on how long someone could be held pretrial before a bail reassessment and its potential to reduce the number of people being held pretrial because of inability to pay bail could help to mitigate these affects.

For the above reasons, and in the interests of equality under the law and justice for all people, we strongly urge you to support H.B. 7287 and Governor's Bill 7044.