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CONNECTICUT SENTENCING COMMISSION

May 9, 2019

Hon. Robert J. Devlin
Chair

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

Alex Tsarkov
Executive Director

Dear Members of the Rules Committee,

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Commission
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We write in support of the proposed amendment to Practice Book Rule Sec. 38-8, which would allow ten percent cash bail to be available automatically for surety bonds under \$20,000 both at court and at the police departments. This proposal was endorsed by the Connecticut Sentencing Commission in its 2017 report on pretrial release and detention: [https://www.ct.gov/ctsc/lib/ctsc/Pretrial Release and Detention in CT 2.14.2017.pdf](https://www.ct.gov/ctsc/lib/ctsc/Pretrial%20Release%20and%20Detention%20in%20CT%202.14.2017.pdf).

The Sentencing Commission is a permanent statutory commission created eight years ago. Our membership includes four judges; the Chief State's Attorney; the Chief Public Defender; the State Victim Advocate; the commissioners of Correction and Emergency Services and Public Protection; community activists interested in the criminal justice system; the chair of the Board of Pardons and Paroles; municipal police chiefs; the undersecretary of the Office of Policy and Management's Criminal Justice Policy and Planning Division; as well as others vitally engaged in the criminal justice system. We operate by consensus among all Commission members. Our work is informed by all the major stakeholders of the criminal justice system and aims to adhere to the best legal and evidence-based research and practices.

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 cases are disposed.

Most people with surety bonds use a bail bondsman to secure release. Bondsmen require a nonrefundable payment of a percentage of the bond amount. 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 the bond and it may help those defendants who are detained on

low-level charges to make their bond.

Making the option automatic would 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 ten percent option would mean returning resources to individuals and families often struggling to stabilize their lives and make ends meet. One purpose of bail is to incentivize court appearance—not to punish the presumptively innocent—so an affordable, refundable ten percent cash payment (as opposed to the non-refundable premium) would better serve this purpose.

The bail bond industry in Connecticut operates for profit and benefits from restrictions on the availability of the ten percent cash option. Significantly, financial bonds are forfeited only if the accused person fails to appear in court. They are not forfeited if the accused person is re-arrested. Unlike the Judicial Branch's Court Support Services Division, bail bondsmen do not supervise defendants to prevent re-arrest.

The American Bar Association's *Standards for Criminal Justice: Pretrial Release*, approved in 2002, provide that "compensated sureties should be abolished" and recommend the availability of a ten percent cash option in all cases where a financial condition of release is set. Several states including Wisconsin, Illinois, Kentucky, and Oregon currently prohibit commercial bail bonding. Other states such as New Jersey and New Mexico have recently amended their state constitutions, statutes, and court rules to move away from money bail as a detention tool, and have all but removed financial conditions of release from their pretrial justice systems. Of course, no other country except the United States and the Philippines rely on the for-profit bail bond industry. Other countries prohibit this industry as a matter of public policy.

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 people are detained not with money, but 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 support the proposed amendment to 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.