



Legislative Testimony
765 Asylum Avenue, First Floor
Hartford, CT 06105
860-523-9146
www.acluct.org

**Written Testimony Supporting Senate Bill 880, An Act
Increasing Fairness and Transparency in the Criminal Justice System**

Senator Winfield, Representative Stafstrom, and distinguished members of the Judiciary Committee:

My name is Gus Marks-Hamilton, and I am a Smart Justice field organizer with the American Civil Liberties Union of Connecticut (ACLU-CT). I am here to testify in support of Senate Bill 880, An Act Increasing Fairness and Transparency in the Criminal Justice System.

As an organization that believes government transparency and accountability are imperative to a democracy and that fights for fair and equal justice for everyone in the criminal justice system, the ACLU-CT supports efforts to increase access to data about the work of prosecutors. We therefore support Senate Bill 880, which would require the collection, reporting, and publication of important data about Connecticut's criminal justice system. This would allow lawmakers and the public to better evaluate the criminal justice system and, should it be necessary, propose evidence-based reforms to improve the system for the betterment of Connecticut residents.

Every Connecticut resident is affected by the decisions made by Connecticut prosecutors, known as "state's attorneys" in our state. People accused or convicted of a crime and their families, victims of a crime and their families, and taxpayers who foot the bills for both prosecutors' budgets and the cost of incarceration are impacted by the criminal justice system and deserve to know about the role that prosecutors play in the operation of the criminal justice system and in the mass incarceration of Connecticut residents.

As some of the most powerful people in the criminal justice system, prosecutors hold people's lives in their hands. Prosecutors decide whether to keep, change, or drop a charge against someone; whether to offer a plea deal; whether to recommend bail; how a case is investigated; and whether to offer someone who is accused of a crime the chance to participate in a diversionary program, like drug treatment, instead of trying to send them to prison. Nationwide, 95 percent of criminal cases end in plea bargains, meaning that most of the time it is the prosecutors, not judges and juries, who decide how a case is resolved.

Despite the enormous power that prosecutors wield, Connecticut residents have very little information about what they do. The state does not collect or publish statistics about prosecutors' actions, and Connecticut's Division of Criminal Justice, which oversees prosecutors, is generally exempt from the State Freedom of Information Act. This makes it almost impossible for people to get information about the decisions of state's attorneys. The current lack of information about prosecutors' work hinders both the public and policymakers. Without data, it is difficult, if not impossible, to evaluate the effectiveness of the criminal justice system and understand why there are substantial racial disparities in the Connecticut criminal justice system. We know that people of color are overrepresented in Connecticut state prisons and jails. Without data about the prosecutorial process, however, it is impossible to understand if these racial disparities are in part rooted in the prosecutorial decision-making process.

Senate Bill 880 is an important first step toward meaningful transparency. The bill would require the state to collect, report, and publish information about prosecutors' decisions on a public website each year. That information would include demographic information about who prosecutors decide, or decline to, prosecute, as well as data on charging, diversionary programs, and sentencing. If passed, the bill would make this information public in 2020.

While the current language of the bill requires the collection, reporting, and publication of important data, the ACLU-CT would like to stress the importance of including pieces of information in the final version of the bill that are necessary to complete the picture of prosecutors' work in our state. We recommend that the ultimate version of the bill require data on the pretrial phase, juvenile cases, and victim involvement in cases. It is important to require detailed information on bail or bond and pretrial release determinations. This is a critical step in criminal cases that greatly affects defendants and their families, employers, and communities, as well as the state's finances. Additionally, more clarity is needed about juvenile prosecutions. There is a lack of data about how youth are being treated in the system and how and why juveniles end up in regular criminal court. The ultimate bill should therefore require data about juvenile cases, including the number of cases referred to a juvenile probation officer, how many cases are dealt with informally and how many are dealt with formally, the number of cases dealt with formally that are mandatory transfers and the number that are discretionary transfers requested by prosecutors, and the number of cases that are transferred back to juvenile court after a discretionary transfer request. The ultimate bill should also require information about victim involvement in the criminal justice system, including whether prosecutors were in contact with victims, whether victims were in agreement with the dispositions of cases, and the reason for dismissing charges, if applicable.

Though the bill includes safeguards to protect the identities of victims, we request that the committee include a privacy provision in the bill to protect the identities of defendants. Their privacy could be protected by assigning a unique identifier to each piece of data.

The bill's data provisions would increase transparency greatly without costing the state. The collection, reporting, and publication of the data would be cost-neutral because the state has already set aside funding for two databases that could easily collect the information requested in the bill. According to the Office of Policy and Management, Connecticut's Criminal Justice Information System could collect 80 percent of the data required by the bill. Additionally, funding has already been set aside for prosecutors to move to a digital case management system, in part because Connecticut prosecutors are some of the last in the country to still use a paper case management system. The digital case management system, according to the Office of Policy and Management, could easily be tailored to collect the remaining 20 percent of the data required by the bill. The Division of Criminal Justice is already reviewing vendors' applications to obtain the digital case management system, and the tailoring required to prepare the system to collect the data required by the bill would not be burdensome, nor would it be likely to increase the cost of the system or its operation.

Connecticut should follow in the footsteps of other states and counties around the nation that have recognized the importance of prosecutorial transparency. Both nearby Massachusetts and Florida have passed legislation requiring state prosecutors to release data about their decisions. Multiple county attorneys' offices, including New York County, New York; Santa Clara County, California; and Cook County, Illinois, which contains Chicago, have released aggregate data about race from throughout the prosecutorial process.

The ACLU-CT also supports the bill's provision requiring the establishment of a pilot program to provide legal representation to people at parole revocation hearings. Access to legal counsel for these hearings would increase the fairness of outcomes for people who often cannot afford private attorneys. Under the constitution, criminal defendants have a right to legal counsel at trial. They should also be provided with representation at proceedings subsequent to sentencing. This pilot would be a good first step in increasing access to representation for these hearings.

Transparency is critical for our criminal justice system. If our state is going to create a smarter justice system, then all of us need more information about what prosecutors are doing. We strongly urge the committee to support Senate Bill 880 to bring transparency and awareness to this critical part of the criminal justice system.