

7-6

Proposal by the Connecticut Sentencing Commission to amend Section 38-8 regarding ten percent (10%) cash bail. **On 2-11-19, RC tabled to March meeting for a status report; sent legislation proposed by Governor's Office to Committee.**

**Del Ciampo, Joseph**

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**From:** Del Ciampo, Joseph  
**Sent:** Thursday, February 21, 2019 10:00 AM  
**To:** Alexander, Joan; Bellis, Barbara; Cradle, Melanie L.; Dubay, Kevin; Heller, Donna; McDonald, Andrew; Ozalis, Sheila; Sheridan, David; Stevens, Barry  
**Subject:** Bail Proposal by the Governor's Transition Team  
**Attachments:** Criminal-Justice-Policy-Committee---Sub-Group---Bail-Reform.pdf; 2017HB-07287-R00-HB.PDF

Dear Judges,

At the Rules Committee meeting held on February 11, 2019, you considered a proposal by the Connecticut Sentencing Commission to amend Section 38-8 regarding ten percent cash bail. After discussion, the Committee tabled the matter to the next meeting to enable Judge Alexander to inform the Committee of the status of related proposed legislation put forth by the Governor. Attached is a summary from December of the bail proposals put forth by the Governor's transition team, including the 10% option (see page 4). A bill on this topic could be forthcoming, or the language might be incorporated into another germane bill. Also attached is a bill from 2017 which contains the 10% proposal (see section 3). The 2017 bill did not pass, but it was a recommendation made by the Sentencing Commission, so it could likely be used as a model for new language this year. Thank you.

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To: Transition Team for Governor-elect Lamont and Lt. Governor-elect Bysiewicz  
From: Bail Reform Working Group, Criminal Justice Committee  
Re: Reforming Connecticut's Money-Bail System  
Date: December 31, 2018

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This memo considers Connecticut's pretrial justice system and suggests possible reforms.

## I. BACKGROUND

Under Connecticut's Constitution, bail must be ordered for all individuals charged with crimes.<sup>1</sup> Preventative pretrial detention is unavailable for anyone accused of an offense, regardless of the risk of re-arrest or failure to appear. Following arrest, police departments may release arrestees on a promise to appear or set a bond amount. Connecticut's statewide pretrial services agency, the Judicial Branch's Court Support Services Division (JB-CSSD) will interview and release the arrestee on a promise to appear with or without conditions, keep the police-set bond, or change the bond at the police department. If the arrestee remains detained prior to arraignment, JB-CSSD staff will recommend to the court at arraignment non-financial and financial conditions of release for arrestees. At arraignment, the court may issue a promise to appear or impose financial and/or non-financial conditions of release. JB-CSSD supervises non-financial conditions of release, and addresses failure to comply with those release conditions. In approximately 14% of cases involving custodial arrests, defendants are held in custody on financial bonds until case disposition—and a larger percent spend some period of time in custody before the case concludes (the median duration of pretrial detention for a person who is eventually released prior to disposition is 11 days).<sup>2</sup>

When financial conditions of release are imposed, an individual's ability to secure release pending trial depends on his or her ability to pay. Consider two individuals who present identical risks of re-arrest and failure to appear and who have identical bond amounts set in their cases: the defendant with financial resources will be released pending trial whereas the defendant without resources will stay detained. This makes a big difference: those detained pretrial, on average, plead guilty at higher rates and receive longer sentences than similarly-situated defendants who are released pretrial.<sup>3</sup> Moreover, pretrial detention—even for several days—is deeply disruptive for individuals and their families and can result in the loss of jobs and housing.<sup>4</sup> Indeed, studies show that for individuals assessed as low or moderate risk, short-term

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<sup>1</sup> Connecticut's Constitution permits preventative detention for defendants charged with capital crimes. However, following the elimination of the death penalty in Connecticut, this provision no longer applies.

<sup>2</sup> Connecticut Sentencing Commission, *Pretrial Release and Detention in Connecticut*, [https://www.ct.gov/ctsc/lib/ctsc/1Pretrial\\_Release\\_and\\_Detention\\_in\\_CT\\_2.14.2017.pdf](https://www.ct.gov/ctsc/lib/ctsc/1Pretrial_Release_and_Detention_in_CT_2.14.2017.pdf) [hereinafter *Pretrial Release and Detention in Connecticut*]. This report contains extensive information about Connecticut's pretrial justice system.

<sup>3</sup> See, e.g., Paul S. Heaton, Sandra G. Mayson & Megan T. Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711 (2017).

<sup>4</sup> See, e.g., Christopher T. Lowenkamp et al., Arnold Foundation, *The Hidden Costs of Pretrial Detention* (2013), [http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF\\_Report\\_hidden-costs\\_FINAL.pdf](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FINAL.pdf); Arpit Gupta et al., *The Heavy Costs of Bail: Evidence from Judge Randomization*, 45 J. Legal Stud. 20-21, 23 (2016), <http://www.columbia.edu/~cjh2182/GuptaHansmanFrenchman.pdf>.

pretrial detention is associated with an increased risk of re-arrest and failure to appear.<sup>5</sup> In addition, a recent report from the Connecticut Sentencing Commission concluded: “In Connecticut and elsewhere around the country, the bond amounts imposed on defendants as financial conditions of release—unlike the risk assessment instrument that helps decision makers determine whether to impose a financial condition—have never been validated. That is, there is no evidence that the amount of financial bond correlates with a defendant’s likelihood of re-arrest or failure to appear.”<sup>6</sup> Notably, a financial bond is forfeited if the accused person fails to appear for a subsequent court appearance. It is not forfeited if the person is re-arrested.

## II. REFORMS IN CONNECTICUT AND NATIONWIDE

### A. Reforms in Connecticut in 2017

Connecticut enacted legislation relating to bail in 2017. Under the reforms, judges may not set “cash only” bonds (i.e., bonds that require defendants to pay the full amount of the bond rather than a percentage to secure release).<sup>7</sup> In addition, the legislation requires courts to make certain findings before imposing a financial condition of release where a defendant is charged with a misdemeanor other than a family violence crime. The law also provides, subject to certain exceptions, that a person who remains detained in a misdemeanor case must be brought back to court within 14 days of arraignment. At that time, in cases other than family violence cases, the court must remove the financial condition unless it makes certain findings. These modest reforms in 2017 have not led to a reduction in the number of individuals detained pretrial in Connecticut.<sup>8</sup>

Currently, there are almost 300 people being held pretrial in DOC jails who are on a waiting list for a bed at a drug treatment facility. Because of budget cuts, there is funding now for only 188 treatment beds (funding for 123 beds was recently cut). Notably, the number of people held pretrial in Connecticut jails with immigration detainers has nearly doubled in the past two years (from 48 in December 2016 to 93 in December 2018). In the past year, it has become impossible to bail out anyone with an immigration detainer—despite DOC policies to the contrary. (For more details, see our separate memo addressing the intersection between our state criminal justice system and federal immigration enforcement).

### B. Reforms Nationwide

In the past few years, there has been extensive litigation nationwide asserting that money bail systems in states and localities violate the Equal Protection and Due Process Clauses of the U.S. Constitution. Many jurisdictions have entered into settlement agreements in these cases and changed their practices, and litigation is ongoing in a number of places.<sup>9</sup> States such as New

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<sup>5</sup> Arnold Foundation, *Pretrial Criminal Justice Research* (Nov. 2013), [https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief\\_FINAL.pdf](https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF-Pretrial-CJ-Research-brief_FINAL.pdf).

<sup>6</sup> *Pretrial Release and Detention*, *supra* note 1, at 7.

<sup>7</sup> Public Act 17-145 (Gen. Sess.); Public Act No. 17-2 (June Sp. Sess.).

<sup>8</sup> As of November 1, 2018, the number of people detained pretrial was 3,375 (compared to 3,214 people on November 1, 2017 and 3,332 people on November 1, 2016).

<sup>9</sup> Civil Rights Corp., *Challenging the Money Bail System* (describing lawsuits nationwide). <https://www.civilrightscorps.org/work/wealth-based-detention>.

Jersey, New Mexico, and California have recently moved away from money-bail systems and adopted preventative-detention schemes. Such schemes prevent individuals from being detained based on their inability to pay, and permit pretrial detention of individuals charged with some crimes (with no opportunity for release on bail) if certain procedures are followed and standards met.

### III. RECOMMENDATIONS

Money bail systems are fundamentally unfair to those without resources. Rather than basing the pretrial release decision on an individual's risk of re-arrest or failure to appear, such systems allows an individual's wealth to determine whether he or she will be free pending trial. Money bail systems result in the detention of individuals who could be safely released in the community and the release of people who present a greater risk than many who end up detained.

However, despite the problems with money bail, preventative detention systems carry their own risks. For example, in the federal system, under the Bail Reform Act of 1984, courts are prohibited from imposing financial conditions that result in a defendant's detention, and preventative detention is permitted in some circumstances. The pretrial detention rate in the federal system has been steadily increasing since the 1984 Act was passed. As of 2017, excluding immigration cases, 60 percent of the federal pretrial population was detained.<sup>10</sup> Not all preventative detention schemes have such high rates of detention, however. Under the preventative detention scheme in place in the District of Columbia, an average of 88% of pretrial defendants were released pending trial over a recent five-year period.<sup>11</sup> The recent introduction of preventative detention in New Jersey enjoyed widespread bipartisan support and has resulted—at least initially—in a reduction in the population of people detained pretrial. Meanwhile, although progressive advocates fought for the end of money bail in California, many opposed the scheme that was ultimately enacted to replace it—fearing it will drive up the number of people detained. Many advocates nationwide have voiced concern about replacing money bail with systems that rely too heavily on risk assessment tools in making bail decisions, as many of these tools exacerbate racial disparities.

Thus, despite the clear problems with Connecticut's money-bail system, policy makers need to be very thoughtful about how to best move forward with reform. A preventative detention scheme that does not narrowly define the range of offenses eligible for detention and put in place stringent standards for detention could lead to an increase in the number of people detained pretrial in the state. Given this background, we recommend as follows:

- **Restore funding for drug treatment beds.** Almost 300 individuals are currently detained pretrial in DOC jails waiting for beds at residential drug treatment facilities. Recent cuts to the Judicial Branch's budget meant a reduction in funding for treatment beds. Investing in treatment now will reduce recidivism rates and save costs in the long term.

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<sup>10</sup> U.S. Courts, U.S. District Courts-Pretrial Services and Detention for the 12-Month Period Ending September 30, 2017, Table H-14A, [http://www.uscourts.gov/sites/default/files/data\\_tables/jb\\_h14a\\_0930.2017.pdf](http://www.uscourts.gov/sites/default/files/data_tables/jb_h14a_0930.2017.pdf).

<sup>11</sup> *Pretrial Release in Connecticut*, supra, at 41 (providing data for the years 2010-2016).

- **Encourage the Commissioner of Correction to consider appropriate uses of DOC’s power to release individuals charged with certain misdemeanors and low-level felonies.** Conn. Gen. Stat. § 18-100f provides that the Commissioner of Correction may release individuals charged with misdemeanors or D or E felonies (except with respect to certain crimes) to “a residence approved by the Department of Correction subject to such conditions as the commissioner may impose including, but not limited to, participation in a substance abuse treatment program and being subject to electronic monitoring or any other monitoring technology or services.” The person remains under the supervision of DOC and release can be revoked. (The power cannot be used if the court orders otherwise).
- **Support a change in court rules (or enact legislation) allowing an arrestee to deposit 10% of the bond amount with the court whenever a bond is imposed, and permitting an arrestee to utilize this 10% option while detained at the police station after arrest.** Most people with surety bonds use a bail bondman to secure release. Typically, bondsmen require a nonrefundable payment of 7% or 10% of the bond amount. A judge has the authority under the Connecticut Practice Book to permit the bond to be satisfied by a deposit of 10% of the bond amount with the court.<sup>12</sup> That money is later returned to the defendant upon discharge of the bond. If the defendant fails to appear, he or she is liable to the court for the full amount.<sup>13</sup> However, this “10% cash bail” option is available only if specifically ordered by the judge. Making this 10% option automatic in every case would allow arrestees to use this option at the police station prior to arraignment (the option is not currently available at the police station because a court must enter an order permitting it). Making the option automatic would increase its use and allow the release of individuals currently detained simply because friends and family are not willing or able to pay a nonrefundable fee to a bondsman. Increased use of this 10% option would mean returning resources to individuals and families often struggling to stabilize their lives and make ends meet. Nationally, the bail industry profits \$2 billion annually, representing a massive wealth transfer from individuals and their families (who typically have extremely limited resources) to private bondsmen and insurance corporations. The purpose of bail is to incentivize court appearance, not to punish the presumptively innocent—so an affordable, refundable 10% cash payment (as opposed to the non-refundable premium) would better adhere to this purpose.

Note: a bill on this topic was introduced in the 2017 legislation session based on a recommendation of the Connecticut Sentencing Commission. The bill provided that the 10% option would be available for bond amounts of \$10,000 or less. However, the provision providing a 10% option was removed from the final version of the bill that passed.

- **Support a change in court rules (or enact legislation) requiring judges to conduct an inquiry into a defendant’s ability to pay before the bond is set.** Currently, there is no such requirement at arraignment. JB-CSSD, which interviews all detained individuals

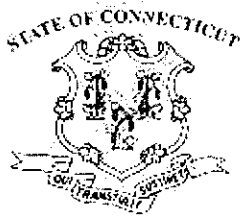
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<sup>12</sup> Conn. Practice Book § 38-8.

<sup>13</sup> *Id.* § 38-9.

prior to arraignment, generally asks people how much bond they can post. However, there is no requirement for the judge to consider a defendant's ability to pay when setting the bond. Requiring the submission of bank or other financial records would be unworkable at a first arraignment. However, the defendant and his or her attorney could prepare a simple financial affidavit to be reviewed by the court.

- **Create a working group that includes members of the Connecticut Sentencing Commission and other organizations and individuals with expertise on pretrial detention and release (e.g., ACLU SmartJustice, Connecticut Bail Fund, Connecticut Immigrant Rights Alliance, and individuals impacted personally by pretrial incarceration). Task this group with developing recommendations for a design of a system that would remove money bail as a detention mechanism and create an in-or-out system of pretrial release and detention. Given the concerns about pretrial detention, the group should make recommendations regarding a constitutional amendment and implementing statutes that would ensure that pretrial detention is strictly limited.**



General Assembly  
January Session, 2017

**Raised Bill No. 7287**

LCO No. 5302



Referred to Committee on JUDICIARY

Introduced by:  
(JUD)

**AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE  
CONNECTICUT SENTENCING COMMISSION CONCERNING  
PRETRIAL RELEASE AND DETENTION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 54-64a of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2017*):

4 (a) (1) Except as provided in subdivision (2) of this subsection and  
5 subsection (b) of this section, when any arrested person is presented  
6 before the Superior Court, said court shall, in bailable offenses,  
7 promptly order the release of such person upon the first of the  
8 following conditions of release found sufficient to reasonably ensure  
9 the appearance of the arrested person in court: (A) Upon his execution  
10 of a written promise to appear without special conditions, (B) upon his  
11 execution of a written promise to appear with nonfinancial conditions,  
12 (C) upon his execution of a bond without surety in no greater amount  
13 than necessary, (D) upon his execution of a bond with surety in no  
14 greater amount than necessary. In addition to or in conjunction with



15 any of the conditions enumerated in subparagraphs (A) to (D),  
16 inclusive, of this subdivision the court may, when it has reason to  
17 believe that the person is drug-dependent and where necessary,  
18 reasonable and appropriate, order the person to submit to a urinalysis  
19 drug test and to participate in a program of periodic drug testing and  
20 treatment. The results of any such drug test shall not be admissible in  
21 any criminal proceeding concerning such person.

22 (2) If the arrested person is charged with no offense other than a  
23 misdemeanor, the court shall not impose financial conditions of release  
24 on the person unless the person requests such financial conditions or  
25 the court makes a finding on the record that (A) if the misdemeanor is  
26 not a family violence crime, as defined in section 46b-38a, without such  
27 financial conditions there is a serious risk that the arrested person will  
28 fail to appear as required in court, or (B) if the misdemeanor is a family  
29 violence crime, as defined in section 46b-38a, without such financial  
30 conditions there is a serious risk that (i) the arrested person will fail to  
31 appear as required in court, (ii) the arrested person will obstruct or  
32 attempt to obstruct justice, or threaten, injure or intimidate or attempt  
33 to threaten, injure or intimidate a prospective witness or juror, or (iii)  
34 the arrested person will engage in conduct that threatens the safety of  
35 another person.

36 [(2)] (3) The court may, in determining what conditions of release  
37 will reasonably ensure the appearance of the arrested person in court,  
38 consider the following factors: (A) The nature and circumstances of the  
39 offense, (B) such person's record of previous convictions, (C) such  
40 person's past record of appearance in court after being admitted to  
41 bail, (D) such person's family ties, (E) such person's employment  
42 record, (F) such person's financial resources, character and mental  
43 condition, and (G) such person's community ties.

44 Sec. 2. Section 54-53a of the general statutes is repealed and the  
45 following is substituted in lieu thereof (*Effective July 1, 2017*):

46 (a) No person who has not made bail may be detained in a  
47 [community correctional center] correctional facility pursuant to the  
48 issuance of a bench warrant of arrest or for arraignment, sentencing or  
49 trial for an offense not punishable by death, for longer than forty-five  
50 days, unless at the expiration of the [forty-five days he] forty-five-day  
51 period the person is presented to the court having cognizance of the  
52 offense. On each such presentment, the court may reduce, modify or  
53 discharge the bail, or may for cause shown remand the person to the  
54 custody of the Commissioner of Correction. On the expiration of each  
55 successive forty-five-day period, the person may again by motion be  
56 presented to the court for such purpose.

57 (b) Notwithstanding the provisions of subsection (a) of this section,  
58 any person who has not made bail and is detained in a [community  
59 correctional center] correctional facility pursuant to the issuance of a  
60 bench warrant of arrest or for arraignment, sentencing or trial for an  
61 offense classified as a class D or E felony or as a misdemeanor, except a  
62 person charged with a crime in another state and detained pursuant to  
63 chapter 964 or a person detained for violation of [his] parole pending a  
64 parole revocation hearing, shall be presented to the court having  
65 cognizance of the offense [within] not later than thirty days [of] after  
66 the date of [his] the person's detention, unless such presentment is  
67 waived by the person. On such presentment, the court may reduce,  
68 modify or discharge the bail or may for cause shown remand the  
69 person to the custody of the Commissioner of Correction. On the  
70 expiration of each successive thirty-day period, the person shall again  
71 be presented to the court for such purpose.

72 (c) (1) Notwithstanding the provisions of subsection (a) or (b) of this  
73 section, any person who has not made bail and is detained in a  
74 correctional facility for no offense other than a misdemeanor, except a  
75 person charged with a crime in another state and detained pursuant to  
76 chapter 964 or a person detained for violation of parole pending a  
77 parole revocation hearing, shall be presented to the court having  
78 cognizance of the offense not later than fourteen days after the date of

79 the person's arraignment, unless such presentment is waived by the  
80 person.

81 (2) If such person is detained for a misdemeanor that is not a family  
82 violence crime, as defined in section 46b-38a, on such presentment the  
83 court shall remove the financial conditions on the release of the person  
84 unless the court makes a finding on the record that, without such  
85 conditions, there is a serious risk that the person will fail to appear as  
86 required in court.

87 (3) If such person is detained for a misdemeanor that is a family  
88 violence crime, as defined in section 46b-38a, on such presentment the  
89 court shall remove the financial conditions on the release of the person  
90 unless the court makes a finding on the record that, without such  
91 conditions, there is a serious risk that (A) the person will fail to appear  
92 as required in court, (B) the person will obstruct or attempt to obstruct  
93 justice or threaten, injure or intimidate or attempt to threaten, injure or  
94 intimidate a prospective juror or witness, or (C) the person will engage  
95 in conduct that threatens the safety of another person.

96 (4) If the court does not remove such financial conditions, it may  
97 reduce or modify the bail or may for cause shown remand the person  
98 to the custody of the Commissioner of Correction.

99 [(c)] (d) Notwithstanding the provisions of subsections (a), [and] (b)  
100 and (c) of this section, any person who has not made bail may be heard  
101 by the court upon a motion for modification of the bail at any time.

102 Sec. 3. Section 54-66 of the general statutes is repealed and the  
103 following is substituted in lieu thereof (*Effective July 1, 2017*):

104 (a)(1) In any criminal case in which a bond is allowable or required  
105 and the amount of such bond has been determined, the accused  
106 person, or any person on the accused person's behalf, (A) may deposit,  
107 with the clerk of the court having jurisdiction of the offense with which  
108 the accused person stands charged or any assistant clerk of such court

109 who is bonded in the same manner as the clerk or any person or officer  
110 authorized to accept bail, a sum of money equal to the amount called  
111 for by such bond, or (B) may pledge real property, the equity of which  
112 is equal to the amount called for by such bond, provided the person  
113 pledging such property is the owner of such real property, and such  
114 accused person shall thereupon be admitted to bail.

115 (2) When cash bail is offered, such bond shall be executed and the  
116 money shall be received in lieu of a surety or sureties upon such bond.  
117 Such cash bail shall be retained by the clerk of such court until a final  
118 order of the court disposing of the same is passed, except that if such  
119 bond is forfeited, the clerk of such court shall pay the money to the  
120 payee named therein, according to the terms and conditions of the  
121 bond. When cash bail in excess of ten thousand dollars is received for a  
122 person accused of a felony, where the underlying facts and  
123 circumstances of the felony involve the use, attempted use or  
124 threatened use of physical force against another person, the clerk of  
125 such court shall prepare a report that contains (A) the name, address  
126 and taxpayer identification number of the accused person, (B) the  
127 name, address and taxpayer identification number of each person  
128 offering the cash bail, other than a person licensed as a professional  
129 bondsman under chapter 533 or a surety bail bond agent under  
130 chapter 700f, (C) the amount of cash received, and (D) the date the cash  
131 was received. Not later than fifteen days after receipt of such cash bail,  
132 the clerk of such court shall file the report with the Department of  
133 Revenue Services and mail a copy of the report to the state's attorney  
134 for the judicial district in which the court is located and to each person  
135 offering the cash bail.

136 (3) When real property is pledged, the pledge shall constitute a lien  
137 on the real property upon the filing of a notice of lien in the office of  
138 the town clerk of the town in which the real property is located. The  
139 lien shall be in an amount equal to the bond set by the court. The  
140 notice of lien shall be on a form prescribed by the Office of the Chief  
141 Court Administrator. Upon order of forfeiture of the underlying bond,

142 the state's attorney for the judicial district in which the forfeiture is  
143 ordered shall refer the matter to the Attorney General and the  
144 Attorney General may, on behalf of the state, foreclose such lien in the  
145 same manner as a mortgage. The lien created by this subsection shall  
146 expire six years after the forfeiture is ordered unless the Attorney  
147 General commences an action to foreclose it within that period of time  
148 and records a notice of lis pendens in evidence thereof on the land  
149 records of the town in which the real property is located. If the bond  
150 has not been ordered forfeited, the clerk of the court shall authorize the  
151 recording of a release of such lien upon final disposition of the  
152 criminal matter or upon order of the court. The release shall be on a  
153 form prescribed by the Office of the Chief Court Administrator.

154 (b) (1) In any criminal case in which a bond is allowable or required  
155 and the amount of such bond has been set at ten thousand dollars or  
156 less, the accused person, or any person on the accused person's behalf,  
157 other than a person licensed as a professional bondsman under chapter  
158 533 or a surety bail bond agent under chapter 700f, may deposit a sum  
159 of money equal to ten per cent of the amount called for by such bond.

160 (2) In any criminal case in which a bond is allowable or required  
161 and the amount of such bond has been set at more than ten thousand  
162 dollars, the accused person, or any person on the accused person's  
163 behalf, other than a person licensed as a professional bondsman under  
164 chapter 533 or a surety bail bond agent under chapter 700f, may, with  
165 the approval of the court, deposit a sum of money equal to ten per cent  
166 of the amount called for by such bond.

167 (3) The sum of money equal to ten per cent of the amount of such  
168 bond shall be deposited with the clerk of the court having jurisdiction  
169 of the offense with which the accused person stands charged or any  
170 assistant clerk of such court who is bonded in the same manner as the  
171 clerk or any person or officer authorized to accept bail.

172 (4) If such bond is forfeited, the accused person shall be liable for the

173 full amount of the bond. Upon discharge of the bond, the ten per cent  
174 cash deposit shall be returned to the person depositing the same.

175 [(b)] (c) (1) Whenever an accused person is released upon the  
176 deposit by a person on behalf of the accused person of a sum of money  
177 equal to the amount called for by such bond, [or] upon the pledge by a  
178 person on behalf of the accused person of real property, the equity of  
179 which is equal to the amount called for by such bond, or upon the  
180 deposit by a person on behalf of the accused person of ten per cent of  
181 the amount called for by such bond, and such bond is ordered forfeited  
182 because the accused person failed to appear in court as conditioned in  
183 such bond, the court shall, at the time of ordering the bond forfeited:  
184 (A) Issue a rearrest warrant or a capias directing a proper officer to  
185 take the accused person into custody, (B) provide written notice to the  
186 person who offered cash bail, [or] pledged real property or deposited  
187 ten per cent of the amount of the bond on behalf of the accused person  
188 that the accused person has failed to appear in court as conditioned in  
189 such bond, and (C) order a stay of execution upon the forfeiture for six  
190 months. The court may, in its discretion and for good cause shown,  
191 extend such stay of execution. A stay of execution shall not prevent the  
192 issuance of a rearrest warrant or a capias.

193 (2) When the accused person whose bond has been forfeited is  
194 returned to custody pursuant to the rearrest warrant or a capias  
195 [within] not later than six months [of] after the date such bond was  
196 ordered forfeited or, if a stay of execution was extended, within the  
197 time period inclusive of such extension of the date such bond was  
198 ordered forfeited, the bond shall be automatically terminated and the  
199 person who offered cash bail, [or] pledged real property or deposited  
200 ten per cent of the amount of the bond on behalf of the accused person  
201 shall be released from such obligation and the court shall order new  
202 conditions of release for the accused person in accordance with section  
203 54-64a, as amended by this act.

204 (3) When the accused person whose bond has been forfeited returns

205 to court voluntarily [within] not later than five business days [of] after  
206 the date such bond was ordered forfeited, the court may, in its  
207 discretion, and after finding that the accused person's failure to appear  
208 was not wilful, vacate the forfeiture order and reinstate the bond.

This act shall take effect as follows and shall amend the following sections:

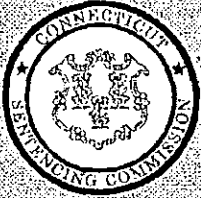
Section 1	<u>July 1, 2017</u>	54-64a(a)
Sec. 2	<u>July 1, 2017</u>	54-53a
Sec. 3	<u>July 1, 2017</u>	54-66

**Statement of Purpose:**

To implement the recommendations of the Connecticut Sentencing Commission concerning pretrial release and detention.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*

previous materials



## CONNECTICUT SENTENCING COMMISSION

January 28, 2019

Rules Committee of the Superior Court  
Connecticut Supreme Court Building  
231 Capitol Avenue  
Hartford, CT 06106

Hon. Robert J. Devlin  
Chair

Alex Tsarkov  
Executive Director

Dear Members of the Rules Committee,

**Website:**

<http://csentencingcommission.org/>

**Email:**

[SentencingCommission@ccsu.edu](mailto:SentencingCommission@ccsu.edu)

**Mailing Address:**

Connecticut Sentencing  
Commission  
Room 212  
185 Main St  
New Britain, CT 06051

On behalf of the Connecticut Sentencing Commission, we are writing to request that you consider a rule change to the *Connecticut Practice Book* to make the ten percent cash bail provision an automatic option for defendants whenever a surety bond of \$20,000 or less is imposed. Enclosed please see the draft of the proposed rule.

As you know, the ten percent cash option is already authorized in the *Practice Book*, and is available if requested by the defendant and granted by a judge. If granted, defendants receive their money back once their case is disposed.

An automatic option of ten percent to the court would assist indigent persons to make a bond. It would lessen the burden on those who could barely afford it and it may help those defendants who are detained on low-level charges to make their bond.

This proposal was endorsed by the Connecticut Sentencing Commission in its 2017 report on pretrial release and detention. As you know, the Commission's membership consists of all the major stakeholders in the criminal justice system of Connecticut including superior court judges, the Chief State's Attorney, the Chief Public Defender, the Victim Advocate, the commissioners of Corrections, Emergency Services and Public Protection, and Mental Health and Addiction Services; community activists interested in the criminal justice system, the chair of the Board of Pardons and Paroles, municipal police chiefs, the undersecretary of the criminal justice policy and planning division, as well as others vitally engaged in the criminal justice system.

We realize that expanded utilization of ten percent cash is not a long-term solution to pretrial justice issues. The Sentencing Commission is examining

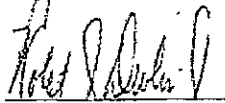


whether Connecticut should move to a no-money bail, in-or-out type of system where persons are detained only upon a finding of flight risk or dangerousness after an on-the-record hearing conducted with the proper due process considerations.

The Sentencing Commission will continue its efforts to explore a no money bail system. In the meantime, we ask that you amend the *Practice Book* to expand the ten percent cash option and improve the pretrial justice system in the state.

Thank you in advance for your consideration. If you have any questions, we would be glad to provide further information.

Sincerely,



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Honorable Robert J. Devlin, Jr.  
Chair



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Alex Tsarkov  
Executive Director

**Proposed Sec. 38-8. Ten Percent Cash Bail**

Unless otherwise ordered by the judicial authority, 10 percent cash bail shall be automatically available for surety bonds not exceeding \$20,000. For surety bond amounts exceeding \$20,000, 10% cash bail may be granted pursuant to an order of the judicial authority. This 10 percent option applies to bonds set in court as well as bonds set at the police department.

When 10 percent cash bail is authorized either automatically or pursuant to court order, upon the [When 10 percent cash bail is granted, upon] the depositing in cash, by the defendant or any person in his or her behalf other than a paid surety, of 10 percent of the surety bond set, the defendant shall thereupon be admitted to bail in the same manner as a defendant who has executed a bond for the full amount. If such bond is forfeited, the defendant shall be liable for the full amount of them bond. Upon discharge of the bond, the 10 percent cash deposit made with the clerk shall be returned to the person depositing the same, less any fee that may be required by statute.