

April 20, 2023

Dear Governor Lamont, Chairperson *Zaccagnini*, Senator Winfield, Representative Stafstrom, and Speaker Ritter,

My name is Claudine Constant, and I am the public policy and advocacy director of the American Civil Liberties Union (ACLU) of Connecticut a statewide organization within the nationwide ACLU network that defends, promotes, and expands the civil rights and civil liberties of all people in Connecticut through litigation, community organizing and legislative advocacy, and civic education and engagement. One of the most forward-facing programs within the ACLU of Connecticut is the Campaign for Smart Justice.



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The ACLU of Connecticut's Campaign for Smart Justice is grounded in the knowledge that the people closest to the problem are closest to the solution. We are an unprecedented cohort of advocates who have been directly impacted by Connecticut's justice system.ⁱ We are working to usher in a new era of justice, and we are not alone. We are part of the nationwide Campaign for Smart Justice, a multiyear effort in all 50 states. Imprisonment is a brutal and costly response to crime that traumatizes incarcerated people and hurts families, communities, and economies. Yet the U.S. incarcerates more people, in absolute number and per capita, than any other nation. Connecticut has made progress toward ending mass incarceration, but we have much more work to do.

Since 2018, the ACLU of Connecticut's Smart Justice Campaign has worked tirelessly to drive progressive policy change that:

- 1) Reduces Connecticut's prison population,
- 2) Ensures that people exiting Connecticut's prisons and jails have meaningful opportunities to thrive and support their families, and
- 3) Addresses the systemic drivers of mass incarceration in the first place, like the over-policing of predominantly Black and Latinx communities in our state

We write to express our disappointment in the recent decision to suspend commutations for Connecticut prisoners.

We are deeply concerned by the suspension of commutations in Connecticut. We support the recent work of the Board of Pardons and Paroles ("the Board") to establish a robust and thorough commutation process that thoughtfully balanced the importance of second chances for Connecticut prisoners, the perspectives of victims, and public safety considerations. We urge the Board to resume the commutation process, which served as a critical safety valve in Connecticut's criminal justice system.

Commutation serves as a critical safety net in the criminal justice system.

Commutation is a vital safeguard in the criminal justice system. Judges are not clairvoyant and cannot always anticipate whether the sentence meted out on sentencing day will continue to serve the purposes of punishment years later. In particular, Connecticut judges rely on the Board to reassess sentences in light of an individual's record of rehabilitation and growth, which judges have no way of evaluating at the time of sentencing. Nor can judges anticipate developments in social science that mitigate culpability, such as the recent scientific consensus that

human brains continue developing until the age of 25. For these reasons, it should come as no surprise that the United States Supreme Court has affirmed that clemency serves as a crucial “fail safe” in our criminal justice system.¹

Commutation is especially necessary to review mandatory sentences. In Connecticut, several offenses carry mandatory minimum sentences, which means that neither the judge nor the jury has the discretion to impose a less severe sentence once guilt is found, even when compelling mitigating circumstances are present. This means that the prosecutor effectively determines the punishment when making the charging decision, with no check on severity from a judge or a jury. As Professor Rachel Barkow has explained, commutation allows for “individualization” in sentencing, “which becomes increasingly important as judges lose authority to tailor sentences.”²



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Commutation is fundamentally different from other forms of post-conviction relief.

Unlike other avenues for relief like writs of habeas corpus, commutation decisions are not based on any alleged fault or error in someone’s conviction. Commutations rely on fundamentally different evidence—a person’s growth and rehabilitation over time. Habeas asks whether an error makes a person’s sentence invalid; commutation asks whether a person’s dedication to rehabilitation has made their sentence unnecessary. Other forms of post-conviction relief simply are not designed to allow people to present evidence of how they have changed since the time of their sentencing and are not able to provide relief as and when rehabilitation occurs. In other words, the Board is the only entity with the ability to consider rehabilitation, making it a vital avenue for sentencing relief with no clear, equal alternative.

Moreover, many incarcerated people in Connecticut are statutorily ineligible for sentence modification and parole, which makes commutation their *only* possible avenue for post-appellate sentence review. Sentence modification excludes people whose sentences were mandatory, and parole excludes a whole category of offenses, including murder, capital felony murder, and felony murder. For these people, commutation is their only remaining avenue for sentencing reconsideration; without it, they are left without any opportunity for relief.

The Connecticut Board of Pardons and Paroles has demonstrated that it can use its discretion responsibly and with great care.

Though the Board has utilized its commutation power to varying degrees over the years, between 2021 and early 2023, the Board implemented a more robust and

¹ *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

² Rachel E. Barkow, *The Ascent of the Administrative State and the Demise of Mercy*, 121 HARV. L. REV. 1332, 1360 (2008); see also George Lardner, Jr. & Margaret Colgate Love, *Mandatory Sentences and Presidential Mercy: The Role of Judges in Pardon Cases, 1790-1850*, 16 FED. SENT’G REP. 212, 212 (2004) (noting the “importance of having a safety valve in any system of mandatory punishments, one that is both readily accessible and politically accountable”). Barkow observes that grants of clemency “can prompt attention to systemic failures in the criminal justice process” and have brought about reforms in the law of self defense and insanity, and in the death penalty. Barkow, *supra*. She cites a 1939 survey of the Attorney General concluding that that clemency has “historically always been used . . . to take care of cases where the legal rules have produced a harsh, unjust, or popularly unacceptable result” and that “[s]uch cases will continue to arise under any legal system.” See U.S. Dep’t of Just., *The Attorney General’s Survey of Release Procedures* 298 (1939).



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thorough commutation process. During this period, the Board developed thoughtful eligibility criteria and created two separate opportunities to screen commutation applications: first at the pre-screen stage, and again at a hearing (should the applicant receive one). In deciding whether to grant a commutation, the Board considered a number of factors, including: the seriousness and recentness of the conviction; the impact on the victim(s); the institutional record of the applicant; the extent to which the applicant has been rehabilitated; the length of the applicant's sentences; whether the length and form of the applicant's sentence is consistent with contemporary sentencing practices; and whether the continued service of the applicant's sentence are in the interests of justice.³

In the nearly two years that the Board actively considered commutation applications, it demonstrated that it is able to balance these factors effectively, granting commutation only in cases where a petitioner's individual circumstances warrant it. The Board rejected far more commutations than it granted, which is a testament to how carefully the Board wielded its power and discretion. From 2021 to 2022, the Board received 328 applications for commutation.⁴ Of that group, the Board granted hearings to 99 applicants, and granted commutations to only 89.⁵ In other words, only 27% of the cases the Board reviewed resulted in successful commutations.

The Board's record also demonstrates its important role in reviewing the sentences of people who committed crimes before their brains were fully developed. Of the commutations the Board granted from 2021-2022, the average age at the time of the offense was 22.6 years old.⁶ Reconsidering sentences of people who were "late adolescents," as neuroscientists now refer to them, is consistent with contemporary sentencing practices. Commutation thus, in some ways, served as a state corollary to the First Step Act, federal legislation signed into law by then-President Donald Trump which authorized federal judges to reduce an incarcerated person's term of imprisonment if warranted by "extraordinary and compelling reasons."⁷ The Second Circuit has held that a prisoner's youth at the time of their offense may serve as one such "extraordinary and compelling reason" warranting a reduction in sentence.⁸ In keeping with that decision, judges in the District of Connecticut have granted sentence reductions on age-based grounds in several recent cases involving defendants who were late adolescents (between 18 and 25 years old) at the time of their crimes, including *United States v. Cruz* and *United States v. Morris*.⁹ The Board's emphasis on reviewing sentences for crimes committed in late adolescence was also consistent with efforts in and beyond Connecticut to raise the age of parole eligibility from 18 to 25.

Commutation does not pose a threat to public safety.

³ *Commutations, Policy III.02*, ST. OF CONN. BD. OF PARDONS AND PAROLES (June 1, 2021), <https://s3.documentcloud.org/documents/20795653/getfileattachment.pdf>.

⁴ *Commutation Statistics, 2021-2022 Commutation Summary*, ST. OF CONN. BD. OF PARDONS AND PAROLES, <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Commutation-Statistics>.

⁵ *Id.*

⁶ *Id.*

⁷ 18 U.S.C. § 3582(c)(1)(A)(i); *see also* USSG § 1B1.13.

⁸ *United States v. Brooker*, 976 F.3d 228, 238 (2d Cir. 2020).

⁹ *United States v. Cruz*, No. 3:94-CR-112, 2021 WL 1326851 (D. Conn. Apr. 9, 2021); *United States v. Morris*, No. 3:00-CR-264-17, 2022 WL 3703201 (D. Conn. Aug. 26, 2022).

Policies that prevent parole and commutation do not advance public safety. This is especially true for older people serving long sentences for crimes they committed when they were young. Evidence suggests that most people who commit crimes—even very serious crimes—age out of criminal behavior as they mature.¹⁰ The Board’s policy regarding commutations was consistent with this research and with criminal justice policies across the country that ensure access to a second chance. Many incarcerated people rely on commutation as their sole opportunity to demonstrate their rehabilitation, to show that they are not threats to public safety, and to rejoin the community.

Restoring Connecticut’s commutation process will help the State maintain its place as a leader on criminal justice issues.



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Over the past decade, Connecticut has established an impressive track record on criminal justice issues, emerging as a national leader on sensible criminal legal reform.¹¹ Connecticut has abolished the death penalty and solitary confinement; refined the bail system; decriminalized possession of small amounts of marijuana; extended parole to people who committed their crime before the age of 18 consistent with Supreme Court precedent and neuroscience; streamlined the parole and sentencing modification processes; and restored voting rights to formerly incarcerated people.

Connecticut has also solidified its place as a criminal justice leader through its rehabilitative prison programming. In partnership with the Vera Institute of Justice, the Connecticut Department of Correction developed the T.R.U.E. program at Cheshire Correctional Institution and the W.O.R.T.H. program at York Correctional Institution. These programs select incarcerated people serving lengthy sentences to mentor cohorts of young men and women ages 18-25 as they work to rehabilitate. The T.R.U.E. and W.O.R.T.H. programs are evidence of Connecticut’s commitment to rehabilitation: the Department of Correction recognizes that people of all ages, whether serving sentences long or short, are capable of rehabilitating, and of helping others do the same. Several states, including [XYZ], have since followed Connecticut’s lead.

We hope the Board will resume its careful and exemplary work around commutation, thus renewing Connecticut’s commitment to reconsidering lengthy sentences for a carefully considered group of deserving prisoners.

Sincerely,

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The American Civil Liberties Union of Connecticut is a nonpartisan, non-profit membership organization that defends, promotes, and expands the civil rights and civil liberties of all people in

¹⁰ See, e.g., *The Older You Get: Why Incarcerating the Elderly Makes us Less Safe*, FAMILIES AGAINST MANDATORY MINIMUMS, <https://famm.org/wp-content/uploads/Aging-out-of-crime-FINAL.pdf>.

¹¹ Governor Daniel P. Malloy, “Second Chance Society” (Feb. 3, 2015), http://www.governor.ct.gov/malloy/lib/malloy/2015.02.03_gov_malloy_second_chance_society.pdf.

Connecticut through litigation, community organizing and legislative advocacy, and civic education and engagement.

ⁱ To learn more about the ACLU's Smart Justice Campaign visit: <https://www.acluct.org/en/issues/smart-justice>



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