

- 8-3. 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. **On March 18, 2019, RC tabled matter to 3-27-19 meeting.**

Del Ciampo, Joseph

From: Del Ciampo, Joseph
Sent: Tuesday, March 19, 2019 12:22 PM
To: Alexander, Joan; Bellis, Barbara; Cradle, Melanie L.; Dubay, Kevin; Heller, Donna; McDonald, Andrew; Ozalis, Sheila; Sheridan, David; Stevens, Barry
Cc: Petruzzelli, Lori; O'Donnell, Shanna
Subject: bail letters
Attachments: ABC CT Court Rules 10 percent.docx.pdf; Rules Committee letter for 10^1 option copy.docx; Item 06-08 (021119) CT Sentencing Commission.pdf

Dear Judges,

Attached are two letters that Justice McDonald received regarding the attached request by the Sentencing Commission's for a rule change regarding ten percent cash bail that will be on the Rules Committee agenda next week. I will also post these to SharePoint. Thank you.

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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

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

Dear Members of the Rules Committee,

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,



Honorable Robert J. Devlin, Jr.
Chair



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 the 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.



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March 18, 2019

The Honorable Chairman Andrew McDonald
Rules Committee of the CT Superior Court
Supreme Court Building
Capitol Avenue
Hartford, CT 06106

Dear Chairman McDonald,

It has been brought to our attention that the Rules Committee of the Judicial Department has been asked to consider a rules change that would facilitate the institution of 10% deposit bail, payable to the Court, as an option in all criminal cases in Connecticut. We would respectfully request that you consider our opposition to such a change in the bail system in Connecticut for the reasons outlined below.

First, 10% to the court is a partially secured bail. National research has consistently shown that unsecured bails perform no better than simply releasing a person on their own recognizance.

Second, this will turn the State of Connecticut into a bail collections agency. The State will either have to aggressively collect the remaining 90% or it will simply never get collected. In fact, this occurred in the City of Philadelphia, which was ultimately owed over \$1 billion in uncollected bails that it was forced to write off after unsuccessfully trying to collect. Obviously, forfeitures collected from secured bails today will all go away to the extent 10% bails replace 100% bails.

Third, this creates a perverse judicial incentive, and a potentially unconstitutional one, to use the bail system as essentially a collections mechanism because the 10% can be forfeited up on either conviction or non-appearance. In states that have expanded this practice, legislative pressure on judicial and other budgets can create an incentive to use the 10% bail program as a means to increase revenue rather than to assess cases in terms of public safety, appearance, and all of the other constitutional or statutory factors that bear on the reasons for which bail may be set.

Fourth, 10% deposits create a disincentive for fugitives to return to court because they wrongly believe that the state will require them to forfeit the other 90% of the bail.

Fifth, 10% deposit bail is dishonest to the victims of crime who assume, wrongly, that the face value of the bail has meaning and someone is taking a risk on the entire amount when, in fact, no one is taking such a risk that would be enforced with any vigor.

Finally, 10% deposit bail more than likely will not require the involvement of a third-party or bail agent, who are typically involved in cases where 100% of the bail amount is secured. That removes the financial incentive of third-parties and bail agents to return someone to court, and it also removes the possibility of arrests by bail agents when someone flees the jurisdiction.



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We have for the last several years been involved in a moving target of bail reform. As I travel the country, I often use Connecticut as an example of a system that makes good sense as we go through the list of what issues are central to bail reform and realize that Connecticut has already done the vast majority of it. To go to 10% bail after all of this would be complete mistake. I do not see any benefit to moving in this direction. Instead, the current system of recognizance release or secured bail by cash or surety should be maintained.

Respectfully submitted,

DocuSigned by:

A handwritten signature in black ink, appearing to read 'Jeffrey Clayton', enclosed in a rounded rectangular box.

653C35E22F4848B
Jeffrey Clayton, M.S., J.D.

Executive Director

American Bail Coalition

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A Voice in the Fight to Preserve and Improve the Bail Industry in Connecticut

March 18, 2019

The Honorable Chairman Andrew McDonald
Rules Committee of the Connecticut Superior Court
Connecticut Supreme Court Building
231 Capital Ave
Hartford, Ct 06106

Dear Chairman McDonald:

On behalf of the Bail Association of Connecticut (BAC), we would like to provide comments in opposition to the Connecticut Sentencing Commission's request for a rules change within the Connecticut Practice Book, as sought in their January 28, 2019 letter. Specifically, their request that the ten percent cash bail provision be made automatic for defendants whenever a surety bond of \$20,000 or less is imposed.

It is important to note, that the legislature did not include a similar proposal when it was proposed during the recent comprehensive, negotiated and enacted, pretrial release legislation in 2017(PA 17-145).

Proponents of the proposal had and continue to advocate that such an option would assist indigent persons to make bail, lessening the burden on those who can afford bail as well as help defendants who are detained on low-level charges to make their bond. However, it is our opinion that measures taken within PA 17-145 have addressed this.

As intended, PA 17-145 addressed concerns relating to indigents allegedly being held simply for a lack of funds. The Public Act, eliminated bonds on misdemeanor charges, required courts to take finances into consideration when setting bail, as well as required the courts to bring defendants back in front of the judge for a reconsideration of the bond within two weeks if bail is not posted.

If the proponents of the 10% option truly want to help those in need, the solution is simple and inexpensive, lower the surety/cash bond amounts or release a defendant on recognizance. If there are any changes to the Practice Book relating to pretrial release to be considered it should be to limit pretrial-release to 2 options; PTA or cash/surety.

Such a change to release via PTA or cash/surety only, could translate to significant savings for the state and further clarify expectations/responsibilities on court appearances.

As proven by statistics presented to the Sentencing Commission in the past years, no other form of pretrial release performs nearly as well as the bail industry. In the previous studies, it was shown that all the forms of pretrial release result in similar numbers of failure to appear, with the exception of surety bail, which statistically averages over 90% rate of return compared to other forms of release at less than 55%.

Additionally, the imposition of an automatic 10% cash option would have the opposite effect of the proponent's goal of affordability of a bond for the defendant. For example, a bond set at \$20,000, under the 10% cash option, the defendant would have to present \$2,000 to secure release. Comparably, the cost of the same bond using a surety bail agent would be \$1,550.00, which is further reduced to an initial payment of \$542.50 (35%), when the defendant selects a payment plan.

The 8th Amendment's intention was to give the defendant protection from the accuser by allowing them the opportunity to be released free from the burdens of the state during the pendency of their case. We respectfully submit that this proposed rule change does not further the protections realized under the Amendment, but only seeks to further some proponents' desires to eliminate money bail from our criminal justice system.

Connecticut has one of the lowest rates of incarceration in the country and is referenced as a gold standard nationally. Improving our current system is a laudable goal and we hope to continue to be involved in such efforts as a partner, but we strongly believe such a Rule Change is a step in the wrong direction.

We welcome the opportunity to discuss this proposed rule change with you and the members of the Rules Committee as you consider the above mentioned proposal.

Thank you for your consideration and we look forward to the opportunity to discuss this proposal in more detail.

Sincerely,

Andrew Marocchini
President, Bail Association of Connecticut