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May 9, 2019

Honorable Andrew J. McDonald
Chair, Rules Committee of the Superior Court
Connecticut Judicial Branch

RE: Testimony in Opposition to Proposed Rule Change to Sec. 38-8, Ten Percent Cash Bail

Dear Judge McDonald:

I am here today to testify against the change to the practice book that would expand the use of 10% bail in Connecticut. There is no public policy justification for the change: by all measures it would be worse for the State of Connecticut.

First, the existing data from the Judicial Department clearly shows that 10% to the court bail in the existing system dramatically under-performs every form of release including cash, non-surety, PTA, and surety releases. In data, attached, from 2014 to 2018, 10% to the court failure to appear rates were higher in both felonies and misdemeanors than any form of release over the five-year data set. For example, in 2018, if all of those who posted cash go the 10% option, the failure to appear rate would more than triple, from 7% to 21%. In addition, promises to appear in Connecticut outperform 10% deposits. The supporting data was provided by the Bail Association of Connecticut.

The data in Connecticut also comports with national research from data derived from the Bureau of Justice Statistics sampling the 75 largest jurisdictions in the United States over a 15-year period in an article that appeared in the University of Chicago's *Journal of Law and Economics*. That study showed that 10% to the court deposit bonds, typically perform "marginally better" than a simple release on recognizance.¹ In addition, the Connecticut data does not include a cure rate—i.e., what occurred after the failure to appear and how successful third-party posters of bonds, compensated or uncompensated, were at returning persons to court. We think today, that is what judges are doing is balancing whether they think a release on own recognizance is appropriate and then if not going to a secured bail, rarely using the 10% option.

Second, the change to the 10% option does not benefit defendants and will create an economic incentive for the system to encourage the option so that the proceeds of the 10% deposits may be kept by the State. We have seen this occur in several other states, where then the court system is funded largely on the flow of these deposits. Because surety agents can offer payment plans and because bail

¹ "Defendants released on surety bond are 28 percent less likely to fail to appear than similar defendants released on their own recognizance, and if they do fail to appear, they are 53 percent less likely to remain at large for extended periods of time. **Deposit bonds perform only marginally better than release on own recognizance.**" <https://mason.gmu.edu/~atabarro/PublicvsPrivate.pdf>



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premiums are only 7% over \$5,000, a 10% option does not help indigent defendants. To steer such defendants into such a 10% option with the possibility that they then lose the 10% also does not help their financial position, when perhaps they could have spread out their fines and costs on a payment schedule upon conviction as well.

Third, if a defendant absconds and the bond is forfeited, the defendant will then have a disincentive to return to court because he/she will wrongly believe the state will collect such deposits. In other states, we have not seen states making any attempt to collect the other 90% when a bond forfeits, which is why the City of Philadelphia was ultimately owed over \$1 billion in uncollected 10% forfeitures when its program disbanded. On the other hand, if the State is to collect the other 90% from defendants, this will involve costs to the State that the State may or may not be able to then pass along to defendants. Either way, this does not make sense when a secured bond can be posted, and the defendant can pay a premium of 10% and set up a payment plan to then pay that over time.

Fourth, when a defendant absconds on a 10% to the court bond, there is no third-party or bail agent to formally arrest them or to informally get their case back on track by having them to return to court. We simply hope they come back, which typically they do not unless they are rearrested for something else.

Fifth, 10% bonds are confusing and potentially disingenuous to victims of crimes who will wrongly believe that the entire bail amount is secured. In fact, a criminal defendant is going to get a 90% bail discount because the State, barring some major investment in collections on criminal defendants, will never collect the other 90%.

Finally, bail reform has been a hot topic for several years, and for the last several years, I have been working on this issue with various interest groups and government and legislative leaders. As part of a bail reform package that passed in during Governor Malloy's Administration, the legislature, the Governor's office, and many others agreed to the final language that became law as part of what was bail reform and the Second Chance Act. At the time, the expansion of 10% to the court bail was on the table as an issue, was specifically discussed, and ultimately was rejected for many of the same reasons detailed in my testimony here today.

We believe the expansion of 10% to the court bail is not necessary, will harm accountability in the system by increasing failures to appear in court as required, and is simply not good public policy for the State of Connecticut.

Respectfully submitted,

DocuSigned by:

A handwritten signature in black ink, appearing to read "J. Clayton".

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Jeffrey Clayton, M.S., J.D.
Executive Director
American Bail Coalition