



Legislative Testimony
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**Written Testimony Supporting Senate Bill 1058, An Act Concerning
Compassionate Parole Release by the Board of Pardons and Paroles and
Concerning Staff of the Department of Correction**

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

My name is Gus Marks-Hamilton, and I am the interim campaign manager for the Smart Justice campaign of the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in support of Senate Bill 1058, An Act Concerning Compassionate Parole Release by the Board of Pardons and Paroles and Concerning Staff of the Department of Correction.

Even before the COVID-19 pandemic began to spread inside the Connecticut Department of Correction (DOC), Connecticut's prisons and jails were not healthy places. In January 2020, 72 people were held at Northern Correctional Institution¹ in conditions that were deemed literally torture by a United Nations Special Rapporteur.² DOC had been dealing with epidemic levels of Hepatitis C³ and HIV/AIDS for years.⁴ But when COVID-19 hit, DOC prisons and jails hit an entirely new level of unhealthy. Over the course of the pandemic to date, nineteen people have

¹ "Average Confined Inmate Population and Legal Status." Connecticut Department of Correction Research Unit, Feb. 2020, *available at* <https://portal.ct.gov/-/media/DOC/Pdf/MonthlyStat/Stat02012020.pdf>.

² "United States: prolonged solitary confinement amounts to psychological torture," United Nations Human Rights, Office of the High Commissioner, *available at* <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633&LangID=E>.

³ See Keith M. Phaneuf & Kelan Lyons, "Correction Department to begin testing, treating inmates for Hepatitis C." CT Mirror, Aug. 13, 2019, *available at* <https://ctmirror.org/2019/08/13/correction-department-to-begin-testing-treating-inmates-for-hepatitis-c/>.

⁴ See Kelan Lyons, "Elderly prisoners in Connecticut vulnerable to potential coronavirus outbreak." CT Mirror, Mar. 11, 2020, *available at* <https://ctmirror.org/2019/08/13/correction-department-to-begin-testing-treating-inmates-for-hepatitis-c/>.

died after becoming infected in DOC custody,⁵ while a total of 4,249 people were infected.⁶ At one point, the DOC had a higher infection rate than any municipality in Connecticut.⁷

During this time, Connecticut had options available to move people from incarceration to the supervised release into community.⁸ If the political will had existed, Connecticut could have released people through a wide variety of mechanisms.⁹ But the available evidence suggests that this did not happen. To the contrary, it appears that discretionary releases stayed relatively consistent with discretionary release rates from prior years.¹⁰ Although Connecticut abolished the death penalty, it did not take the necessary steps to prevent unnecessary COVID-19 deaths inside the DOC.

One such method of discretionary release available was compassionate releases: a mechanism to release people with grave illnesses, diseases, or disabilities who do not pose a safety risk back into their communities.¹¹ But health crises, inside or outside of DOC facilities, do not affect whether the Board of Pardons and Paroles (BOPP) can grant compassionate release.¹² No matter the public health context, the BOPP must apply the same standards. This is likely why, in the face of the greatest pandemic seen in a century, the BOPP granted 25 compassionate releases in 2020, denying 20%

⁵ “Health Information and Advisories: Coronavirus Inform [sic],” Connecticut Department of Correction, Mar. 19, 2021, *available at* <https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-Advisories>.

⁶ *Id.*

⁷ David McGuire & Melvin Medina, “If CT prisons and jails were a town, they’d have the highest COVID-19 infection rate in the state.” ACLU of Connecticut, Apr. 21, 2020, *available at* <https://www.acluct.org/en/news/if-ct-prisons-and-jails-were-town-theyd-have-highest-covid-19-infection-rate-state>.

⁸ Melvin Medina & Meghan Holden, “What’s actually happening with Connecticut’s discretionary releases from prisons and jails?” ACLU of Connecticut, May 11, 2020, *available at* <https://www.acluct.org/en/news/whats-actually-happening-connecticuts-discretionary-releases-prisons-and-jails>.

⁹ *Id.*

¹⁰ As of November 2020, discretionary releases for the year accounted for a 4.66% reduction in the DOC population, compared with a 4.21% reduction due to discretionary releases for the same month in 2019. Kelan Lyons & Kasturi Pananjady, “COVID-19 leads to more ‘discretionary releases’ from prison, but advocates say it’s not enough.” CT Mirror, Dec. 23, 2020, *available at* <https://ctmirror.org/2020/12/23/covid-19-leads-to-more-discretionary-releases-from-prison-but-advocates-say-its-not-enough/>.

¹¹ Conn. Gen. Stats. § 54-131k (2020).

¹² *Id.*

of applicants.¹³ This is illogical to the point of absurdity. If compassionate release is about respecting the lives of people incarcerated by placing them into healthier surroundings, a pandemic is exactly when compassionate release should be easier to obtain. As the executive director of the BOPP noted, the compassionate release “statutory criteria were not drafted to handle a virus such as this.”¹⁴

This bill seeks to remedy that. Senate Bill 1058 provides that the BOPP shall consider different criteria for considering compassionate releases during disasters, emergency declarations, epidemics and pandemics, and other public health emergencies. These criteria still require a finding that community risk will be low if the person is released, but they take important context into account. By limiting the risk of serious illness or death for people who are particularly susceptible to the then-existing emergency, this bill respects the lives of people who are incarcerated. It also recognizes that incarcerated people are dependent upon the state for their health, since they cannot change their living environments, cannot socially distance, cannot move freely for safety, and cannot otherwise take the actions that people in communities can choose to keep disease-free.

While it is critically important to change the definition to provide more options for keeping people safe during this or future pandemics, we must also acknowledge that providing the government with more options is, alone, insufficient. In the federal system, 98% of requests for compassionate release were denied during the COVID-19 pandemic.¹⁵ As mentioned earlier, only 25 people were granted compassionate release in Connecticut during the pandemic.¹⁶ As of November 2020, Connecticut had not

¹³ “Boards of Pardons and Parole Statistical Information,” CT Board of Pardons and Paroles, *available at* <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Historical>.

¹⁴ Kelan Lyons, “Inmates seeking compassionate release face laws not built for COVID-19.” CT Mirror, May 7, 2020, *available at* <https://ctmirror.org/2020/05/07/inmates-seeking-compassionate-release-face-laws-not-built-for-covid-19/>.

¹⁵ Keri Blakinger & Joseph Neff, “Thousands of sick federal prisoners sought compassionate release. 98 percent were denied.” The Marshall Project, Oct. 7, 2020, *available at* <https://www.themarshallproject.org/2020/10/07/thousands-of-sick-federal-prisoners-sought-compassionate-release-98-percent-were-denied>.

¹⁶ “Boards of Pardons and Parole Statistical Information,” CT Board of Pardons and Paroles, *available at* <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Historical>.

commuted a single sentence since the pandemic began.¹⁷ And several of the people who died from contracting COVID-19 in DOC custody had medical conditions that should have warranted community release.¹⁸ This bill is an important step, but it must be coupled with much greater appreciation of the responsibility that the government owes to keep the people it incarcerates against their will safe and healthy. Connecticut outlawed the death penalty, but through its inaction it sentenced at least nineteen people to die from contracting COVID-19 in DOC custody over the last year.¹⁹

The changes in Section 2 of Senate Bill 1058, which provide additional whistleblower protections to DOC staff, are important. We support this addition fully.

The ACLU-CT supports Senate Bill 1058 as a necessary but not, alone, sufficient step to ensuring that no one ever dies in DOC custody during a public health crisis again. By providing a clear path and more appropriate health risk assessment for times when there is a public health emergency, the revised compassionate release standard could save lives – if only governmental agencies cared to do so. We urge this Committee to support this bill, but we also urge the executive branch to do more to prevent unnecessary death in DOC custody during this and future pandemics.

¹⁷ Kelan Lyons, “CT hasn’t commuted a single prisoner’s sentence since before the pandemic. Advocates say it’s time to change.” CT Mirror, Nov. 30, 2020, *available at* <https://ctmirror.org/2020/11/30/ct-hasnt-commuted-a-single-prisoners-sentence-since-before-the-pandemic-advocates-say-its-time-to-change/>.

¹⁸ *See, e.g.*, Dave Altimari & Kelan Lyons, “Michael Ferrigon had asthma and diabetes. The state transferred him to the prison with the most COVID deaths.” CT Mirror, Jan. 28, 2021, *available at* <https://ctmirror.org/2021/01/28/nineteen-men-have-died-behind-bars-from-covid-these-are-their-names/>; Kaitlyn Krasselt, “CT inmate approved for release dies with coronavirus.” CT Post, Apr. 13, 2020, *available at* <https://www.ctpost.com/news/coronavirus/article/Inmate-approved-for-release-dies-with-COVID-19-15198054.php>.

¹⁹ “Health Information and Advisories: Coronavirus Inform [sic],” Connecticut Department of Correction, Mar. 19, 2021, *available at* <https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-Advisories>.