Report to the Governor
and the General Assembly on

Pretrial Release and Detention in Connecticut

CONNECTICUT SENTENCING COMMISSION
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"In our society liberty is the norm,
and detention prior to trial or without trial is the carefully limited exception."
-- Chief Justice William Rehnquist

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This report addresses Connecticut policy and practice with respect to pretrial release and detention. It reflects the knowledge, insight, and experience of a broad range of policymakers, practitioners, stakeholders, and researchers.

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Special commemoration is due to the late Justice David Borden, one of the key founding members of the Commission. His initiative and commitment helped bring the Commission to a point where we are able to address the challenges of pretrial justice. It is difficult to overstate his impact on the Sentencing Commission and this study. We know that he would be proud of the Commission's work.

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I. EXECUTIVE SUMMARY

A. Objective

The Sentencing Commission has been tasked with investigating Connecticut's current system of pretrial detention and release, with a view to making recommendations as to how to justly and fairly maximize (1) public safety, (2) appearance in court, and (3) the release of bailable defendants. This report is a preliminary one. The goal to identify the most fair and equitable pretrial release and detention practices will require more intensive data analysis and policy deliberation. Based on the analysis and deliberations of the Commission to date, the following observations can be made.

Many elements of Connecticut's pretrial justice system stand out as exemplary. Compared to many other jurisdictions in the United States, our state's rate of pretrial detention is low. The Judicial Branch Court Support Services Division (JB-CSSD) is the only statewide pretrial agency in the country that has been accredited by the National Association of Pretrial Agencies (NAPSA). Unlike many other jurisdictions in the United States, Connecticut utilizes a risk assessment instrument that has been validated to establish a correlation with defendants' court appearance and re-arrest outcomes.

However, the Commission recognizes that there are ways in which to improve our system. It appears that many defendants remain detained before trial because they lack sufficient resources to post financial bond, while other similarly-situated defendants are released because they are financially able to post bond. At the same time, because the state constitution guarantees to all non-capital defendants the right "to be released on bail upon sufficient security," some defendants who pose a high risk to public safety are released because they are able to post bond. Another concern with the state's current approach to pretrial justice is the lack of common standards to guide police departments' decisions with respect to the conditions of pretrial release.

The main focus of this initial report is on defendants who face relatively minor charges and have been assessed as posing a low risk of re-arrest and failure to appear. The recommendations contained in this report are designed to empower decision makers to release bailable defendants. The recommendations aim to (1) reduce the duration of pretrial detention, (2) reduce disparities in pretrial release and detention arising from ability to post bond, and (3) realize the benefits of reduced recidivism and enhanced public safety that come from evidence-based practices of pretrial release and detention.

B. Summary of Findings

1.The Constitution of the State of Connecticut requires that bail in a reasonable amount be ordered for all defendants charged with a crime.[1] Thus, preventive pretrial detention is unavailable for anyone accused of a non-capital offense, regardless of their risk of re-arrest or failure to appear.

2. A financial bond is forfeited if the accused person fails to appear for trial. It is not forfeited if the person is re-arrested. Our research has uncovered no study finding any relationship between the amount of financial bond and the likelihood of re-arrest during the pretrial period.

3. Connecticut's nationally accredited, statewide pretrial services agency (JB-CSSD) utilizes an empirically validated risk assessment instrument, and recommends non-monetary and monetary conditions of release for all arrestees who are not released by police departments after arrest. JB-CSSD supervises non-monetary conditions of release, and addresses failure to comply with those release conditions.

[1]See *infra* Connecticut Jurisprudence. Connecticut's right-to-bail clause includes an exception for capital offenses "where the proof is evident or the presumption great." In 2012, the Connecticut legislature prospectively abolished the death penalty for offenses committed after April 12, 2012, i.e., offenses theretofore defined as "capital offenses," and in 2015 the Connecticut Supreme Court declared the death penalty unconstitutional under the state constitution. Thus it appears that all criminal offenses are "bailable offenses" and none are subject to the exception.

4. Connecticut's present pretrial justice system is to an extent resource-based. When financial conditions of release are imposed, a defendant's ability to secure release before trial may depend upon the defendant's ability to obtain sufficient funds to meet those conditions. Thus, Connecticut's present system may result in the detention of poor defendants who present manageable risks of pretrial misconduct and may result in the release of more affluent defendants who present more severe and at times less manageable risks of pretrial misconduct.

5. Our research has not found any study concluding that short-term pretrial detention of low- or moderate-risk individuals increases the likelihood of court appearance or promotes public safety. Several studies have found that, for individuals assessed as low or moderate risk, short-term pretrial detention is associated with an increased risk of re-arrest and failure to appear.

6. There is no statewide uniform policy for release and detention decision making at the police department level. Police officers do not use empirically validated risk assessment tools to determine conditions of release for defendants after arrest.

7. 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.

C. Summary of Recommendations[2]

Recommendation 1*
Legislation should be enacted requiring that the court make a finding on the record before imposing secured financial conditions in misdemeanor cases.

Recommendation 2*
The bail review period should be shortened and modified for certain individuals who remain detained after the imposition of secured financial conditions.

Recommendation 3*
Legislation should be enacted permitting a defendant to deposit 10% of the bond amount with the court whenever a surety bond of $10,000 or less is imposed.

Recommendation 4
Judicial Branch bail staff should have adequate opportunity to review and make release decisions following every warrantless custodial arrest.

Recommendation 5.
The Sentencing Commission should continue to evaluate the effectiveness and fairness of Connecticut's pretrial justice system.

Recommendation 6.
Lawyers, judges, and other stakeholders should receive regular training on current best practices in the area of pretrial release and detention decision making.

Recommendation 7.
The Judicial Branch, its Division of Public Defender Services, and the Division of Criminal Justice should have adequate support and resources to consider alternatives to prosecution.

Recommendation 8.
The Commission should continue to investigate the feasibility of a carefully limited preventive detention system.

**See Appendix A for proposed legislative changes.*

[2] *See infra* RECOMMENDATIONS for a full explanation of the proposals.

II. INTRODUCTION

The following serve as the guiding principles supporting the research and findings included in this report:

- Persons who are accused of crimes are presumed to be innocent of the charges against them.
- "[I]n our society liberty is the norm, and detention prior to trial … is the carefully limited exception."[3]
- Risk is inherent in criminal justice and pretrial decision making. To eliminate risk entirely is to undermine our fundamental legal principles. A high functioning pretrial justice system balances risks of public safety and non-appearance to court with the rights of the accused.

Concerns with pretrial release and detention decisions are nothing new. A 1970 *Yale Law Journal* article on the Connecticut Bail Commission noted that by then "the use of surety bonds in pretrial release [had] been under fierce attack for a decade in the United States."[4] The report noted further that the most appalling aspect of the bail system was the incarceration of indigent individuals based on their inability to post a bond.[5]

Recently, a wave of advocacy and legal challenges have advanced the momentum to fundamentally rethink how the pretrial justice system operates in the United States. The issues surrounding money bail are receiving much more attention nationally. An increasing number of jurisdictions across the country are in the process of evaluating their pretrial processes to ensure that pretrial detention is limited to the most dangerous defendants, that defendants are not detained because they are too poor to post their bond, and to allow for individualized bail determinations. The Connecticut Sentencing Commission's study of the pretrial process is part of that effort.

On November 5, 2015, Governor Dannel P. Malloy asked the Connecticut Sentencing Commission to conduct a comprehensive evaluation of Connecticut's pretrial justice system and investigate "the possibility for its reform."[6]

Specifically, the governor requested that the Commission focus on the non-violent, low- level pretrial population, given his concern that these individuals may be detained solely because they do not have the financial resources to post bond. The governor also requested that the Commission provide "an analysis of potential ways Connecticut can focus pretrial incarceration efforts on individuals who are dangerous and/or a flight risk." The governor's directive, therefore, included consideration of both the release and the detention aspects of Connecticut's pretrial justice system. The Commission agreed to the governor's request at its December 2015 meeting, resolving to "study Connecticut's current bail bond system and the possibility for its reform."[7]

In order to inform its analysis, the Commission sought, and was granted, technical assistance from the National Institute of Corrections (NIC), an agency within the United States Department of Justice (USDOJ). As part of NIC's orientation for jurisdictions conducting such analyses, Commission staff traveled to Aurora, Colorado for a week of intensive training covering the fundamental principles of pretrial research and law, the essential elements of a high functioning pretrial justice system and agency, and national developments in the field of pretrial justice.

In March 2016, Atty. Timothy Schnacke, a criminal justice system analyst and one of the nation's leading experts in the pretrial justice field, presented on the fundamental principles of pretrial release and detention at the Commission's regular meeting. Shortly afterward, Commission staff finalized the study scope and helped facilitate the formation of a research advisory group. The

[3]United States v. Salerno, 481 U.S. 739, 755 (1987).
[4]Thomas O'Rourke & Robert F. Carter, The Connecticut Bail Commission, 79 Yale L.J. 513 (1970).
[5]*Id.*
[6]*See infra* Appendix B, Governor's Letter.
[7]CONNECTICUT SENTENCING COMMISSION RESOLUTION 2015-06.

Pretrial Release and Detention Advisory Group, comprised of criminal justice professionals with experience in the state's pretrial justice system, was established to involve these key criminal justice system stakeholders in the Commission's evaluation of pretrial release and detention.

The advisory group worked with Commission staff to evaluate Connecticut's pretrial justice system and solicited input from local and national experts on pretrial justice issues. These included presentations from Lori Eville of NIC, Judge Truman Morrison of the District of Columbia Superior Court, Doctor Jennifer Hedlund of the Central Connecticut State University Department of Criminology and Criminal Justice, Professor Sarah French Russell of the Quinnipiac University School of Law, Professor Kim Buchanan, Bryan Sperry and other members of Judicial Branch Court Support Services Division, Jeffrey Clayton from the American Bail Coalition, and Andrew Marocchini of the Bail Association of Connecticut.

As part of the evaluation process, Commission staff and advisory group members conducted a two-day site visit to the District of Columbia to observe the operations of what is considered to be one of the model high functioning pretrial justice systems in the United States. Group members and staff spent the majority of their time there as guests of the Pretrial Services Agency (PSA) for the District of Columbia. The group met with a variety of stakeholders, including senior PSA staff, judges, prosecutors, and defense attorneys; observed the pretrial process; and engaged in substantive discussions concerning the merits, distinguishing features, and limitations of the D.C. Pretrial Justice System.

During the evaluation process, the Commission also held a public hearing on the ability of Connecticut's current pretrial justice system to justly and fairly maximize public safety, appearance in court, and the release of bailable defendants. Members of the Commission and its advisory group on pretrial release and detention heard testimony from the advocates, representatives of the bail bond and insurance industries, and other interested parties.

Finally, Commission staff and advisory group members spent many hours examining Connecticut's pretrial justice system, reviewing the substantial literature in this area, and conferring with a broad range of subject matter experts and stakeholder groups.

This study of the state's pretrial system raised many questions. We expect even more questions to emerge as we continue to examine these complicated issues. Some of the issues may be answered with data analysis, while others will require policy makers to make difficult decisions among competing policy priorities.

Our findings and recommendations incorporate an important emphasis on public safety, the rights of victims, and the rights of the accused. The Commission's membership, structure, and commitment to this matter can continue to bring together the interested stakeholders to evaluate Connecticut's pretrial justice system, identify any deficiencies, and develop any necessary and appropriate solutions.

III. BACKGROUND

A. Definitions and Meaning

Any system evaluation must begin with a review of the basic terminology it utilizes. This is especially true when discussing pretrial release and detention in the United States.

Misunderstandings of terms such as "bail" and "bail bond" have led to their misuse by members of the public, the media, and criminal justice professionals in Connecticut and other jurisdictions across the country. For example, on May 31, 2016, the Connecticut Mirror published an article, referring to Governor Malloy's legislative proposal, which stated: "The only portion of his 'Second Chance' criminal justice reforms with a chance of passage in special session is a provision eliminating bail for minor crimes."[8] This was likely referring to the governor's proposal to eliminate the use of secured financial conditions of release for minor crimes. This—and many other similar articles—have mistakenly equated money (a condition of bail) with bail itself (a process of release).[9]

The misunderstanding of terms such as bail is understandable considering that such terms are often inconsistently defined. Bryan Garner, a well-respected legal author, has described the term "bail" as "a chameleon-hued legal term."[10]

This report seeks to eliminate confusion by defining and using these basic terms and phrases, where possible, in a manner consistent with the growing national consensus in the criminal justice field.[11]

In this report, "bail" refers to the process of releasing the accused from jail or government custody prior to trial with conditions designed to reasonably assure community safety and court appearance. In common parlance "bail" is used as both a noun and as a verb. An accused may "make bail" or be "admitted to bail" or "bail out" or "be bailed out" at different points following arrest or during a criminal prosecution. Police, bail staff, and courts have authority to release a person upon arrest or upon presentment in court, by setting conditions for bail release. If bail is a process of release, it follows that "no bail" is a process of detention.[12]

"Surety" generally refers to a person or entity that is primarily liable for paying another's debt or performing another's obligations. Surety is also used in the pretrial field to refer to a broad range of assurances or guarantees provided to accomplish the purposes of bail. In the broader sense, "surety" does not necessarily refer to a person.[13]

"Bail bond" refers to an agreement between the defendant and the court or among the defendant, a surety, and the court concerning the defendant's release. "Bond" refers to an obligation or promise, but is also used as a short form for bail bond. Nationally, jurisdictions utilize an array of different types of bonds during the pretrial period.[14] All bail bonds fall into one of two categories: those that require immediate payment or guarantee of payment prior to release and those that do

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[8] Mark Pazniokas, "Malloy bows to legislature, narrows 'Second Chance' to bail," CONNECTICUT MIRROR (May 31, 2016), http://ctmirror.org/2016/05/31/malloy-bows-to-legislature-narrows-second-chance-to-bail/.

[9] *See* Gov. Malloy's 'Second Chance 2.0' Fails, THE CONNECTICUT LAW TRIBUNE (Aug. 16, 2016), http://www.ctlawtribune.com/id=1202765246974/Gov-Malloys-Second-Chance-20-Fails?mcode=0&curindex=0;
Ken Dixon, "Bail-reform dead in state House," CT POST (June 2, 2016 7:38 PM), http://www.ctpost.com/local/article/Bail-reform-bill-sinking-caught-in-budget-7959347.php;
Daniela Altimari, "Gov. Malloy Proposes Elimination of Bail for Some Offenders," HARTFORD COURANT, (Jan. 28, 2016 7:50 PM), http://www.courant.com/politics/hc-second-chance-malloy-20160128-story.html.

[10] BRYAN GARNER, DICTIONARY OF MODERN LEGAL USAGE 100 (Oxford Univ. Press, 3d ed. 2011).

[11] *See* Timothy R. Schnacke, Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform, NATIONAL INSTITUTE OF CORRECTIONS, U.S. DEPARTMENT OF JUSTICE 1 (2014) [hereinafter Schnacke, Fundamentals].

[12] Glossary of Terms and Phrases Relating to Bail and the Pretrial Release or Detention Decision, PRETRIAL JUSTICE INSTITUTE 2 (July 2015), http://www.pretrial.org/download/pji-reports/Glossary%20of%20Terms%2 (July%202015).pdf.

[13] *Id.* at 29.

[14] *Id.* at 3.

not.[15]

With a "full cash bond," a defendant deposits the full amount of the financial condition that the court imposes in exchange for release from custody. In Connecticut, this type of bond is imposed when the court grants release upon execution of a "cash only" bond. If the defendant posts but then fails to appear in court, the full amount may be forfeited to the state.

A variation of the full cash bond is the "property bond." With a property bond, the defendant may pledge equity in property in lieu of the cash bond amount and obtain release from custody. If the defendant fails to appear, the property is generally forfeited. Connecticut provides for a real estate bond which allows a defendant to pledge equity in real property in lieu of a cash bond.[16]

"Surety bond" refers to an agreement entered into by a surety (commercial bail bond agent) with the court accepting liability for the full amount of a money bail bond in exchange for a fee (usually 7% or 10%) and/or collateral from the defendant. The court accepting the surety bond will release the defendant from custody. However, if the defendant fails to appear, the surety is liable to the court for the full amount. The surety is not liable to the court if the defendant who is out on bond gets re-arrested.

With a "deposit bond," the defendant deposits with the court a percentage of the full cash bail amount. That percentage is later returned to the defendant upon discharge of the bond. If the defendant fails to appear, the defendant is liable to the court for the full amount. In Connecticut, this is referred to as "10% Cash Bail" and may be used by a defendant if granted by the court.[17]

"Release on recognizance" is a signed agreement between the defendant and the court to appear in court. In Connecticut, release on recognizance is referred to as a "written promise to appear."

An "unsecured bond" consists of an agreement between the defendant and the court whereby the defendant promises to both return to court and be held liable for an amount of money in the event of failure to return to court as required. In Connecticut, an unsecured bond is referred to as a "non-surety bond."

As used in this report, "pretrial" means the period of time between an arrest (or citation) and final disposition.

B. Foundational Legal Principles

Release and detention decisions implicate the defendant's most basic federal and state constitutional rights and can ultimately impact the outcome of the case itself. Certain fundamental constitutional principles serve as both "the framework and the boundaries within which we must work in the administration of bail" in the United States.[18]

1. Overarching Principles

a. The Presumption of Innocence

The presumption of innocence is at once the most important and intangible fundamental principle that animates the right to bail. Simply stated, in the United States, an individual accused of a crime is legally presumed to be innocent until convicted.[19] The presumption is implied by the United States Constitution's Due Process guarantee applicable to both federal and state defendants[20]

[15] *Id.* at 4.

[16] CONN. PRACTICE BOOK § 38-9

[17] CONN. PRACTICE BOOK § 38-8.

[18] Schnacke, *Fundamentals* at 62.

[19] "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 453 (1895).

[20] In re Winship, 397 U.S. 358, 364 (1970).

and is rooted in over a thousand years of legal tradition dating back to Roman law.[21] Inherent in the presumption of innocence is our criminal justice system's commitment to take a risk by treating the innocent and guilty alike at the stage in the process before guilt or innocence has been adjudicated. The presumption stems from William Blackstone's classic formulation that "it is better that ten guilty persons escape than that one innocent suffer."[22]

Although the presumption's full force does not come into play until trial, it weighs heavily in favor of the accused prior to that point, given that "its enforcement lies at the foundation of the administration of our criminal law."[23] The U.S. Supreme Court emphasized the presumption's role in the pretrial release determination when it observed that "[u]nless the right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."[24]

b. Traditional Presumption of Release Before Trial.

Distinct from, yet directly related to, state and federal rights to bail is the principle that release is favored prior to disposition. American legal tradition contemplates a presumption of release before trial.[25] This principle was most memorably stated by the U.S. Supreme Court in *United States v. Salerno* when the majority held that: "In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[26] This principle is tied to both the presumption of innocence[27] and the protections afforded to individual liberty under the Due Process Clauses of the Fifth Amendment and the Fourteenth Amendment. Although not actionable by itself, the idea that American legal tradition favors release before trial suggests that, even absent a constitutional right to bail provision, jurisdictions should presume liberty to be the paramount value and severely limit pretrial detention.[28]

2. Federal Constitutional Principles

a. Right to Bail That Is Not Excessive

The Eighth Amendment provides, in part, that "[e]xcessive bail shall not be required."[29] It is the only provision in the United States Constitution to explicitly address bail. The U.S. Supreme Court has interpreted this provision to apply to the states through the Fourteenth Amendment.[30] Although the clause prohibits the imposition of excessive bail, it does not prevent the government from denying bail altogether.[31] The omission of language providing for a right to bail could have been the result

[21] *Coffin*, 156 U.S. at 432.

[22] 4 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *358 (1965-1969).

[23] *Coffin*, 156 U.S. at 453.

[24] Stack v. Boyle, 342 U.S. 1, 4 (1951). Some have argued that the presumption does not apply to bail determination because of the Supreme Court's statement in *Bell v. Wolfish* that the presumption of innocence "has no application to a determination of the rights of a pretrial detainee during confinement before his trial has even begun." *Bell v. Wolfish*, 441 U.S. 520, 533 (1979). However, the presumption's application to pretrial decision making was neither nullified nor diminished by the Supreme Court's decision in *Bell v. Wolfish*. In that case, the Court considered a constitutional challenge to conditions of confinement and practices at a facility used to house pretrial detainees. The issue was not whether the detention itself was permissible but whether practices such as body cavity searches and double bunking passed constitutional muster. Under consideration was the legitimacy of the lower courts' reliance on the presumption of innocence as the source of the accused's right to be free from conditions of confinement that were not justified by a compelling necessity. In determining that the presumption did not support such a rule, the Court was careful to note that it was "…not concerned with the initial decision to detain an accused and the curtailment of liberty that such a decision necessarily entails." *Id.* at 533-34.

[25] Commentary, ABA STANDARD 10-1.1, *Purposes of the pretrial release decision*, AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE (3d ed. 2007).

[26] *Salerno*, 481 U.S. at 755.

[27] *See Stack*, 342 U.S. at 4.

[28] Schnacke, *Fundamentals* at 48.

[29] U.S. CONST. AMEND. VIII.

[30] Schilb v. Kuebel, 404 U.S. 357, 365 (1971); Meechaicum v. Fountain, 696 F.2d 790, 791-92 (10th Cir. 1983).

[31] *Salerno*, 481 U.S. at 753.

of a presumption that the right to release before trial was already engrained in early American legal tradition. Regardless, there is no express right to bail in the U.S. Constitution and no requirement, at least under the Eighth Amendment, that bail be made available at all.

When bail is made available, it cannot be "excessive." The U.S. Supreme Court in *Stack v. Boyle* determined that secured financial conditions of bail are "excessive" when "set at a figure higher than an amount reasonably calculated" to "assure the presence of the accused."[32] The Court also determined that, because of its limited function, the "fixing of bail for any individual defendant must be based on standards relevant to the purpose of assuring the presence of that defendant."[33]

The Court revisited the test for excessiveness in *United States v. Salerno*.[34] The Salerno test for excessiveness compares the government's proposed conditions of release or detention against the interest the government is seeking to protect.[35] When the government has a compelling interest other than preventing the defendant's flight, the Eighth Amendment does not require release on bail. However, where the only interest is preventing flight, then "bail must be set by a court at a sum designed to ensure that goal, and no more."[36]

The Court has not examined the Excessive Bail Clause with respect to other conditions of bail, such as pretrial supervision, drug testing, or GPS monitoring. Furthermore, the issue of reasonableness and excessiveness has not been substantially revisited since the Court's decisions in Stack and Salerno.

b. Right to Due Process of Law

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law."[37] Likewise the Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law." The Due Process guarantee contains both a procedural and a substantive component.

Procedural Due Process is a guarantee of fair procedure in the event that an individual is deprived of, or faces the deprivation of, any of these three enumerated interests. However, courts have long recognized that the Fourteenth Amendment's Due Process Clause guarantees more than fair process.[38] There is also a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests."[39] The deprivation of individual liberty that occurs during the pretrial decision-making process implicates both the substantive and procedural components of the Due Process Clause.

Substantive Due Process "forbids the government to infringe certain 'fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."[40] Due process therefore requires that any pretrial justice system that allows detention before trial to be narrowly tailored to serve the compelling state interest put forward to justify that detention.[41]

The U.S. Supreme Court addressed the argument that the federal pretrial preventive detention scheme violated Substantive Due Process under the Fifth Amendment in *United States v. Salerno*. There, the Court rejected the claim that the Bail Reform Act of 1984 "violates substantive due process

[32] *Stack v. Boyle*, 342 U.S. 1, 3 (1951).
[33] *Id.* at 5.
[34] *Salerno*, 481 U.S. at 754.
[35] *Id.*
[36] *Id.* at 755.
[37] U.S. CONST. AMEND. XIV, § 1.
[38] Washington v. Glucksberg, 521 U.S. 702, 719 (1997).
[39] *Glucksberg*, 521 U.S. at 720; *see also* Reno v. Flores, 507 U.S. 292, 302 (1993).
[40] *Reno*, 507 U.S. at 302.
[41] *Moving Beyond Money: A Primer on Bail Reform*, CRIMINAL JUSTICE POLICY PROGRAM, HARVARD LAW SCHOOL 8 (Oct. 2016), *available at* http://cjpp.law.harvard.edu/assets/FINAL-Primer-on-Bail-Reform.pdf [hereinafter *Harvard Report*].
[42] *Salerno*, 481 U.S. at 746.

because the pretrial detention it authorizes constitutes impermissible punishment before trial."[42] The Court found that the restriction on personal liberty authorized by the act constitutes "permissible regulation" because "Congress did not formulate the pretrial detention provisions as punishment for dangerous individuals" but Congress "instead perceived pretrial detention as a potential solution to a pressing societal problem."[43] The Court declared that "[t]here is no doubt that preventing danger to the community is a legitimate regulatory goal."[44] Thus, the Court concluded that "the pretrial detention contemplated by the Bail Reform Act is regulatory in nature, and does not constitute punishment before trial in violation of the Due Process Clause."[45]

c. Equal Protection

Money bail systems also implicate equal protection principles. The U.S. Supreme Court has established that individuals may not be imprisoned based on their inability to pay fines or fees.[46] In concluding that a probationer should not be imprisoned based on his inability to pay a fine and restitution, the Court reasoned in *Bearden v. Georgia* that to "deprive [a] probationer of his conditional freedom simply because, through no fault of his own he cannot pay [a] fine . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment."[47] Citing its prior decisions in *Williams v. Illinois* and *Tate v. Short*, the Bearden Court observed that "[d]ue process and equal protection principles converge in the Court's analysis in these cases." The Court stressed that "if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it."[48]

Relying on these Supreme Court decisions, several federal district courts around the country have recently held that imprisoning someone pending trial based on their inability to post money bail violates equal protection and due process rights. Although the Supreme Court precedent relates to post-conviction detention based on an inability to make monetary payments, courts have stressed that the constitutional arguments are even more compelling in a pretrial context where guilt has not been established.[49]

d. Right to Counsel

The Sixth Amendment gives defendants the right to assistance of counsel. The U.S. Supreme Court has held that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."[50]

e. Right Against Self-Incrimination

Under the Fifth Amendment applicable to the states through the Fourteenth Amendment, no person "shall be compelled, in any criminal case, to be a witness against himself."[51]

3. State Constitutional Principles

a. Right to Bail

Traditionally, individuals charged with non-capital offenses had a near absolute statutory or state constitutional right to bail, that is, a right to release before trial with or without adequate

[43] *Id. at 747.*

[44] *Id.*

[45] *Id.* at 748.

[46] Williams v. Illinois, 399 U.S. 235 (1970) (statute requiring misdemeanant who failed to pay court-ordered fines and court costs to be kept in jail beyond the term of his 12-month sentence violated equal protection clause); Tate v. Short, 401 U.S. 48395 (1971) (striking down statute that punished traffic offenders by imposing fines and allowed unpaid fines to be converted to imprisonment at the rate of five dollars for each day in jail).

[47] Bearden v. Georgia, 461 U.S. 660 (1983).

[48] *Bearden*, 461 U.S. at 667.

[49] See *infra* Litigation Challenging the Release Decisions.

[50] Rothgery v. Gillespie County, 554 U.S. 191, 213 (2008)

[51] U.S. CONST. AMEND. V.

assurances.[52] About 20 states have retained the language associated with this "traditional" or "broad" right to bail, nine states have no constitutional right to bail provision, and 21 states have amended their constitutions and enacted statutes to provide for additional preventive detention.[53] Connecticut is one of several states with a traditional right to bail. In particular, Article I, Sec. 8 of the Connecticut State Constitution provides: "In all criminal prosecutions, the accused shall have a right …to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great…."[54]

C. The History of Bail

> *Bail as it is known today…did not develop in a New World vacuum but descended directly from English traditions. An exposition of those traditions, as well as an examination of the development of bail in the United States hopefully will benefit not only legal scholars but, perhaps more importantly, those actively involved in the future evolution of the system.*
> *—William F. Duker, The Right to Bail: A Historical Inquiry*

Bail is not a novel concept and purportedly dates back to ancient Rome. However, the American understanding of the concept is derived from English roots.[55] Although the Anglo-Saxon *wergeld* system provided a foundation for the setting of bail, it was not until after the Norman invasion of England in the 11th century that criminal justice—and with it bail—would begin to become truly an affair of the state.[56] Changes in criminal law following the Norman invasion resulted in long delays between arrest and trial, and exposure to the harsh punishments imposed upon conviction provided greater incentive to flee.[57]

In light of these changes and due in part to the limited adequacy and capacity of royal jails, royal officers (known as sheriffs) regularly granted the release of most individuals upon sufficient sureties.[58] Sheriffs came to rely on members of the community (i.e., personal sureties) to take responsibility for the accused prior to trial.[59] These individuals took responsibility for defendants for no money and with no expectation of indemnification upon default.[60] During this period, the custom gradually developed whereby some offenses were bailable and some offenses were not. Under this system, sheriffs would release defendants charged with customarily bailable offenses and detain those charged with customarily non-bailable offenses.[61]

In 1274, the crown unearthed a number of abuses in this system. Among these, it discovered that sheriffs were releasing unbailable defendants for sums of money and detaining bailable defendants who refused or could not afford to pay a fee.[62] In 1275, Parliament responded by enacting the Statute of Westminster I.[63] The statute established criteria governing bailability, officially

[52] *See generally* Donald B. Verrilli, Jr., *The Eighth Amendment and the Right to Bail: Historical Perspectives*, 82 COLUM. L. REV. 328, 331 (1982); William F. Duker, *The Right to Bail: A Historical Inquiry*, 42 ALB. L. REV. 33 (1977); Caleb Foote, *The Coming Constitutional Crisis* in Bail: I, 113 U. PA. L. REV. 959 (1965).

[53] *See* Matthew J. Hegreness, *America's Fundamental and Vanishing Right to Bail,* 55 ARIZ. L. REV. 909 (2013).

[54] Connecticut's right to bail provisions is explored in further detail in the Connecticut Jurisprudence segment of this report. See *infra* Pretrial Release and Detention in Connecticut.

[55] ELSA DE HAAS, ANTIQUITIES OF BAIL: ORIGIN AND HISTORICAL DEVELOPMENT IN CRIMINAL CASES TO THE YEAR 1275 (Columbia University Press, New York, 1940) [hereinafter De Haas, *Antiquities*].

[56] June Carbone, *Seeing through the Emperor's New Clothes: Rediscovery of Basic Principles in the Administration of Bail*, 34 SYRACUSE L. REV. 517, 521 (1983). [hereinafter Carbone, *Seeing Through*].

[57] *Id.* at 522.

[58] De Haas, *Antiquities* at 54-57.

[59] Elsa de Haas, *Concepts of the Nature of Bail in English and American Criminal Law*, 6 U. TORONTO L.J. 385, 397 (1946) [hereinafter *Concepts*].

[60] William F. Duker, *The Right to Bail*: A Historical Inquiry, 42 ALB. L. REV. 33, 70-71 (1977) [hereinafter Duker, *The Right to Bail*].

[61] For example, individuals accused of homicide or arrested by order of the king were generally not bailable during this time period. See Carbone, *Seeing Through* at 522-23.

[62] De Haas, *Antiquities* at 87-97.

[63] Duker, *The Right to Bail* at 45-46.

categorized bailable and nonbailable offenses, and made it an offense against the crown for a sheriff to release an unbailable defendant or to deny the release of a bailable defendant.[64] In the 500 years of English history that followed, the binary release or detain scheme continued with the release of bailable defendants and the detention of unbailable defendants. Any interference with the release of bailable defendants or the lawful detention of unbailable defendants generally led to identification and correction, or an attempted correction, of the abuse.[65]

It is important to emphasize that during this early period in England and up until the 19th century in America, bail was administered through a personal surety system. This meant that a reputable individual, usually a friend, neighbor, family member, or trusted member of the community, would take responsibility for the accused, agreeing to pay the required financial condition only if the defendant forfeited his or her obligation.[66] Importantly, the personal surety accepted this responsibility without any indemnification or initial compensation. The personal surety system relied, to a large part, on personal relationships.

Additionally, for most of bail's history, the accused was released on an unsecured bond.[67] Under this model, payment is not a prerequisite to release. Instead, a defendant satisfies the initial obligation by agreeing to be held liable for the full amount of the bond in the event of a subsequent failure to appear.[68] This is significant in that—bribery aside—defendants were not detained before trial because of their inability to post a bond amount upfront.

The English colonists brought English law with them to America, including the laws surrounding bail.[69] They adopted the use of bail as a mechanism for release, the use of unsecured bonds administered by personal sureties, and the binary bail/no bail decision-making process. For example, by 1672, Connecticut law provided that, "no man's person shall be restrained or imprisoned by any Authority whatsoever, before the law hath sentenced him thereunto if he can put in sufficient security, bayl or mainprize for his appearance and good behavior in the meantime, unless it be in Crimes Capital, and Contempt in open Court, or in such cases where some express Law doth allow it."[70]

Some colonies, such as Massachusetts and Pennsylvania, departed from English tradition by crafting more liberal bail laws. Pennsylvania's provincial constitution in 1682 granted bail to all persons, "unless for capital offences, where the proof is evident, or the presumption great."[71] The colonies followed Pennsylvania's approach, incorporating a broad right to bail into their criminal justice systems. In fact, the Pennsylvania provision served as a model for nearly every state constitution adopted after 1776.[72] By 1789, the First Congress had granted an absolute right to bail in non-capital federal criminal cases with the passage of the Judiciary Act of 1789.[73]

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[64]STATUTE OF WESTMINSTER OF 1275, 3. EDW. 1, C. 15 (1275).

[65]Schnacke, *Fundamentals* at 27. *See generally*, Duker, *The Right to Bail* at 50-66. The Statute of Westminster I did not, by any means, end injustices in the pretrial justice system of medieval England. However, it did signify the start of legislative reforms enacted to correct abuses to the bail/no bail dichotomy.

[66]*See e.g.*, De Haas, *Concepts*; Paul Lermack, *The Law of Recognizances in Colonial Pennsylvania*, 50 TEMP. L.Q. 475, 505 (1977).

[67]F.E. Devine, *Commercial Bail Bonding: A Comparison of Common Law Alternatives*, at 4 (Praeger Publishers, 1991) (citing BLACKSTONE, supra note 21 at *291, 295-97).

[68]*See generally* CHARLES PETERSDORFF, A PRACTICAL TREATISE ON THE LAW OF BAIL IN CIVIL AND CRIMINAL CASES (Jos. Butterworth & Son, 1824).

[69]*See, e.g.*, CHARTER OF CONNECTICUT—1662, 1 AMERICAN CHARTERS 533 (F. Thorpe ed. 1909) ("That all, and every the Subjects of Us…shall have and enjoy all Liberties and Immunities of free Did natural Subjects…to all Intents, Constructions and Purposes whatsoever, as if the they and every of them were born within the realm of England…").

[70]The book of the general laws for the people within the jvrisdiction [sic] of Connecticut: collected out of the records of the General Court, lately revised, and with some emendations and additions / established and published by the authority of the General Court of Connecticut, holden at Hartford in October, 1672. Id., available at http://cslib.cdmhost.com/cdm/ref/collection/p128501coll2/id/188289.

[71]THE FRAME OF GOVERNMENT OF PENNSYLVANIA OF 1682.

[72]Carbone, *Seeing Through* at 532.

[73]Judiciary Act of 1789, ch. 20, 1 Stat. 73, 91.

During the 19th century, both in England and America personal sureties started to disappear. American westward expansion into the vast frontier made it more difficult for the court to find close friends and neighbors to act as personal sureties where there was also a vast expanse of land for any defendant wanting to flee.[74] Increasingly, in the absence of sufficient sureties, bailable defendants in both England and America were detained. American jurisdictions sought to resolve this problem by eliminating their traditional prohibitions against surety indemnification. Inevitably with the ability to demand repayment upon default, commercial sureties were established in the late 1890s.[75] During this same time period America moved from a system that primarily relied on unsecured bonds to one that largely utilized secured money bonds.[76]

As the use of secured commercial surety bonds became commonplace, scholars in the United States became increasingly concerned with the large number of bailable defendants detained due to unattainable financial conditions.[77] In 1951, the U.S. Supreme Court decided *Stack v. Boyle*, the first major Supreme Court case concerning pretrial release.[78]

By the 1960s, the use of secured commercial surety bonds had become a topic of national concern.[79] Empirical studies on the administration of bail, successful experimental alternatives such as the Manhattan Bail Project, and two national conferences on bail helped drive major shifts in policy on both the federal and state levels. These changes included the creation of recognizance release programs, release on unsecured bonds, and release on "least restrictive" financial conditions.[80] The Federal Bail Reform Act of 1966 established a presumption of release on recognizance or non-surety bond, provided for the review of cases resulting in more than 24 hours of pretrial detention, allowed alternative conditions of release, and set forth the factors which the court had to consider in setting release conditions.[81]

Connecticut was no exception to the national reform movement of the 1960s. In 1965, the Connecticut General Assembly passed a measure authorizing Circuit Court judges to release defendants on their own recognizance at arraignment.[82] Connecticut then embarked on its own bail reform project that arguably rivaled the Manhattan Bail Project in scope, administrative structure, and results.[83]

Connecticut's statewide Bail Commission was established by the Connecticut legislature in 1967 as an independent state agency for the determination of bail.[84] The Commission was given authority to make the initial bail determination and a staff of some 61 employees were assigned to interview arrestees and determine the appropriate conditions of release at police stations across the state.[85] A commissioner who decided to set a surety bond had to state reasons for the decision. Additionally, if a defendant sought judicial review of the decision, the defendant was authorized to use

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[74]WAYNE H. THOMAS, BAIL REFORM IN AMERICA (University of California Press, 1976).

[75]England also faced a decline in personal sureties—albeit for other reasons—and a rise in the detention of bailable defendants. England, however, differed in its approach to resolving this problem. Unlike America, England amended its laws to dispense with sureties. Schnacke, *Fundamentals* at 26.

[76]Duker*, The Right to Bail at 95-96;* Schnacke*, Fundamentals at 26.*

[77]CRIMINAL JUSTICE IN CLEVELAND (F. Frankfurter & R. Pound eds., 1922); ARTHUR L. BEELEY, THE BAIL SYSTEM IN CHICAGO (University of Chicago Press, 1927).

[78]*Stack, 342 U.S. at 1.*

[79]ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE, REPORT: POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE (U.S. Government Printing Office, 1963); WAYNE H. THOMAS, BAIL REFORM IN AMERICA, 3-8 (University of California Press, 1976); DANIEL FREED & PATRICIA WALD, BAIL IN THE UNITED STATES: 1964, at 8 (Dept. of Just. & Vera Foundation 1964).

[80]By 1971, at least 36 states had enacted legislation authorizing the release of defendants on their own recognizance. John J. Murphy, *Revision of State Bail Laws*, 32 OHIO ST. L.J. 451, 485 (1971); *See generally*, Schnacke, *Fundamentals* at 33.

[81]Bail Reform Act of 1966, 18 U.S.C. § 3146-3152 (1976).

[82]Conn. Gen. Stat. § 54-1b (1968).

[83]O'Rourke & Carter, *supra* note 3.

[84]Conn. Gen. Stat. 54-63a to 54-63g (1968).

[85]O'Rourke & Carter, *supra* note at 517.

the interview form as evidence of unnecessary detention. After nine months of operation at the Circuit Court level, the commission had achieved an overall non-surety release rate of 61% and a 2.8% rate of non-appearance.[86]

The Commission's authority was limited by the legislature in 1969. The staff of the Commission was cut from 61 to 28. Initial bail determination was returned to the police, and the role of the bail commissioner was reduced to interviewing only those defendants who have been unable to post the bail bond set by the police.[87] The commission, as originally structured, was eventually eliminated and bail commissioners now are assigned to the JB-CSSD.

The underlying philosophy of the bail reform movement in the United States shifted dramatically over the course of the next decade.[88] In 1970, Congress formally recognized the emergence of public safety as a legitimate rationale for bail when it passed the first comprehensive preventive detention law in the United States: the D.C. Court Reform and Criminal Procedure Act of 1970.[89] This second generation of reform focused largely on limiting pretrial freedom based on future danger threats. This era of bail reform was influenced by increased public concern over crime, including crimes committed by defendants released on bail bonds.[90] Throughout the 1970s and 1980s, jurisdictions responded to these concerns by passing measures allowing for the consideration of public safety as a valid purpose to limit pretrial freedom.[91]

In 1984, Congress passed the Bail Reform Act of 1984, permitting pretrial detention, i.e., detention without bail, on the basis of pretrial danger or flight risk and recognizing public safety as a legitimate rationale for bail.[92] The Act moved beyond all previous reforms by prohibiting the use of financial conditions as a means for detaining defendants.[93] In allowing for preventive detention, Congress acknowledged that for some defendants there was no amount of money or set of conditions that could assure the safety of the community or other persons.[94] In doing so, it relied on an implicit assumption that regardless of the amount imposed, secured financial conditions of release do not guarantee the safety of the community. This congressionally approved shift in the administration of bail was ratified when the U.S. Supreme Court upheld the 1984 Act's preventive detention language against a constitutional challenge in *United States v. Salerno*.[95]

Crucial to the Court's holding in *Salerno* was that, if employed, preventive detention must be both carefully limited in its application and include proper procedural safeguards. Although the Court in *Salerno* upheld the constitutionality of the Bail Reform Act's preventive detention provisions, it was careful to conclude with emphasis that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."[96] By 1999, "at least 44 states and the District of Columbia [had] statutes that list[ed] community safety as well as the risk of failure to appear as being appropriate considerations in the bail decision."[97]

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[89]D.C. Code Ann. §§ 23-1321 to 1332 (1981 & Supp. 1985). Pub. L. 91-358 (1970).

[90]THE SUPERVISED PRETRIAL RELEASE PRIMER, PRETRIAL SERVICES RESOURCES CENTER 5 (BJA, August 1999).

[91]GAYNES, TYPOLOGY OF STATE LAWS WHICH PERMIT THE CONSIDERATION OF DANGER IN THE PRETRIAL RELEASE DECISION, PRETRIAL SERVICES RESOURCES CENTER (1982).

[92]Bail Reform Act of 1984, 18 U.S.C. §§ 3141-3156.

[93]18 U.S.C. § 3142(c) (Supp. 1985).

[94]S. Rep. No. 225, 98TH Cong., 1ST Sess. 1983, 1983 WL 25404 (Leg.Hist.) ("…there is a small but identifiable group of particularly dangerous defendants as to whom neither the imposition of stringent release conditions nor the prospect of revocation of release can reasonably assure the safety of the community or other persons. It is with respect to this limited group of offenders that the courts must be given the power to deny release pending trial.").

[95]*Salerno*, 481 U.S. at 755.

[96]*Id.*

[97]Evie Lotze et al., THE PRETRIAL SERVICES REFERENCE BOOK, PRETRIAL SERVICES RESOURCES CENTER 12 (Dec. 1999).

Although collectively the nation was focused on pretrial detention and public safety, Connecticut continued to focus on providing adequate mechanisms for pretrial release throughout the late 1970s. In 1978, the Connecticut General Assembly formed a pretrial commission to "study the effectiveness of pretrial programs and techniques with a view to implementing a state-wide criminal pretrial program."[98] The Connecticut Pretrial Commission drew heavily from the first generation of bail reform measures and issued two reports that focused on the continued detention of individuals unable to afford money bail, alternatives to commercial sureties, and the need for a more robust pretrial services agency.[99]

Connecticut's primary second generation reform effort did not occur until 1989. In response to perceived abuses in the pretrial justice system and public outcry over the rape and murder of a Hartford woman by a man out on bond for a rape charge, the legislature reexamined Connecticut's bail system and enacted reform legislation.[100] For the first time in Connecticut history, the legislation allowed superior court judges to consider public safety concerns when setting conditions of release for certain crimes and to revoke bail when a defendant violated conditions set by the court.[101]

Renewed interest in pretrial justice, along with legal challenges to bail practices, have spurred a reexamination of the history of bail and the reforms of the 20th century.[102] Contemporary scholars have emphasized the need to draw from the research developed and the lessons learned during both generations of bail reform to fully understand the scope of change necessary for effective and lasting reform.[103]

Connecticut has a long history of innovation and pursuit of outcome improvements when it comes to its pretrial practices. The Sentencing Commission is proud to be part of that continued effort.

[98]Special Act 78-37.

[99]State of Connecticut Pretrial Commission, Report to the General Assembly, Feb. 1, 1980.

[100]Maureen J. Mann, *Overlooking the Constitution: The Problem with Connecticut's Bail Reform*, 24 CONN. L. REV. 915, 916 (1992).

[101]Pub. Act 90–213 § 51 (1990).

[102]Lauren Kelleher, *Out on Bail: What New York Can Learn from D.C. about Solving a Money Bail Problem*, 53 AM. CRIM. L. REV. 799 (2016); Hayley E. Miller, *Taming the Wild West: Using Unsecured Bail Bonds in Nevada's Pretrial-Release Program*, 16 NEV. L.J. 1239 (2016); Lydia D. Johnson, *The Politics of the Bail System: What's the Price for Freedom?* 17 SCHOLAR 171 (2015); State v. Brown, 338 P.3d 1276, 1283-89 (N.M. 2014).

[103]Schnacke, *Fundamentals* at iv.

IV. PRETRIAL RELEASE AND DETENTION IN CONNECTICUT

A. Connecticut Bail Jurisprudence[104]

The Constitution of the State of Connecticut guarantees that "[i]n all Criminal prosecutions, the accused shall have a right... to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great."[105]

The Connecticut Constitution mandates that "excessive bail [shall not] be required."[106] Excessive bail—that is, "bail set at a figure higher than an amount reasonably calculated" to ensure appearance in court—also violates the excessive bail clause of the Eighth Amendment to the U.S. Constitution.[107] The Connecticut Supreme Court has recognized that an unreasonably high bail amount could allow a court to "accomplish indirectly what it could not accomplish directly, that is, denying the right to bail."[108]

The Connecticut Supreme Court has declared that "a reasonable amount is not necessarily an amount within the power of an accused to raise. It is an amount which is reasonable under all the circumstances relevant to the likelihood that the accused will flee the jurisdiction or otherwise avoid being present for trial."[109] The reasonableness of monetary bail must be assessed against the purposes for which the surety is required.

Connecticut courts have always recognized that the main purpose of monetary bail is to offer sufficient assurance that the accused will appear in court. Thus, the bond the judge sets should be "in proportion to the nature and aggravation of the offense charged."[110] Since at least 1992, the Connecticut courts have recognized that ensuring "good behavior while on pretrial release" (public safety) is another "legitimate purpose for bail in the state."[111]

Most recently, in *State v. Anderson*, the Connecticut Supreme Court considered a claim by an insanity acquittee who had been confined in the state mental hospital until he was transferred to the Department of Correction when he was unable to post a $100,000 surety bond set by a trial judge in new criminal cases against him.[112] The defendant argued that setting a monetary bond "amounted to impermissible preventive detention" because "the fundamental purpose of bail is to ensure the appearance of the accused and not to protect the public from a dangerous accused."[113]

The Supreme Court rejected the defendant's argument that the purpose of bail was already accomplished by his involuntary confinement in the state hospital. The Court held that another fundamental purpose of bail is to protect the public from a dangerous accused defendant.[114] Relying on the history of bail in Connecticut, as previously laid out in *State v. Ayala*, the Court found that there was no indication that the Connecticut Constitution excludes "good behavior" as a valid purpose of

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[104] *See supra* Appendix H for further discussion of Connecticut Bail Jurisprudence.
[105] CONN. CONST. art. I, § 8 (1965).
[106] CONN. CONST. art. I, § 8 (1965) (emphasis added).
[107] "*Excessive bail shall not be required*, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. AMEND. VIII. *See Stack*, 342 U.S. at 5.
[108] State v. Menillo, 159 Conn. 264, 269 (1970). [109] Schnacke, *Fundamentals* at iv.
[109] *Id.* (citing 2 ZEPHANIAH SWIFT, A SYSTEM OF LAWS OF THE STATE OF CONNECTICUT 395 (1795).
[110] Z. SWIFT, A System of the Laws of the State of Connecticut (1796), vol. II, 391; See Maureen J. Mann, *Overlooking the Constitution: The Problem with Connecticut's Bail Reform*, 24 CONN. L. REV. 915, 937 (1992).
[111] *See* State v. Ayala, 222 Conn. 331, 347 (1992); *see also Salerno*, 481 U.S. at 753 (permitting monetary bail to accomplish "compelling interests" beyond preventing flight).
[112] State v. Anderson, 319 Conn. 288, 295-97 (2015).
[113] *Id.* at 299.
[114] *Id.*

bail simply because it is not included in the constitutional text.[115]

Anderson is the most recent major case with respect to bail in Connecticut. The decision reaffirmed that purposes other than the need to assure a defendant's appearance in court may be considered when determining reasonable bail under the state Constitution.[116] Despite the strong differences voiced by dissenting justices in *Anderson*, the decision recognizes that judges have the discretion to set monetary bail for the purpose of protecting the safety of the general public, in addition to the purpose of assuring the defendant's appearance in court.[117]

B. The Pretrial Process in Connecticut

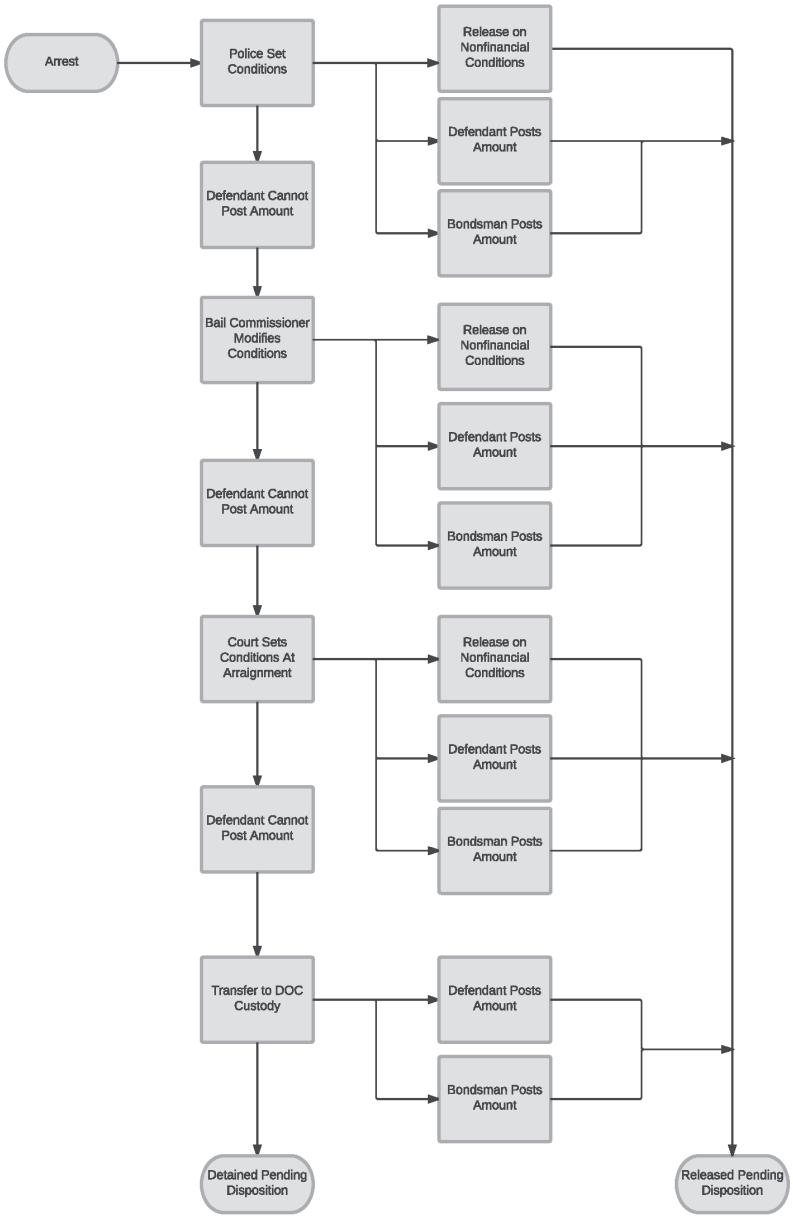
The pretrial process begins with a summons and complaint or a custodial arrest and it ends with the disposition of the case. It does not include the processes that occur following conviction, such as, sentencing, appeal, parole, or probation. There are multiple decision points during the pretrial process, and at almost all of them, there are opportunities for release from custody or modification of conditions of release (see Figure 1).

[115] *See id.* at 302 ("As we observed in *Ayala*, however, there is 'no evidence . . . that the framers of the 1818 constitution intended to abandon the customary purposes of bail that were in effect at the time of the adoption of the constitution and had been for at least 145 years' . . . particularly because the 1818 constitution was intended to enshrine rights already in existence by virtue of statute and the common law.") (quoting *Ayala*, 222 Conn. at 351).

[116] The 4-3 decision prompted a dissent in which Justice Palmer, joined by Chief Justice Rogers and Justice McDonald, vehemently argued that "the imposition of a monetary bond for the purpose of ensuring that [defendant] would be detained pending trial based solely on the belief that he posed a threat to public safety violates his right to bail under article first, § 8, of the Connecticut constitution." *Id.* at 329 (Palmer, J., dissenting).

[117] *Id.*

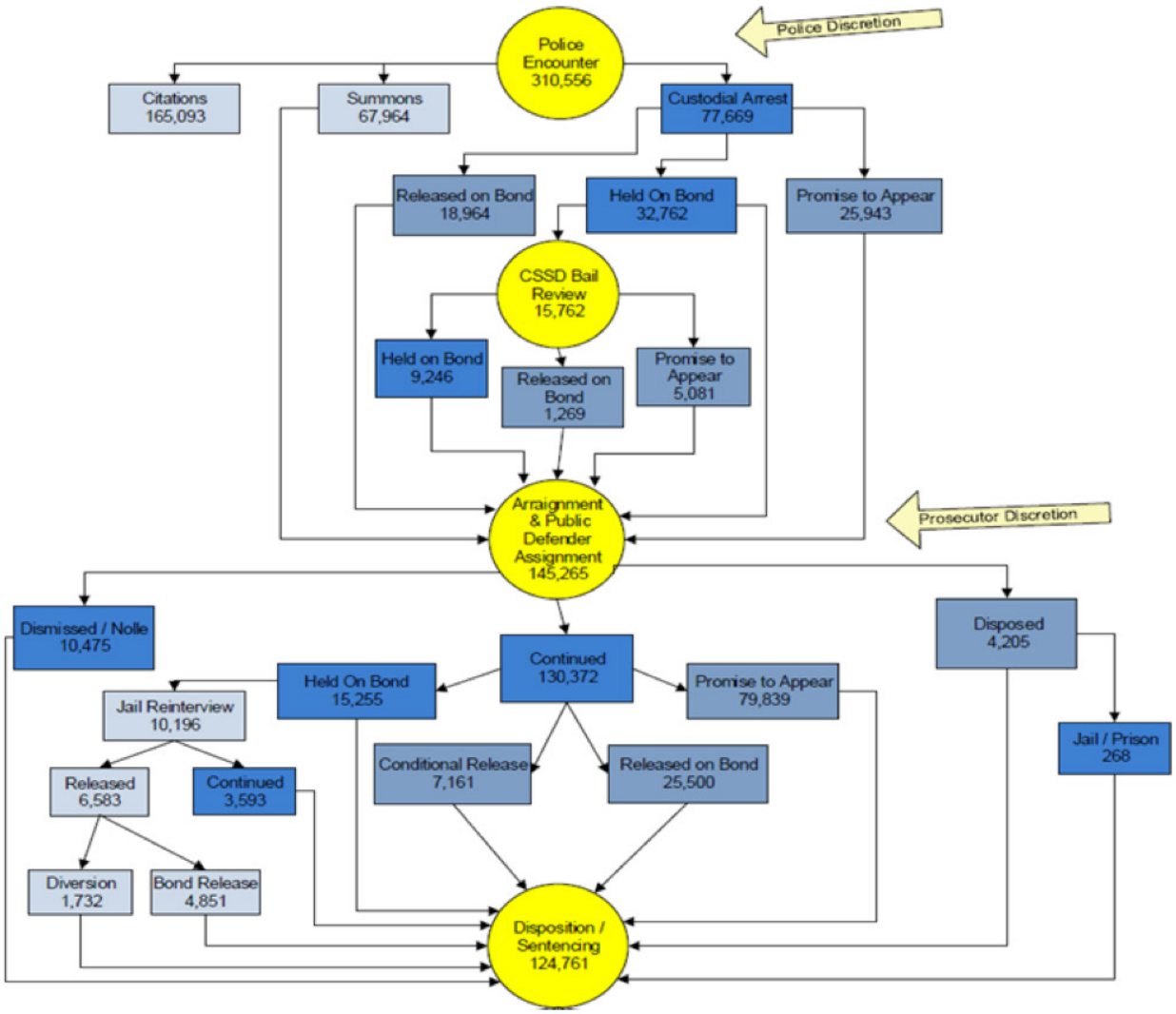
Figure 1. Release and Detention Mechanisms



Several entities are involved in pretrial release and detention decisions along this continuum. These include police officers, Judicial Branch bail staff,[118] the prosecutor, public defender (or retained defense attorney), and the judge. Figure 2 shows the pretrial justice system map with the number of defendants affected at each decision point in 2014.

[118]For purposes of this report, we refer to the Judicial Branch bail staff to include Bail Commissioners who work during non-court hours, and Intake, Assessment and Referral Specialists who work during court hours. Both are employed by the Judicial Branch Court Support Services Division (JB-CSSD).

Figure 2: The State of Connecticut Justice System Map Calendar Year 2014[119]



1. Police Officers

In Connecticut, an individual's involvement with the justice system begins with an initial police encounter that may occur under any one of three different circumstances. First, an individual may be issued a citation or a written summons and complaint during the initial encounter. Second, an individual can be brought in under a warrantless arrest. That is, the individual is brought in based on the arresting officer's determination of probable cause that the individual committed a criminal offense, and the charging document formally describing that offense is later filed with the court. Lastly, an individual may be arrested and brought into police custody pursuant to a bench warrant issued by the court. In 2014 (the most recent year for which statistics are available), of 310,726 police encounters, there were 165,093 citation releases; 67,964 non-custodial arrests (summons); and 77,669 custodial arrests.[120]

[119]State of Connecticut multi-agency application for the John D. and Catherine T. MacArthur Foundation's Safety and Justice Challenge, 2015.

[120]*Id*

By statute, a summons and complaint—referred to as a citation arrest in other jurisdictions—may only be issued for misdemeanor offenses. The decision to issue a written complaint and summons rests with the arresting officer and once made, that officer may release the individual on a written promise to appear.[121]

Following a custodial arrest, the officer transports the individual to the police station for booking, during which the police inform that person of his or her rights.[122] In cases in which a bench warrant is issued, the court issuing the warrant usually sets the conditions of release[123] and an officer cannot modify those conditions.[124]

If the arrest is not made pursuant to a warrant, a police officer is required to promptly interview the arrestee to obtain information relevant to the terms and conditions of that person's release from custody.[125] There are no statewide guidelines for conducting these interviews. However, some departments have internal written guidelines for determining a bond amount based on the offense and the defendant's past criminal history. Although guidelines may exist in certain departments, officers do not utilize an actuarial risk assessment to determine which conditions they will impose nor are they required by law to do so.

After the interview, the officer must promptly order the release of the arrestee upon the execution of a written promise to appear, the execution of an unsecured (non-surety) bond, or the execution of a secured bond and the deposit of the sum specified by that bond. If the accused is charged with the commission of a family violence crime[126] and, in the commission of such crime that person used or threatened to use a firearm, the officer may not release that person on recognizance or upon the posting of a non-surety bond.[127]

If the accused is charged with the commission of a family violence crime, a police officer may also impose non-financial conditions of release, which may require the arrested individual to (1) avoid all contact with the alleged victim of the crime; (2) comply with specified restrictions on the person's travel, association, or place of abode that are directly related to the protection of the alleged victim of the crime; or (3) not use or possess a dangerous weapon, intoxicant, or controlled substance.[128]

If the police order release on secured financial bond and the arrestee is able to deposit the amount required, the person is released immediately. By law, if the arrestee is unable or unwilling to post bond, the police must notify the bail staff at the Judicial Branch Court Support Services Division.[129] However, in practice, JB-CSSD often initiates contact with police departments to determine whether any defendants in custody were unable to post bond.

2. Judicial Branch Bail Staff

During non-court hours, once the Judicial Branch bail staff determine that a defendant is unable to post bond at a police department, staff will travel to the police department, review those conditions, conduct an interview, modify the bond, or release on a promise to appear if necessary.

The new determination is based on a validated risk tool and statutory release criteria that include the nature and circumstances of the offense and such person's (1) record of previous convictions; (2) past record of appearance in court after being admitted to bail; (3) family ties; (4)

[121]Conn. Gen. Stat. § 54-1h. Individuals who are eligible include those arrested for a misdemeanor, or an offense for which the penalty is imprisonment for a year or less, or a fine of $1,000 or less. Conn. Practice Book § 36-4 authorizes the judicial authority to direct that a summons and complaint be issued instead of an arrest warrant.

[122]*Bail Services in Connecticut*, LEGISLATIVE PROGRAM REVIEW & INVESTIGATIONS COMMITTEE (Dec. 2003) (available at https://www.cga.ct.gov/2003/pridata/Studies/Bail_Final_Report.htm). [hereinafter *Bail Services in Connecticut*].

[123]Conn. Gen. Stat. § 54-2a

[124]Conn. Practice Book § 38-2.

[125]Conn. Gen. Stat. § 54-63c(a). The arrested individual may waive this interview.

[126]Family violence crimes are defined in C.G.S.A. § 46b-38a.

[127]Conn. Gen. Stat. § 54-63c(a).

[128]Conn. Gen. Stat. § 54-63c(b). Non-financial conditions may also be imposed by the bail commissioners or the court.

[129]Conn. Gen. Stat. § 54-63c(b).

employment record; (5) financial resources, character and mental condition; and (6) community ties.[130]

Following the interview and investigation at the police station, the bail staff are required by statute to promptly order the release of the person interviewed on the least restrictive condition sufficient to assure that person's appearance in court.[131] The bail staff may release the individual upon the execution of (1) a written promise to appear without special conditions; (2) a written promise to appear with nonfinancial conditions; (3) a bond without surety in no greater amount than necessary; or (4) a bond with surety in no greater amount than necessary.[132] When bail staff order financial conditions of release, they utilize financial bond guidelines, which are explained below. If the individual is unable to meet the conditions of release as modified by bail staff, a report is submitted to inform the court and provide recommendations to the judge.

If the non-court bail staff are unable to conduct an interview at the police station, bail staff who work during court hours conduct an interview in the court's holding facility on the morning of arraignment.[133] The interviews and investigations conducted by the bail staff at both the police department and the courthouse are designed to accurately obtain the information necessary to assess risk and determine an individual's needs.

The interview information is entered into a standardized form containing Connecticut's actuarial risk assessment instrument and recommendation guidelines. Once the interview, investigation, and analysis are complete, bail staff formulate a recommendation based on the interview information, the individual's assessment score, and the recommendation guidelines. The report and recommendation are submitted in writing to the judge presiding over the day's arraignment docket and the bail staff inform the judge of a recommendation in open court. Judges exercise their discretion and make the final decision on defendants' condition of release.

After the arraignment, JB-CSSD staff provide pretrial supervision and referrals for treatment and services. Bail staff monitor all conditions of release ordered by the court, and supervise individuals referred to services. JB-CSSD staff provide the court with a progress report at each court appearance.[134]

JB-CSSD contracts with private non-profits to provide treatment and services for defendants based on need. The most frequently used non-residential program for pretrial defendants is the Alternative in the Community (AIC) program. AICs are community-based programs that include validated assessments and case management services. These services address an individual's basic needs and deliver research-driven and evidence-based cognitive skill-building group interventions. Based on the individual's assessment results, the defendant must participate in AIC programs that target individual risk and needs and are designed to change behaviors and reduce recidivism. In the 2015 calendar year , of the 10,718 referrals to the AIC program, 3,485 were pretrial defendants. Additionally, the 12-month re-arrest rate for pretrial program completers was 27%.[135]

Another statewide program model is Adult Behavioral Health Services (ABHS). ABHS contractors are licensed substance and mental health clinics that deliver an array of outpatient treatments to target the behavioral health needs of JB-CSSD clients. Services include integrated substance use and mental health evaluations; individual and group cognitive-behavioral treatment for substance use, mental health, trauma, anger management, and co-occurring disorders; intensive outpatient treatment; medication evaluation and medication monitoring. In 2015, of the 20,434

[130]Conn. Gen. Stat. § 54-64a(a)(2)(A)-(G)

[131]Bail staff do not order release of defendants who have already been transported to the courthouse and are awaiting arraignment.

[132]Conn. Gen. Stat. § 54-63d(a).

[133]Conn. Gen. Stat. § 54-63d(a).

[134]*Court Support Services Division*, STATE OF CONNECTICUT JUDICIAL BRANCH, http://www.jud.ct.gov/cssd/bail.htm (last visited Nov. 7, 2016).

[135]JB-CSSD; Contractor Data Collection System (CDCS) Statistics, 2015.

referrals made to ABHS contractors, 2,136 were pretrial defendants. The 12-month re-arrest rate for pretrial program completers was 27%.[136]

As part of its client services, JB-CSSD also maintains a robust court notification program that includes reminder calls, text messaging, and notification by US mail. The court notification program by text began in 2015 and has now been extended to notifications for treatment sessions at JB-CSSD contracted services.

Finally, JB-CSSD administers a Jail Re-Interview Program for individuals held on bond after arraignment. Originally established in 1997, the program was a collaborative effort between the state Department of Correction (DOC) and the Judicial Branch to assist DOC with prison overcrowding. The program was designed for Judicial Branch bail staff to re-interview defendants held on bond to determine their appropriateness for community release. The program targets defendants with mental health disorders or substance abuse issues. After the interview, a supervision plan is developed that addresses the defendant's specific needs and the court's concerns. This plan is presented for the court's consideration in the form of a bond modification.[137]

Initially, this program covered only the three pretrial facilities of New Haven Correctional, Hartford Correctional, and York Correctional centers. With the program's recognized success (see Table 1), coverage was expanded to include all pretrial facilities, including the Manson Youth Institution, Corrigan, Bridgeport, Osborn, and Garner Correctional facilities.[138] The Jail Re-Interview Program staff continue to work closely with DOC to develop community-based alternative release plans for defendants held on bond. The data in Table 1 illustrates some of the program outcomes that (1) successfully identify defendants who can be supervised in the community while their criminal cases are pending and (2) ultimately assist the DOC in its efforts to reduce prison and jail overcrowding.

[136] *Id.*

[137] *Id.*

[138] *Bail Services in Connecticut* at 68.

Table 1: Jail Re-Interview Statistics[139]

JAIL RE-INTERVIEW (JRI) PROGRAM RELEASE STATISTICS		
	CALENDAR YEAR 2014	CALENDAR YEAR 2015
Total Number of Interviews	18,114	20,135
Total Number of Releases	9,674	9,828
Percentage of Defendants Released	53%	49%
Admits Interviewed within 5 Days	11,078 (95%)	10,775 (97%)
RELEASES BY ALTERNATIVES:		
AIC	92	616
Intensive Pretrial Supervision	524	926
Residential	1,756	1,776
Bond Screen	4,989	4,232
Percentage of JRI Cases Disposed to a Sentence of Non-Incarceration	79% (7,306)	78% (7,078)

[139]JB-CSSD Risk Reduction Indicators for Jail Re-Interview, Calendar Years 2014/2015.

a. Risk Assessment Instrument

Since the 1980s, JB-CSSD has used a set of weighted release criteria, as specified in C.G.S. § 54-64a, to inform bail staff recommending or imposing conditions of release.[140] Connecticut's actuarial risk assessment instrument was first validated in 2003 and was revalidated in 2015. To validate the risk assessment tool, the cases in which clients were released on a promise to appear were reviewed to determine if the factors in the assessment instrument were predictive of bail decisions and outcomes.[141] No financial release cases were included in the validation studies because the use of financial bonds can provide a distorted view of those relationships.[142]

Several factors are considered when evaluating the risk of an arrested individual, such as the current charge, criminal history, marital status, employment, education, substance abuse, mental health, and prior failure to appear charges.[143] The instrument aims to predict the relationship between these risk factors and pretrial outcomes, particularly appearance in court.[144] The instrument includes a sliding point scale (see Table 2) for each risk factor with varying point values assigned based on information collected during the interview.

Bail staff apply each factor to the defendant using either positive or negative points. For example, the severity of the charge and the individual's criminal history are associated with negative point values, while community ties and financial resources are associated with positive point values.[145] An individual's risk score is the sum of point values for each factor. The instrument divides individuals into two groups based on their total score: those who should be considered for a non-financial form of release and those who should be considered for a secured financial bond. If the total score is zero or above, the individual is considered to be low-risk and should be considered for a non-financial form of release.[146] If the total score is negative, the individual is considered to be higher risk and may be considered for a financial bond. However, it should be noted, that many individuals who have a negative score are released on non-financial bonds.

[140]Bail Services. at 12.

[141]JENNIFER HEDLUND, BAIL REVALIDATION: AN ANALYSIS OF WEIGHTED RELEASE CRITERIA AND BAIL POINTS 9 (Oct. 13, 2015). [hereinafter Hedlund, *Bail Revalidation*].

[142]*Id.* at 4.

[143]There are fourteen total factors: marital status, current criminal charge, who the person lives with, verifiable references, means of support, years of education, substance/mental health, prior FTA, number of convictions, prior criminal record, safety risk convictions, safety risk pending, and use of dangerous instrument. *Id.*

[144]*Id.* at 3.

[145]*Id.*

[146]JENNIFER HEDLUND & KATHLEEN BANTLEY, THE DEVELOPMENT OF GUIDELINES FOR FINANCIAL BOND RECOMMENDATIONS 3 (July 1, 2009). [hereinafter *Hedlund, Development of Guidelines for Financial Bond Recommendations*].

Table 2: Pretrial Risk Assessment Point Scale

Marital Status	*0 = Not Married (includes separated, divorced, and widowed)* *+3 = Married*	
Charge (Most Serious)	*-20 = Capital Felony* *-10 = Class A Felony* *-9 = Class B Felony* *-8 = Class C Felony* *-7 = Class D Felony* *-6 = Class E / Unclassified Felony*	*-5 = Class A Misdemeanor* *-4 = Class B Misdemeanor* *-3 = Class C Misdemeanor* *-2 = Class D Misdemeanor* *-1 = Unclassified Misdemeanor* *0 = Motor Vehicle Violation*
Lives with	*0 = Alone* *+2 = Nonimmediate family or roommate* *+3 = Immediate family*	
Verifiable References	*0 = No* *+2 = Yes*	
Means of Support	*0 = None or Incarcerated* *+2 = Reliance on others (includes government support)* *+4 = Self-reliance (part-time, seasonal, & full-time employment)*	
Length at Employer	*0 = Less than one year at current job* *+1 = One year but less than two years at current job* *+2 = Two or more years at current job*	
Total YRS. (Education)	*0 = High School or less* *+2 = More than High School*	
Substance/Mental Health	*0 = No* *-1 = Yes*	
Prior Failure to Appear*	*+1 = No prior failure to appears* *-2 = Prior FTA for a misdemeanor charge* *-3 = Prior FTA for a felony charge*	***COUNT *PENDING or CONVICTED* FTA CHARGES**
Number of Convictions	*0 = No convictions* *-1 = One or two convictions* *-2 = More than two convictions*	
Prior Criminal Record	*+2 = No prior record* *-1 = Prior misdemeanor convictions* *-2 = Prior felony convictions*	
Safety Risk Convictions	*0= Not charged with a Safety Risk Offense and does not have a Safety Risk Offense conviction* *-2= Charged with a Safety Risk Offense and has a Safety Risk Offense Conviction*	
Safety Risk Pending	*0 = Not charged with a Safety Risk Offense and does not have a Safety Risk Offense pending* *-2= Charged with a Safety Risk Offense and has a Safety Risk Offense pending*	
Dangerous Instrument	*0 = No Dangerous Instrument Involved* *-2 = Dangerous Instrument Involved*	
TOTAL POINTS	*Below zero: Surety or 10% Bond* *Zero or more: Nonfinancial form of release*	

Table 3 below breaks down by bail points the percentage of clients released on non-financial conditions who failed to appear (FTA) to court in 2010-2013.[147] There was a steady incremental decrease in the likelihood of FTA as the amount of bail points increased.

Table 3: Percent of Clients Released on a PTA Who Failed to Appear

		Non-Court		Court	
		n	FTA	n	FTA
Total Points	-9 or less points	680	**22.9%**	433	**18.2%**
	-8 to -7 points	1,099	**15.4%**	550	**13.8%**
	-6 to -5 points	1,695	**14.0%**	868	**13.6%**
	-4 points	1,031	**12.8%**	519	**16.2%**
	-3 to -2 points	2,454	**12.5%**	1,178	**11.1%**
	-1 point	1,268	**12.3%**	629	**12.2%**
	0 to 1 point	3,248	**10.6%**	1,389	**10.2%**
	2 to 4 points	5,216	**9.1%**	2,271	**12.1%**
	5 to 6 points	3,034	**8.0%**	1,377	**10.9%**
	7 or more points	4,728	**6.0%**	1,978	**7.9%**

Similarly, Table 4 shows the relationship between the weighted release criteria points of the defendants released on non-financial conditions to their likelihood of acquiring a new arrest (NA).[148]

Table 4: Percent of Clients Released on a PTA Who Obtained a New Arrest (NA)

		Non-Court		Court	
		n	NA	n	NA
Total Points	-9 or less points	680	**27.4%**	433	**18.7%**
	-8 to -7 points	1,099	**24.5%**	550	**12.4%**
	-6 to -5 points	1,695	**21.1%**	868	**14.1%**
	-4 points	1,031	**20.6%**	519	**13.3%**
	-3 to -2 points	2,454	**18.4%**	1,178	**14.4%**
	-1 point	1,268	**17.0%**	629	**12.4%**
	0 to 1 point	3,248	**14.8%**	1,389	**10.2%**
	2 to 4 points	5,216	**12.2%**	2,271	**8.1%**
	5 to 6 points	3,034	**10.0%**	1,377	**6.6%**
	7 or more points	4,728	**6.3%**	1,978	**4.9%**

[147] Hedlund, *Bail Revalidation* at 6.
[148] *Id.* at 7

b. Guidelines for Financial Bond Recommendations

After a client is determined to be ineligible for a non-financial condition of release, the Judicial Branch bail staff turn to financial bond guidelines. The guidelines were developed to address concerns about the relationship between client risk factors and the bond recommendations, and to address inconsistent bond amount recommendations between judicial branch bail staff and the courts.[149]

In 2009, the Department of Criminal Justice at Central Connecticut State University submitted a report containing recommendations for financial bond guidelines to the JB-CSSD. This report analyzed patterns in bond recommendations using 2006 and 2007 data. Guidelines were developed based on this report consisting of two rating scales (offense characteristics and client risks) with a corresponding table of bond amounts. The offense characteristics incorporate mitigating and aggravating factors that increase or decrease with the severity of a charge.[151]

Table 5: Financial Bond Guidelines

Guidelines for Financial Bond Recommendations
(Bond Recommendation Rating Scale must be completed prior to setting bond amount)

Charge Type/Class	Rating Scale Total												
	+6	+5	+4	+3	+2	+1	0	-1	-2	-3	-4	-5	-6
Unclassified Misdemeanor	$500	$500	$500	$500	$500	$1,000	$1,000	$1,500	$2,500	$5,000	$7,500	$10,000	$15,000
Class C Misdemeanor	$500	$500	$500	$500	$1,000	$1,000	$1,500	$2,500	$5,000	$7,500	$10,000	$15,000	$20,000
Class B Misdemeanor	$500	$500	$500	$1,000	$1,000	$1,500	$2,500	$5,000	$7,500	$10,000	$15,000	$20,000	$25,000
Class A Misdemeanor	$500	$500	$1,000	$1,000	$1,500	$2,500	$5,000	$7,500	$10,000	$15,000	$20,000	$25,000	$50,000
Class D Felony	$1,000	$1,500	$2,500	$5,000	$7,500	$10,000	$15,000	$20,000	$25,000	$50,000	$75,000	$100,000	$150,000
Unclassified Felony	$1,500	$2,500	$5,000	$7,500	$10,000	$15,000	$20,000	$25,000	$50,000	$75,000	$100,000	$150,000	$200,000
Class C Felony	$2,500	$5,000	$7,500	$10,000	$15,000	$20,000	$25,000	$50,000	$75,000	$100,000	$150,000	$200,000	$250,000
Class B Felony	$5,000	$7,500	$10,000	$15,000	$20,000	$25,000	$50,000	$75,000	$100,000	$150,000	$200,000	$250,000	$500,000
Class A Felony	$7,500	$10,000	$15,000	$20,000	$25,000	$50,000	$75,000	$100,000	$150,000	$200,000	$250,000	$500,000	$1,000,000

The client risk score comes directly from the risk assessment point scale JB-CSSD calculates as part of the individual's initial intake interview (see Table 5). The total of the two ratings for offense characteristics and the client's risk correspond to a money bond amount in a table that reflects the distribution of bonds from 2006 and 2007 data.[152] However, it should be noted that these bond amounts, unlike the risk assessment, have never been validated to show their relationship to failure to appear in court or re-arrests.

Connecticut's pretrial detention rate compares favorably to that of many other US jurisdictions (see Table 6). However, it should be noted that cross-jurisdictional comparisons of detention rates do not necessarily compare apples to apples. Different jurisdictions define detention rates differently (for example, Connecticut's data in Table 6 counts only persons who are detained until disposition, while other jurisdictions may include persons who are detained for any part of the pretrial period), and cross-jurisdictional variations in pre-arraignment prosecutorial screening processes can affect the number of persons who are detained for all or part of the pretrial period.

[149] Hedlund, *Development of Guidelines for Financial Bond Recommendations* at 16.
[150] *Id.*
[151] *Id.*
[152] *Id.*

Table 6: Connecticut's Pretrial Detention Rate[153]

	All Client Arrests (Approximate)	Non-Felony Client Arrests (Approximate)
All Custodial Arrests and Misdemeanor Summons	**140,998**	**113,620**
All Custodial Arrests	**77,056**	**49,907**
Custodial Arrests Interviewed in Court	19,633	9,928
Custodial Arrests Interviewed Non-Court	15,623	8,749
Custodial Arrests Released by PD	40,034	29,984
Custodial Arrests Arraigned	**28,802**	**14,269**
Non-Financial Release at Arraignment	8,638	5,631
Financial Bond Ordered	19,082	7,852
Financial Bond Ordered: Released	1,843	761
Financial Bond Ordered: Held at Arraignment	**16,296**	**6,766**
% of All Arrests	11.56%	5.95%
% of Custodial Arrests	21.15%	13.56%
Financial Bond Ordered: Held Until Verdict	**10,512**	**4,591**
% of All Arrests	7.46%	4.04%
% of Custodial Arrests	13.64%	9.20%

5. Prosecutors, Public Defenders, and Judges

Every individual arrested in Connecticut who is not released by police must appear before Superior Court for arraignment.[154] At that time, the court advises the accused of his or her constitutional rights, makes a probable cause determination, informs the accused of the charges, and imposes conditions of release before trial. In determining the conditions that should be imposed, the sitting judge (1) reviews the arrest report, criminal history, and the relevant charging documents and (2) listens to the recommendations of the bail staff and arguments by the state's attorney's office and the accused's legal counsel (typically a public defender).

During the arraignment, the state's attorney's office is represented by an assistant state's attorney or deputy assistant state's attorney. This prosecutor reviews the arrestee's criminal history, information gathered by law enforcement on the case, the interests of the state and recommends release conditions to the judge in open court. The prosecutor will often argue for more restrictive conditions on the belief that the accused poses a danger to the community or a risk of failing to appear in court. Typically, a prosecutor will have only a few minutes to review each case and formulate a recommendation before the arraignment.

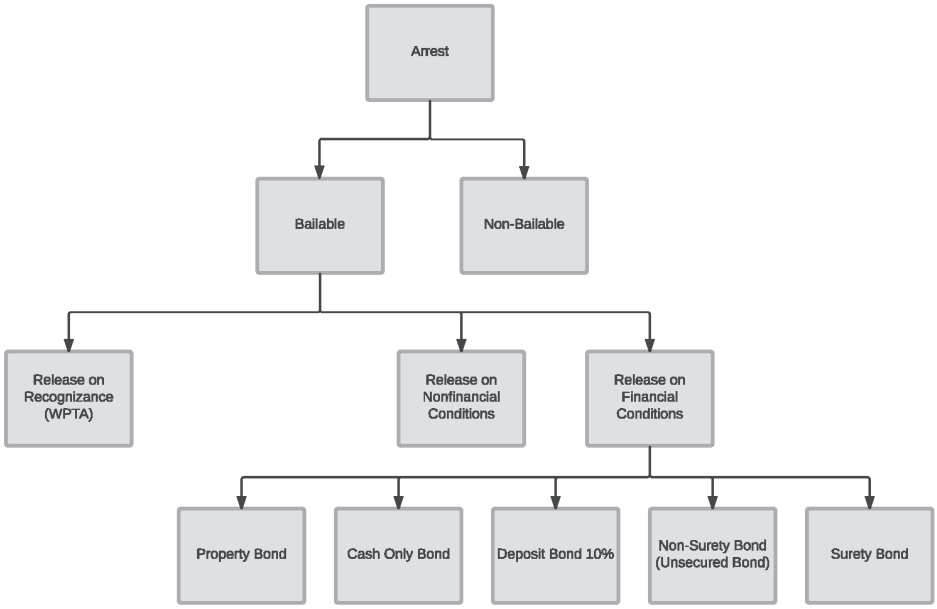
A defendant's right to counsel under the state's constitution is triggered at the arraignment. The morning of arraignment,[155] defense counsel usually conducts a brief interview with the client and reviews the criminal history, arrest report, and charging documents if available. Like the prosecutor, the defense counsel can recommend release conditions to the judge in open court. Although most defendants are represented by a public defender for bond purposes during arraignment, a defendant may hire private counsel or be appointed a public defender for the rest of the criminal proceedings, if deemed eligible.[156]

[153]JB-CSSD: *Arrests in CT Resulting in Pre-Trial Detention*.
[154]Conn. Gen. Stat. § 54-1g.
[155]State v. Stenner, 281 Conn. 742, 766 (2007).
[156]A defendant is eligible for a public defender if deemed to be indigent. *Id.*

After hearing recommendations from the prosecutor, defense attorney, and bail staff, the judge orders conditions of release in open court. A judge can impose a variety of bond options and conditions at first appearance. Bond options in Connecticut include a written promise to appear, non-surety, surety, 10% cash, property, and cash only (see Figure 3).[157] The Connecticut Practice Book lists the full array of available bond options in order of their restrictiveness. A judge must consider the nature and circumstances of the crime for which the defendant was arrested, the defendant's prior criminal history, the defendant's record of appearance in court, and the defendant's family and community ties, employment record, and financial resources. A judge must take into consideration all bond options and must have a reason for not imposing a lesser bond type over a more restrictive one.[158] A judge may not impose a financial bond option (surety, 10% cash, property, and cash only), set in an amount greater than necessary to assure the defendant's appearance.

Generally, the court is not permitted to deny bail altogether (preventive detention). The state constitution provides a right to release on bail except in capital cases where the proof is evident or the presumption great.[159] Connecticut abolished the death penalty prospectively in 2012 and retroactively in 2015.

Figure 3:Release Mechanism Alternatives



In addition to bond options, the court can order additional non-financial conditions (sometimes referred to as conditional release options) such as a "stay away" or no contact order, restrictions on travel, restrictions on the possession of weapons or controlled substances, electronic monitoring, or pretrial supervision.[160] If any of these non-financial conditions are ordered, the judge must state on the record and in open court the reasons for imposing such conditions.[161] A violation of one or more of these conditions may result in the imposition of different or additional conditions, or a complete revocation of release after an adversarial hearing.[162]

[157]These options are described in further detail in the definitions section of this report. See supra Background.

[158]*Bail Services in Connecticut* at 7.

[159]Conn. Const. Art. I, § 8.

[160]Conn. Gen. Stat. § 54-64a(c); Conn. Practice Book § 38-4(d).

[161]Conn. Practice Book § 38-4(e).

[162]Under Conn.Gen.Stat. § 54-64f(b), the court may revoke release if after an evidentiary hearing, the court finds by clear and convincing evidence that the defendant has violated reasonable conditions of the release and that the safety of another person is endangered while the defendant is on release with respect to an offense for which a term of imprisonment of ten or more years may be imposed.

6. Department of Correction

After arraignment, defendants who can post bond are immediately released with instructions to return at the next scheduled court date. Individuals unable to afford the amount necessary for release or those who have been denied bond are transferred to the custody of the Department of Correction and confined in one of the state's correctional centers.

DOC correctional centers are located throughout the state, house both pretrial and sentenced individuals, and are classified by security level. JB-CSSD staff work directly with DOC correctional centers to provide Jail Re-Interview Services. Bailable defendants may post the required bond amount at any point while in DOC custody. Upon posting a bond while in DOC custody, a defendant is immediately released by the department. The bond documents and funds are then submitted to the court clerk.163[163]

7. Bond Review

Connecticut law imposes restrictions on the amount of time any defendant may be detained because of an inability to meet financial conditions before having a bond review hearing. State statutes prohibit the continued detention of any person on bond for more than 45 days without a hearing.[164] Persons charged with a class D or E felony or a misdemeanor cannot be detained for more than 30 days without a hearing.[165] At the hearing, the court may reduce, modify, or discharge the financial condition and may remand the defendant back into DOC custody only for cause shown. On the expiration of each successive 30-day period, the person held on bond must again be presented to the court for a hearing. At the expiration of each successive 45-day period, the person may again be presented to the court for such purpose, but only after making a motion requesting presentment.[166] In practice, however, not all defendants receive a statutory review of their bond.

8. Commercial Bond Industry

Currently, few arrestees are able, without help, to raise the funds required for release on a surety bond. Many may secure release by purchasing the services of a commercial bondsman. Under state statutes, bondsmen assume a financial liability to assure a defendant's appearance in court, attempt to produce the defendant if the defendant fails to appear, and pay the state-negotiated amount as a result of the forfeited bond if they are unable to locate and produce the defendant in court.[167]

In return for posting the bond and assuming the financial risk of forfeiture, a bondsman charges a defendant a nonrefundable fee or premium, which is a percentage of the bond amount set in the case. No part of the bondsman's fee is returned to the defendant after disposition. In Connecticut, bondsmen charge a 10 percent fee for the bond amount between $500 and $5,000 and an additional 7 percent fee for the bond amount over $5,000. For example, to post a $25,000 bond, a surety bondsman charges the defendant a fee of $1,900; $500 for the first $5,000 and $1,400 for the $20,000 balance.[168] To qualify for a payment plan, a defendant must deposit 35% of the bondsman's fee.[169]

Monetary bond conditions are not directly affected by re-arrest: that is, a bond is forfeited by failure to appear, but not by re-arrest. Thus commercial sureties undertake no liability to prevent pretrial re-arrest of their clients, and unlike JB-CSSD, bail bondsmen do not supervise defendants to prevent re-arrest.

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[163]Conn. Gen. Stat. § 54-53
[164]Conn. Gen. Stat. § 54-53a(a)
[165]Conn. Gen. Stat. § 54-53a(b)
[166]Conn. Gen. Stat. § 54-53a
[167]Bail Services in Connecticut at 24
[168]*Id.*
[169]*Id.*

The Bail Association of Connecticut, a group that represents the commercial bond industry, attended many of the meetings of the Connecticut Sentencing Commission Advisory Group on Pretrial Release and Detention. In presentations to the advisory group, representatives of the Bail Association of Connecticut noted that their financial liability for nonappearance creates a financial incentive to make efforts to return non-appearing defendants to court. These representatives asserted further that they succeed at this in a significant percentage of cases. In addition, the Association proposed the creation of an Indigent Defendant Pretrial Services Fund to provide financial assistance

to low-income persons who lack the money to retain a commercial surety.

IV. ALTERNATIVE MODELS FOR THE ADMINISTRATION OF BAIL

A. Federal Pretrial Release System

The federal pretrial release system is very different from most state bail systems. Under current federal law, when an individual is charged with a federal crime, the court "may not impose a financial condition that results in the pretrial detention of the person."[170] An individual charged with a federal crime must be released on personal recognizance or on an unsecured bond unless the court determines that such release "will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community."[171] If the court makes this determination, then the individual's release must be "subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community."[172]

In the federal system, pretrial detention is permitted only for certain categories of offenses or if the case involves "a serious risk that such person will flee" or "a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror."[173] In these cases, a person may be detained if, after a hearing, the court finds by clear and convincing evidence "that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community."[174] However, under federal statute, a number of offenses trigger a rebuttable presumption that no conditions will reasonably assure the defendant's appearance and the safety of the community.

Reform of the federal pretrial release system began 50 years ago with the Bail Reform Act of 1966. The Act was enacted in response to problems with the federal money bail system identified by advocates, scholars, and policymakers. A 1963 report of the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice concluded: "The bail system administered in the federal courts, relying primarily on financial inducements to secure the presence of the accused at the trial, results in serious problems for defendants of limited means, imperils the effective operation of the adversary system, and may even fail to provide the most effective deterrence of non-appearance by accused persons."[175] In testimony before Congress in support of reform, Attorney General Robert Kennedy stated that "[b]ail has become a vehicle for systematic injustice." He stressed "[e]very year in this country, thousands of persons are kept in jail for weeks and even months following arrest. They are not yet proved guilty. They may be no more likely to flee than you or I. But, nonetheless, most of them must stay in jail because, to be blunt, they cannot afford to pay for their freedom. . . . Plainly our bail system has changed what is a constitutional right into an expensive privilege."[176]

Congress responded by enacting the Bail Reform Act of 1966, which was intended to "revise the practices relating to bail to assure that all persons, regardless of their financial status, shall not

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[170] 18 U.S.C. § 3142(c)(2).
[171] 18 U.S.C. § 3142(b).
[172] 18 U.S.C. § 3142(c)(1)(B).
[173] 18 U.S.C. § 3142(f)(1)-(2).
[174] 18 U.S.C. § 3142(e); 18 U.S.C. § 3142(f)(2)(B).
[175] REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE (1963).
Testimony on Bail Legislation before the Senate Judiciary Committee (Aug. 4, 1964).
[176] Testimony on Bail Legislation before the Senate Judiciary Committee (Aug. 4, 1964).

needlessly be detained pending their appearance to answer charges, to testify, or pending appeal, when detention serves neither the ends of justice nor the public interest."[177]

Subsequently, the Bail Reform Act of 1984 further restricted the use of money bail, providing: "The judicial officer may not impose a financial condition that results in the pretrial detention of the person." The 1984 Act authorized for the first time the pretrial detention of federal defendants based on a determination of future dangerousness. The U.S. Supreme Court upheld this preventive detention scheme against due process challenges in *United States v. Salerno*.[178] Although noting "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception,"[179] the Court nevertheless found the Act constitutional because it "carefully limit[ed] the circumstances under which detention may be sought to the most serious of crimes."[180]

The core provisions of the 1984 Act remain in today's federal statutes. However, over time, Congress has increased the number of offenses that trigger a presumption of detention, thus increasing the number of defendants held in pretrial detention.

Rates of pretrial detention in the federal system have changed over time. A four-district survey based on 1961 data found that "23% of defendants could not make bail in the District of Connecticut, 43% in the Northern District of Illinois, 58% in San Francisco, and 83% in Sacramento."[181]

A Bureau of Justice Statistics report provides data from shortly before and after the 1984 Act. In particular, the report found that the percent of federal defendants held for the entire time prior to trial, either on pretrial detention or for failure to make bail, increased from 24% before the Act to 29% after its passage.[182] The percent of defendants held on pretrial detention (i.e., without bail) increased from less than 2% before the Act to 19% after. This increase was equal to the decrease in the percent of defendants required to post financial bail (44% before the Act, 27% after the Act). After the Act, defendants required to post bail were more likely to raise the necessary bail and be released. Both before and after the 1984 Act, about half (54%) of all defendants were released without financial conditions.

The percentage of defendants detained in the federal system has increased significantly since the 1980s. By 1997, 45.7% of federal defendants were detained.[183] In 2005, the detention rate was 61.1%.[184] Most recently in 2015, 72.7% of federal defendants were detained.[185] However, it should be noted that this 2015 data, as well as the 1997 and 2005 data, includes immigration cases where detention may not be contested because of an immigration detainer. Excluding immigration cases, 57.5% of defendants were detained in 2015.

Integral to the federal pretrial system are the pretrial services offices that operate in each

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[177]Bail Reform Act of 1966, Pub. L. No. 89-465, § 3, 80 Stat. 241 (1966).

[178]*Salerno*, 481 U.S. at 755.

[179]*Id.*

[180]*Id.* at 747 (citing 18 U.S.C. § 3142). At the time, pretrial detention was limited to certain categories of crimes. *Id.*

[181]REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON POVERTY AND THE ADMINISTRATION OF FEDERAL CRIMINAL JUSTICE (1963).

[182]See Table 2, *Pretrial Release and Detention: The Bail Reform Act of 1984*, U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS (Feb. 1988) (available at http://www.bjs.gov/content/pub/pdf/prd-bra84.pdf).

[183]*See Table H-9, U.S. District Courts-Pretrial Services Release and Detention for the Twelve-Month Period Ended September 30, 1997*, JUDICIAL BUSINESS 1997, UNITED STATES COURTS (1997). This is the earliest accessible Judicial Business Report. There is no data available that excludes immigration cases from this year.

[184]*Table H-9, U.S. District Courts-Pretrial Services Release and Detention for the 12-Month Period Ending September 30, 2005*, JUDICIAL BUSINESS 2005, UNITED STATES COURTS (2005). There is no data available that excludes immigration cases from this year.

[185]*Table H-14 U.S. District Courts-Pretrial Services and Detention for the 12-Month Period Ending September 30, 2015*, JUDICIAL BUSINESS 2015, UNITED STATES COURTS (2015). The percentage of defendants detained varies significantly by Circuit. The Ninth Circuit had the highest rate of detention, at 85.5%, while the Third Circuit had the lowest rate of detention, at 46.7%. *Id. Table H-14A, U.S. District Courts – Pretrial Services Release and Detention, Excluding Immigration Cases, for the 12-Month Period Ending September 30, 2015*, JUDICIAL BUSINESS 2015, UNITED STATES COURTS (2015).

district. With the 1982 Pretrial Services Act, each federal court was responsible for determining whether the pretrial functions would be managed by a separate pretrial services office or by the U.S. Probation Office for that district.[186] These offices are responsible for collecting information relating to each individual charged with an offense. This information includes the potential danger that could arise from releasing the individual and, where appropriate, a recommendation as to whether the individual should be released or detained. If release is recommended, the agency will recommend appropriate conditions of release and be responsible for the supervision.[187]

B. District of Columbia Pretrial Justice System and Agency

The District of Columbia's (D.C.) pretrial justice system is widely recognized as one of the national models for a high functioning pretrial justice system. The system effectively promotes community safety and future court appearance while protecting the rights of the accused. D.C. is unique in that there is not one defendant in jail pretrial because that person cannot post a monetary bond. The system has consistently achieved high rates of release and court appearance and has maintained a low rate of arrest for individuals on pretrial release.[188]

Washington D.C. is one of a few jurisdictions in the United States with an immediately executed in-or-out decision-making model. At arraignment, the sitting judge orders either release or detention of the defendant. Under this binary decision-making framework, risk serves as the primary factor in release decisions, eliminating the potential for ambiguity regarding judicial intent, and ensuring that individuals assessed to be a threat to the community are detained until trial or a change in circumstances. D.C. municipal code provisions establish a model that (1) severely limits the use of secured financial conditions, (2) permits detention without bail, and (3) includes performance measurement requirements. The pretrial release model also depends on the existing judicial culture and a robust independent pretrial services agency, the Pretrial Services Agency for the District of Columbia (PSA).

The most notable components of the D.C. model include the statutory presumption in favor of non-financial release, the prohibition on commercial sureties, the prohibition against the use of financial conditions to assure safety, the prohibition of financial conditions that result in detention, and the ability to preventively detain a carefully limited subset of individuals if procedural safeguards are satisfied.

1. District of Columbia Pretrial Process

When an individual is arrested in D.C., the arrestee is either issued a citation and released, or held over for arraignment. Law enforcement officials can contact the PSA at the time of arrest for information regarding the arrestee's eligibility for a citation release. The PSA determines whether that individual's criminal and court history contain any of the statutory disqualifying factors and notifies law enforcement of eligibility or ineligibility for citation release.[189] An individual who is not issued a citation release must be held over for arraignment in the District's pretrial detention facility for a maximum of 48 hours.

Prior to arraignment, PSA conducts a 15- to 20-minute interview and obtains a urine sample. PSA staff submit the urine sample to their forensic lab for urinalysis, retrieve criminal and court history, and record the data obtained during the interview in the pretrial database known as PRAXIS. A specially designed software application pulls the data entered into PRAXIS and runs it through D.C.'s validated risk assessment instrument, returning the results to PSA staff.

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[186]United States Courts, *Probation and Pretrial Services History* http://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-services-history

[187]18 U.S.C. § 3154.

[188]Lauren Kelleher, *Out on Bail: What New York Can Learn from D.C. about Solving a Money Bail Problem*, 53 AM. CRIM. L. REV. 799, 825 (2016).

[189]D.C. Code § 23-584 (2015).

Using the criminal history, interview questions, risk score, and toxicological results, PSA staff prepare the Pretrial Services Report (PSR) to present to the sitting judge. The PSR includes the defendant's extensive background information, eligibility for detention, PSA's recommended conditions of release, the level of supervision (if not detention eligible), and any need for mental health or substance abuse screening. PSA does not include the defendant's risk score in the PSR.

As mentioned above, the PSR includes a recommendation to the court as to whether the defendant should be (1) released pending the next court date, (2) released on conditions, or (3) be held pending a hearing to determine if the defendant should be preventively detained given any current status within the criminal justice system or the nature of the charge.[190]

The arraignment judge has four statutory options at the time of the defendant's first appearance. The judge may order that the defendant be (1) released on personal recognizance or the execution of an appearance bond, (2) released on a condition or combination of conditions, (3) temporarily detained to permit revocation of conditional release, or (4) detained pending trial.[191] All of these options are subject to a statutory presumption of release prior to trial.

There are two types of pretrial detention that can occur following a defendant's initial appearance in court. The first is a five-day period of temporary detention permitted by D.C. Code § 23-1322(a) for defendants who have violated the conditions of their probation or parole, or who are likely to flee or pose a danger to the community. The second is a lengthier period of detention under §23-1231(b) designed for individuals for whom no condition or combination of conditions will reasonably assure their appearance in court or the safety of another person or the community.

If a defendant is found eligible for the lengthier detention period, the court must hold a hearing to determine whether any condition or combination of conditions will reasonably assure the defendant's court appearance and public safety. The standard of proof for the hearing is clear and convincing evidence. There is a rebuttable presumption in favor of detention if the court finds probable cause that an individual has met one of the statutory criteria related to dangerousness under § 23-1322(c) of the Code.

If a judge issues a detention order, the court is required to issue written findings of fact with a statement of the reasons for the detention and the defendant has a right to appeal the order. In addition, the individual subject to a detention order must be placed on an expedited calendar for indictment and trial.

Although detention without bail is an option, the majority of defendants are released and supervised by PSA, which provides a continuum of programs and services for defendants released into the community pending trial. These defendants have a wide variety of risk profiles, from those who pose limited risk and require conditional monitoring, to those who pose considerable risk and need extensive release conditions such as frequent drug testing, stay orders, substance use disorder treatment or mental health treatment, and/or frequent contact requirements with a pretrial service officer.[192] The highest risk defendants may be subject to an electronically monitored curfew, home confinement, tracking by global positioning systems or residence in a halfway house.

Throughout the pretrial release period, PSA notifies the court, prosecution, and defense of any noncompliance with release conditions. The developing body of research on pretrial risk assessment shows that most defendants present a low to moderate risk of pretrial failure to appear and that it is

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[190] *Processing Arrestees in the District of Columbia: A Brief Overview*, PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA 5 (2013), *available at* https://www.psa.gov/sites/default/files/Processing%20Arrestees%20in%20the%20District%20of%20Columbia-full%20page%20format.pdf.

[191] D.C. Code § 23-1322 (2016).

[192] *Defendant Supervision*, PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA (2016), *available at* http://psa.gov/?q=programs/defendent_supervision.

[193] Clifford T. Keenan, *It's About Results, Not Money*, PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA (2014), *available at* http://psa.gov/sites/default/files/It%27s%20About%20Results%2C%20Not%20Money.pdf.

only the moderate- to high-risk defendants who need supervision requiring intensive resources.[193] An average 25% of defendants in D.C. are released on personal recognizance with no additional court-ordered conditions, whereas only 10% of defendants on pretrial supervision are on high-level supervision. Almost two-thirds of supervised defendants are ordered to comply with conditions that require more moderate resources to manage.[194]

2. District of Columbia Pretrial Services

In addition to the statutory framework, D.C.'s system is supported by the autonomous and robust PSA that relies heavily on performance and outcome measurement to further its mission. The PSA is a federal agency distinct from D.C.'s government. PSA provides pretrial assessment and reporting, forensic toxicology, pretrial supervision and treatment. PSA's in-house laboratory operated by the Office of Forensic Toxicology Services conducts drug testing for pretrial defendants under PSA's supervision, as well as for clients on probation or parole and respondents ordered into testing by the D.C. Superior Court Family Division. With the laboratory's same-day turnaround policy for drug results in pretrial cases, test results are presented to judicial officers at arraignment. Since its inception as the D.C. Bail Agency, following the passage of the Federal Bail Reform Act in 1966,[195] the PSA has operated under the guiding principle that non-financial conditional release, based on the history, characteristics, and reliability of the defendant, is more effective than financial release conditions.[196]

PSA supervises approximately 16,000 defendants each year and oversees approximately 4,500 individuals on any given day.[197] On average, defendants remain under supervision for 108 days.[198] PSA administers evidence-based and data-informed risk assessments and supervision practices to identify factors related to pretrial misconduct in order to maximize the likelihood of arrest-free behavior and court appearance during the pretrial period.[199]

Over the past 40 years, PSA has developed effective mechanisms for formulating non-financial release recommendations to the court and provided comprehensive supervision and treatment options to defendants.[200] The PSA has used some form of risk assessment tool since it was established in 1967. Its current risk assessment instrument (RAI) is based on independent research to identify factors that are predictive of a failure to appear for a scheduled court appearance as well as re-arrest on a new offense during pretrial supervision.[201] The RAI generates a score that provides a guideline for determining each defendant's risk level and informs the recommendations made by PSA at arraignment. For defendants released to PSA while awaiting trial, the RAI informs the appropriate level of supervision required to reduce the risk of failure to appear in court and re-arrest that is consistent with public safety.[202]

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[194] *Id.*

[195] *PSA's History*, PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA (last visited Dec. 22, 2016), *available at* https://www.psa.gov/?q=about/history.

[196] *Mission and Vision*, PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA (last visited Dec. 22, 2016), *available at* http://psa.gov/?q=about/mission_vision.

[197] Nancy Ware, *FY 2015 Agency Financial Report*, COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA 9 (Nov. 16, 2015) *available at* https://www.psa.gov/sites/default/files/CSOSA%20FY2015%20AFR%20Final%2011-15-2015.pdf.

[198] *Id*, at 9.

[199] *Id.*

[200] Keenan, *supra* note 257.

[201] *Court Support*, PRETRIAL SERVICES AGENCY FOR THE DISTRICT OF COLUMBIA (last visited Dec. 22, 2016), *available at* https://www.psa.gov/?q=programs/court_support.

[202] Ware, *supra* note 256 at 24.

OUTCOMES	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Actual	FY 2014-2016 Target
Percentage of Defendants Who Remain Arrest-free During the Pretrial Release Period						
Any crimes	88%	88%	89%	90%	89%	88%
Violent crimes	97%	99%	99%	>99%	99%	98%
Percentage of Defendants Who Make All Scheduled Court Appearances During the Pretrial Period						
Any defendants	88%	88%	89%	88%	88%	87%
Percentage of Defendants Who Remain on Release at the Conclusion of Their Pretrial Status Without a Pending Request for Removal or Revocation Due to Non-compliance						
	83%	88%	88%	87%	88%	85%

Over the last five years, an average of 88% of D.C. pretrial defendants were released pending trial. Of those, 89% remained arrest-free, and of those re-arrested, less than 1% were charged with a violent crime. And 88% made all scheduled court appearances.[203] PSA supervised just over 70% of those who were released and, annually, 78% under pretrial supervision completed all supervision requirements.[204] Due in part to these successes, D.C.'s jail operates at below 60% of its rated capacity, with only about 12% of its population being pretrial detainees.[205] The supervision cost for each defendant is about $18 per day.[206] The result is that in D.C. unnecessary pretrial detention is minimized; jail crowding is reduced; public safety is increased; and most significantly, the pretrial process is administered fairly.[207]

[203]Keenan, *supra* note 257.
[204]*Id.*
[205]*Id.*
[206]*Id.*
[207]Ware, *supra* note 256 at 9.

VI. CURRENT REFORMS

In this section, we examine reforms to bail systems that are occurring nationwide. We start by considering the interests at stake with respect to pretrial justice reform.

A. The Stakes of Pretrial Detention: Public, Individual and Family Costs

Pretrial justice policy should be considered in light of the principle that persons awaiting trial are presumed to be innocent.[208] Even if a person is likely to be convicted of the allegations, that person cannot be punished in advance. Pretrial detention must therefore rest on one of two justifications: to ensure appearance at trial or to prevent the accused person from committing crimes while on pretrial release. The available research on pretrial detention suggests that for low- and medium-risk defendants, short-term pretrial detention may be ineffective or even counterproductive as a way to secure court appearance and prevent re-arrest.[209]

Many studies have documented the grievous burdens that pretrial detention can impose on accused persons and their families. These include job loss, financial hardship, eviction, loss of child custody, and psychological trauma. Moreover, research in other U.S. jurisdictions suggests that pretrial detention can pressure accused persons to plead guilty, and may increase the risk of conviction. In addition, research studies have found that defendants who are detained pending trial are much more likely to receive a custodial sentence, and to be incarcerated for a longer period, than similarly situated defendants who await the disposition of the cases in the community.[210]

The lack of empirical support for the effectiveness of pretrial detention of low- or moderate-risk defendants, the high fiscal cost of incarceration, and the incalculable costs of pretrial detention to individuals, families and communities, all point in the same direction: pretrial justice policy and procedure should aim to prevent unnecessary detention by ensuring the timely release of low- and medium-risk defendants.

1. Pretrial Population and Trends

In tandem with a multi-year trend of declining arrest and incarceration rates, the number of arrestees held in pretrial detention has also been declining for several years. In Connecticut, the number of pretrial detainees hit a low of 3,111 in May 2016. The number of pretrial detainees has increased in the second half of 2016: as of December 2016, the number of persons held in pretrial detention was 3,258.

[208] Constitutional principles are discussed further in the Foundational Legal Principles segment of this report. *See infra* Background.

[209] *See. e.g.* Christopher T. Lowenkamp et al., *The Hidden Costs of Pretrial Detention*, ARNOLD FOUNDATION 3 (Nov. 2013), *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf.

[210] Arpit Gupta et al., *The Heavy Costs of Bail: Evidence from Judge Randomization*, 45 J. LEGAL STUD. 20-21, 23 (Columbia Law and Economics Working Paper No. 531), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2774453&download=yes [hereinafter Gupta, *Heavy Costs of Bail*]

Table 8: Connecticut Department of Correction Population

Weeks since last DOC admit	Oct. 1, 2016	Nov. 1, 2016	Dec. 1, 2016	Dec. 1, 2015
< 1 week	468	395	371	351
1 to < 3 weeks	457	443	371	415
3 to < 10 weeks	836	854	902	921
10 to < 30 weeks	914	905	949	1,029
30 wks or more	760	757	766	706
Pre-trial prisoners	3,435	3,354	3,359	3,422

Source: OPM Monthly Indicators Report (December 2016).[211]

The Criminal Justice Policy and Planning Division of the Office of Policy and Management (OPM) observes that the "average length of [pretrial] incarceration has been increasing."[212] Between April and October of 2016, OPM notes that the average duration of pretrial detention increased from 91.1 to 95.6 days.[213] OPM suggests that the increasing duration of pretrial detention may be related to cutbacks to JB-CSSD's Jail Re-Interview (JRI) Program, which "provides many pre-trial prisoners with bond and program assistance within a week of entering prison." In October 2016, OPM noted: "In recent months, JRI has been impacted by both layoffs and staff transfers. According to JB-CSSD data, JRI-related offender releases in September were down 18% compared to August and down 50% compared to last year."[214] To the extent that program cuts to JB-CSSD may have increased the duration of pretrial incarceration, it is possible that the cuts may have increased the costs of pretrial detention. The relationship between these program cuts and the duration of pretrial detention may warrant a more detailed cost-benefit analysis.

2. Public Costs of Pretrial Detention

Pretrial detention is costly to the public fisc. According to data collected by the Institute for Municipal and Regional Policy (IMRP) for the Pew-MacArthur Results First cost-benefit analysis (as of October 1, 2016), the marginal cost of inmate detention at the pretrial detention centers in Bridgeport, Hartford, and New Haven—that is, the cost of keeping one more person in detention, over and above the cost of keeping the building open—is $56 per day.[215] Based on an average detention period of 96 days, each inmate who is detained before trial but could have been safely released costs the state of Connecticut about $5,376.[216]

To the extent that, at any point during the year, approximately 3,400 persons are held in pretrial detention, the marginal cost to the taxpayer of their detention is quite substantial. Based on an average 96-day stay, the marginal cost of all pretrial detention in the state of Connecticut is nearly $70 million per year.[217] The proportion of this expenditure that is necessary depends on a policy balance between the interests of public safety, court appearance, and fiscal prudence. A full

[211]Office of Policy and Management Criminal Justice Policy and Planning Division, Monthly Indicators Report, Table 2 at 3 (December 2016),

[212]*OPM October Report* at 2.

[213]*Id.* The average duration of pretrial detention includes defendants who are not released until the disposition of their case as well as defendants who are detained and released prior to the disposition of their case.

[214]*Id.*

[215]COST-BENEFIT ANALYSIS: CRIMINAL JUSTICE SYSTEM PER UNIT COSTS, CONNECTICUT RESULTS FIRST (Jan. 8, 2013).

[216]Calculation based on the rate of $56 per day for 96 days.

[217]Pretrial detention of an average of 3,400 persons per day for a year at $56 per day = $69,496,000. See OPM Monthly Indicators, October 2016 and OPM Monthly Indicators, November 2016.

cost-benefit analysis of pretrial detention falls beyond the scope of this report. Instead, this section presents data that may help identify questions for cost-benefit analysis and for further research.[217]

One question for further research and policy analysis might be this: What proportion of the state expenditure on pretrial detention is necessary? This would require answers to at least two related questions, neither of which can be completely answered with the available data:

(1) Is the state detaining anyone who should be released? and

(2) Is the state detaining anyone longer than necessary?

Although the available data cannot conclusively answer these questions, several observations can be made that might flag questions for further policy research and analysis.

a. Detention of Bailable Persons: Is the State Detaining Anyone Who Should be Released?

Any determination of how many currently-detained persons are bailable would require a calculation of the number who could be released at acceptable risk. That is, what risk level of dangerousness to the community or failure to appear (FTA) is sufficiently low that the state can tolerate it and release certain defendants? The answer to this policy question falls beyond the scope of this report. However, an examination of the effects of current policies and procedures can identify areas that may warrant further analysis.

A primary way to assess how many detainees present a low enough risk to be safely released is to consider their risk assessment scores. The Judicial Branch Court Support Services Division utilizes a validated risk-assessment instrument to evaluate a criminal defendant's risk to public safety and FTA. In practice, JB-CSSD treats a score of 0 or higher on the risk assessment tool as a presumptive indication that a defendant presents a risk low enough that the person could be released without financial conditions.[218] Of 105,137 detainees who were evaluated using this instrument in 2013-15, approximately 31% scored in this range (see Table 9).

Table 9: Distribution of CSSD Pretrial Risk Assessment Scores[219]

CSSD Pretrial Risk Assessment Score	Frequency	Percent
Score 0 or higher	32,475	31%
Score -3 to -1	19,367	18%
Score -4 to -7	26,102	25%
Score -12 to -8	21,908	21%
Score -13 to -28	5,285	5%
Total	105,137	100%

Nonetheless, the Flint Associates analysis found that in 2013-2015 about 7.5% of all people who remained in detention 14 days after arraignment (2,438 persons) had scored 0 or higher on the risk assessment.[220] Flint Associates statisticians concluded that "the state of Connecticut detains a small proportion of defendants who are assessed as low risk to public safety.[221] Approximately 1% of these lowest-risk detainees (n = 33) were charged with Class A felonies. Of the remaining 2,405

[218] *See infra* Pretrial Release and Detention in Connecticut.

[219] *See infra* Appendix G, Table 5.

[220] Calculation based on Flint Analysis, *infra* Appendix G, Table 13 and Table 14. Total detainees at 14 days: 32,283. 3.3% of these (n=1,071) were persons charged with misdemeanors who had scored 0 or higher on the risk-assessment instrument. 4.2% (n=1,367) were persons charged with felonies.

[221] See Flint Report, p.22, reproduced at p.116, *infra*. The Flint Report does not specify its definition of "low risk" or what would constitute a "small" proportion.

lowest-risk persons detained at 14 days despite scoring 0 or higher, about 45% were charged with misdemeanors, and about 55% with felonies. Assuming that these persons were held for the average 95.6 days, the state spent about $12.9 million over three years detaining them. A policy determination as to whether this expenditure was warranted would require balancing against the risk that detainees might be rearrested or fail to appear despite having been assessed as presenting a low risk.

No information is available to the Commission on the proportion of pretrial detainees who might be subject to detainers or other reasons for detention that are not captured by the risk assessment instrument (e.g., whether they had pending charges at the time of arrest[222]). Based on the data available at the time of writing, low-risk accused who are detained because they could not raise the funds to meet financial conditions cannot be disaggregated from those low-risk accused who remained in detention for non-financial reasons.

Another way to assess how much of the cost of pretrial detention might be necessary might be to compare persons who are released (with or without posting monetary bail) to risk- and charge-matched persons who are detained.[223]

Many risk- and charge-matched defendants receive different release and detention outcomes.[224] For every given misdemeanor class and risk score range, some defendants are released and some are detained despite similar charges and risk scores: see Table 10. Of 6,065 JB-CSSD-interviewed defendants whose most serious charge was a class A misdemeanor and who scored -8 to -12 on a risk assessment, 44% were detained 14 days after arraignment (n=2,658), while the rest were released (n=3407). Among class A misdemeanor defendants whose risk score fell between -13 and -28, 58% (n=283) remained in detention after 14 days, while 42% (n=202) had been released in the community.

Similar patterns hold true across risk- and charge-matched cohorts. For example, of the 11,989 JB-CSSD-interviewed defendants who were charged with misdemeanors, and scored -4 to -7 on a risk assessment, 35% (n=4,245) were detained one day after their arraignment and 27% (n=3,243) were detained 14 days after arraignment. Out of 7,600 defendants charged with misdemeanors who scored -12 to -8 or a risk assessment, 51% (n=3,841) were detained one day after arraignment and 42% (n=3,229) were detained 14 days after arraignment. [225]

Further research is needed to evaluate whether other, unmeasured risk factors might differentiate those who are released from risk- and charge-matched persons who are detained.

[222]Although the risk assessment instrument currently does not consider whether the person was on release for outstanding charges at the time of arrest, the instrument has been revised to include this factor beginning in 2017.

[223]"Risk-matched persons" are those who scored the same on the risk assessment instrument. "Charge-matched persons" refers to individuals who were charged with similar charges, that is, misdemeanors or felonies in the same class (A, B, C, D or unclassified).

[224]*See infra* Appendix G, Table 13.

[225]*Id.* Similar disparities between the release and detention outcomes are observed for felony defendants of the same class type and risk score. *See infra* Appendix G, Table 14.

Table 10: Detention Rate for Misdemeanor Charged Defendants by Class of Charge and Risk

	CSSD Risk Assessment Scores	Detained 1 day after Arraignment			Detained 14 days after Arraignment		
		Frequency	Percent	Total	Frequency	Percent	Total
MU	Score 0 or higher	68	10%	678	46	7%	678
	Score -3 to -1	39	30%	131	33	25%	131
	Score -4 to -7	26	39%	66	22	33%	66
	Score -12 to -8	1	14%	7	1	14%	7
	Total	134	15%	882	102	12%	882
MD	Score 0 or higher	16	7%	232	5	2%	232
	Score -3 to -1	7	15%	46	6	13%	46
	Score -4 to -7	12	34%	35	9	26%	35
	Score -12 to -8	5	56%	9	4	44%	9
	Total	40	12%	322	24	7%	322
MC	Score 0 or higher	207	5%	3,901	161	4%	3,901
	Score -3 to -1	354	22%	1,611	280	17%	1,611
	Score -4 to -7	573	30%	1,921	474	25%	1,921
	Score -12 to -8	297	43%	692	258	37%	692
	Score -13 to -28	0	0%	1	1	100%	1
	Total	1,431	18%	8,126	1,174	14%	8,126
MB	Score 0 or higher	246	6%	4,021	185	5%	4,021
	Score -3 to -1	308	21%	1,478	213	14%	1,478
	Score -4 to -7	499	30%	1,687	391	23%	1,687
	Score -12 to -8	355	43%	827	308	37%	827
	Score -13 to -28	5	71%	7	5	71%	7
	Total	1,413	18%	8,020	1,102	14%	8,020
MA	Score 0 or higher	1,172	9%	13,217	674	5%	13,217
	Score -3 to -1	1,811	27%	6,618	1,248	19%	6,618
	Score -4 to -7	3,135	38%	8,280	2,347	28%	8,280
	Score -12 to -8	3,183	52%	6,065	2,658	44%	6,065
	Score -13 to -28	316	65%	485	283	58%	485
	Total	9,617	28%	34,665	7,210	21%	34,665
Total	Score 0 or higher	1,709	8%	22,049	1,071	5%	22,049
	Score -3 to -1	2,519	25%	9,884	1,780	18%	9,884
	Score -4 to -7	4,245	35%	11,989	3,243	27%	11,989
	Score -12 to -8	3,841	51%	7,600	3,229	42%	7,600
	Score -13 to -28	321	65%	493	289	59%	493
	Total	12,635	24%	52,015	9,612	18%	52,015

One potential explanation for differential release and detention outcomes among risk- and charge-matched accused might be that some accused are able to raise money to meet financial conditions of release, while others are not. The available data does not permit a precise determination of how many pretrial detainees who could be released at acceptable risk to the community remain in detention because they cannot raise money to meet monetary conditions of release.

Financial conditions were imposed on more than half of the 99,740 defendants (56.0%, n=55,844) who were interviewed by JB-CSSD between 2013 and 2015. The other defendants (44%, n=43,896) were released on a promise to appear and other non-financial conditions (see Table 11).[226]

[226] *See infra* Appendix G, Table 7.

Table 11: Types of Bonds Imposed on JB-CSSD-Interviewed Defendants

Court or Non-Court Ordered Type of Bond	Non-financial		Financial	
	Frequency	Percent	Frequency	Percent
Written Promise to Appear	20,515	47%	0	0%
Non-Surety with Conditions	459	1%	0	0%
Non-Surety Bond	192	0%	0	0%
Conditions	22,730	52%	0	0%
10% bond	0	0%	667	1%
10% Bond with Conditions	0	0%	679	1%
Cash Bond	0	0%	2,391	4%
Cash Bond with Conditions	0	0%	558	1%
Conditions with Surety	0	0%	20,140	36%
Surety Bond	0	0%	31,409	56%
Total	43,896	100%	55,844	100%

Data received from JB-CSSD cannot conclusively answer whether any persons in Connecticut remain in detention solely because they cannot raise monetary bail, and if so, how many. The available data is, however, consistent with the possibility that this does occur.

Of criminal defendants who face similar charges, are assessed at identical risk levels, and have received similar bond amounts—some are detained, and some are released. Across the spectra of risk score and charge severity, the Flint Springs Associates analysis found a similar pattern: the higher the bond amount, the more likely that a risk- and charge-matched defendant would remain in detention one or 14 days after arraignment.[227] Flint Associates statisticians concluded that "It is reasonable to assume that detained defendants were not able to post bond."[228]

Table 12, below, shows detention rates, risk scores and bond amounts of persons charged with class A misdemeanors. Of defendants charged with a class A misdemeanor and having a risk assessment score of -7, and a bond amount of $1,000 or less, 45% (n=50) remained detained 14 days after arraignment with 55% (n=61) being out in the community. Of defendants charged with a class A misdemeanor who had a risk assessment score -6 and a bond of $1,000 or less, 26% (n=30)

Table 12: Detention Rates for Defendants Matched for Misdemeanor A Charge, Risk Assessment Score, Type of Bond, and Court Ordered Aggregate Bond Amount

CSSD Risk Assessment Score	Aggregate Bond Amount	Number Detained 14 Days after Arraignment	Percent Detained	Total Number of Cases
-5	$1,000 or less	34	29%	119
	$5,000	61	48%	126
	$10,000	51	50%	103
-6	$1,000 or less	30	26%	116
	$5,000	50	46%	108
	$10,000	69	63%	109
-7	$1,000 or less	50	45%	111
	$5,000	69	58%	118
	$10,000	75	67%	112
-8	$1,000 or less	60	44%	136
	$5,000	71	56%	126
	$10,000	54	62%	87

[227] *See* Appendix G, Tables 15-20.

[228] Flint Report, at p.22, reproduced at p.116, *infra*.

were detained while 74% (n=86) had been released.

Similar patterns can be observed with felony defendants (see Tables 13 and 14). For example, of defendants charged with class D felonies whose risk score was -7 and who faced a bond of $10,000, 55% (n=75) were detained, while 45% (n=61) were released. Out of defendants charged with class C felonies, with risk assessment scores of -9 and bonds of $50,000, 47% (n=17) were detained and 53% (n=19) were released. That is, higher bond amounts were associated with higher rates of detention for persons facing similar charges with identical risk assessment scores.

Table 13: Detention Rates for Defendants Matched for Felony Class D Charge, Risk Assessment Score, Type of Bond, and Court Ordered Aggregate Bond Amount

CSSD Risk Assessment Score	Court Ordered Aggregate Bond Amount	Number Detained 14 Days after Arraignment	Percent Detained	Total Number of Cases
-5	$10,000	45	39%	116
	$25,000	56	58%	97
	$50,000	77	76%	101
-7	$10,000	75	55%	136
	$25,000	85	65%	130
	$50,000	84	74%	113
-9	$10,000	74	62%	120
	$25,000	103	79%	130
	$50,000	87	79%	110
-11	$10,000	66	67%	98
	$25,000	75	68%	110
	$50,000	93	85%	109
-13	$10,000	48	68%	71
	$25,000	59	75%	79
	$50,000	70	88%	80

Table 14: Detention Rates for Defendants Matched for Felony Class C Charge, Risk Assessment Score, Type of Bond, and Court Ordered Aggregate Bond Amount

CSSD Risk Assessment Score	Court Ordered Aggregate Bond Amount	Number Detained 14 Days after Arraignment	Percent Detained	Total Number of Cases
-5	$10,000	15	48%	31
	$25,000	19	46%	41
	$50,000	30	58%	52
-7	$10,000	17	47%	36
	$25,000	21	50%	42
	$50,000	31	57%	54
-9	$10,000	15	44%	34
	$25,000	28	74%	38
	$50,000	17	47%	36
-11	$10,000	24	73%	33
	$25,000	23	61%	38
	$50,000	33	80%	41
-13	$10,000	17	74%	23
	$25,000	14	56%	25
	$50,000	33	83%	40

b. Duration of Pretrial Detention: Is the State Detaining Anyone Longer Than Necessary?

Another approach to identifying potentially unnecessary pretrial detention costs might be to more closely examine the duration of pretrial detention. [229] It seems unlikely that a person's risk factors would ordinarily be reduced by pretrial detention. It may be assumed, then, that if defendants are eventually released before disposition, most of them would have posed no higher risk if they had been released at arraignment.

A large majority of the arraigned defendants interviewed by JB-CSSD are eventually released prior to the disposition of their case. According to figures for 2015,[230] only about 30% of JB-CSSD interviewed defendants were detained until the disposition of their case.[231] Nonetheless, nearly half of JB-CSSD interviewed defendants (about 46.2%) were detained at arraignment.[232] About 35.1% of those who are held at arraignment (about 5,694 persons in 2015) are eventually released,[233] but they tend to be detained for substantial periods first.

Table 15: Release Status After Arraignment Across All Types Of Bond

Status after arraignment	Number of Days After Arraignment			
	1 day		14 days	
	Frequency	Percent	Frequency	Percent
Detained	40,387	38%	32,512	31%
Released	64,750	62%	72,625	69%
Total	105,137	100%	105,137	100%

Of persons who are detained at arraignment and released sometime before disposition, most are released within less than two weeks. Based on information received from JB-CSSD, the median duration of detention for a person who is eventually released prior to disposition is 11 days.[234] Some defendants, however, are detained for much longer periods of time before eventual pre-disposition release. As a result, the average duration of pretrial detention is 35.28 days. If the 5,694 persons who were detained at arraignment but later released were held for an average of 35.28 days each, their detention likely cost the State of Connecticut more than $11 million in 2015.[235]

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[229]It seems unlikely that developments that might reduce a person's risk—*e.g.*, stable employment, marriage, home ownership, an improved criminal record or an improved record of court appearance—would arise during a person's time in detention.

[230]AD HOC REQUEST: ARRESTS IN CT RESULTING IN PRE-TRIAL DETENTION, JUDICIAL BRANCH COURT SUPPORT SERVICES DIVISION (Sept. 6, 2016) [hereinafter JB-CSSD: *Arrests in CT Resulting in Pre-Trial Detention*]. JB-CSSD cautions that these figures are approximate.

[231]Of 35,256 cases arraigned, 10,512 are held until disposition. *Id.*

[232]Of 35,256 cases arraigned, 16,206 are held at arraignment. *Id.*

[233]16,206 – 10,512 = 5,694. *Id.*

[234]JB-CSSD, Ad Hoc Request: *Follow-up Questions Posed During CTSC's Pretrial Release/Detention Meeting on 1/3/17* (Jan. 9, 2017), available from Sentencing Commission upon request.

[235]5,694 persons at $56 per day for 35.28 days = $11,249,521. 35.28 days is based on the average pretrial days in detention of those individuals detained at arraignment who were released prior to the disposition of their case. JB-CSSD cautions that these figures are approximate. Ad Hoc Request: Follow-up to questions posed during CTCS's Pretrial Release /Detention meeting on 1/3/2017 (Jan. 9, 2017). [hereinafter JB-CSSD: Follow-up to Questions posed During CTCS's Pretrial Release/Detention Meeting on 1/3/2017.

3. Goals of Pretrial Detention: Justice, Public Safety and Court Appearance

a. Court Appearance and Public Safety

As previously noted, Connecticut detains a small percentage of custodial arrestees while their case is pending. However, as described in the previous section, of those who remain detained subsequent to arraignment, pretrial detention of one to two weeks is common in Connecticut.. While the effectiveness of pretrial detention in ensuring court appearance and preventing re-arrest has not been studied in Connecticut, several empirical studies conducted in other U.S. jurisdictions indicate that short periods of pretrial detention do not serve either of these objectives. On the contrary, some studies suggest that for low- and moderate-risk defendants, temporary pretrial detention may increase the risk that a person will be rearrested or fail to appear. A 2013 Arnold Foundation study, for example, found that detaining low-risk defendants for as little as two to three days tended to increase the risk that defendants would be re-arrested before the disposition of their case. The longer the person was detained pretrial, the greater was this effect. Thus, compared to persons who were held for less than 24 hours after their arrest, persons who were held for two to three days were 40% more likely to reoffend.[236] If they were held for eight to 14 days, low-risk defendants were 51% more likely to reoffend.[237] A recent study by Columbia University scholars found that the imposition of money bail was associated with increased rates of re-arrest, an effect they attributed to pretrial detention.[238]

For low-risk defendants, relatively short periods of pretrial detention have been found to be counterproductive with respect to court appearance. The Arnold Foundation study found that detention for more than 24 hours before release significantly increased the likelihood that a low-risk arrestee would FTA. When low-risk persons were detained for two to three or four to seven days, their risk of FTA increased by 22%, compared to low-risk persons who were released within 24 hours after arrest. Compared to low-risk persons who were released within 24 hours, low-risk persons who were detained for 14 to 30 days were 41% more likely to FTA.[239]

A 2016 Columbia University study of pretrial detention in Philadelphia and Pittsburgh, on the other hand, found no significant effect of monetary bail on the likelihood of trial appearance. While monetary bail did not increase the likelihood of FTA, the study found that it did not serve its intended purpose, which is to reduce FTA.[240]

For moderate- and high-risk defendants, the Arnold Foundation study found mixed effects of pretrial detention: for moderate-risk defendants, short periods of detention (two to three days and four to seven days) were found to increase the likelihood of FTA, while longer periods of detention decreased it. For high-risk defendants, pretrial detention had no effect on the risk of FTA, except that long-term pretrial detention (31 days or more) significantly reduced it.[241]

The results of empirical studies in other jurisdictions suggest directions for research into the effects of pretrial detention on re-arrest and court appearance rates.

b. Justice and Fairness

i. Case Outcomes: Conviction and Sentencing

Pretrial detention reduces the ability of an accused person to communicate with counsel by telephone and in person. It greatly restricts the person's ability to gather evidence and locate

[236]Christopher T. Lowenkamp et al., *The Hidden Costs of Pretrial Detention*, ARNOLD FOUNDATION 3 (Nov. 2013), *available at* http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf.

[237]*Id.*

[238]Arpit Gupta et al., *The Heavy Costs of Bail: Evidence from Judge Randomization*, 45 J. LEGAL STUD. 20-21, 23 (Columbia Law and Economics Working Paper No. 531), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2774453&download=yes [hereinafter Gupta, *Heavy Costs of Bail*].

[239]Lowenkamp, *supra* note at 13.

[240]The study consistently found non-significant positive effects of money bail on FTA: that is, rates of FTA were higher when money bail was imposed than when it was not, but the effect was not statistically significant. See Gupta, *Heavy Costs of Bail* at 20.

[241]*Id.*

witnesses. Moreover, several studies find that the fact of pretrial detention (loss of liberty, conditions of confinement) and its consequences (job loss, financial hardship, separation from children and partners) tend to pressure detainees to plead guilty.[242]

A recent study of hundreds of thousands of misdemeanor cases in Harris County, Texas found that, controlling for all other factors, pretrial detainees are 25% more likely to plead guilty to the charges against them than are similarly situated defendants who have been released. Moreover, this analysis found a causal relationship between pretrial detention and guilty pleas: detention induces people to plead guilty when they would not otherwise have done so.[243] Unsurprisingly, then, studies have repeatedly found that pretrial detainees are significantly more likely to be convicted, compared to similarly situated defendants who are released pending trial.[244]

The authors of the Harris County study note that pretrial detention increases the risk of wrongful conviction.[245] Indeed, the 2016 Columbia University study found that the effect of pretrial detention on guilty pleas was strongest for crimes where the evidentiary basis tends to be weak: defendants who would otherwise have been acquitted or had their charges dropped were induced by detention to plead guilty.[246] The Columbia University authors conclude that, "many defendants appear to be found guilty simply due to an inability to pay money bail."[247]

Studies have shown that after conviction, people who have been detained pending trial are more likely to be sentenced to prison than persons who awaited trial on release, and their sentences are longer. The Harris County study found that defendants who are detained until trial are 43% more likely to be sentenced to prison and receive sentences that are more than twice as long as defendants who awaited trial on release.[248] The Philadelphia-Pittsburgh study found that sentences were five months longer for people who had been detained pending trial than among those who had awaited trial while on release.[249]

This effect is strong for all criminal defendants, but the defendants most vulnerable to this risk are those who would have posed a low risk if released. The Arnold Foundation study found that low-risk defendants were 5.41 times more likely to receive a prison sentence than those who are released pending trial. Moderate-risk defendants were four times more likely to receive a prison sentence, while high-risk defendants were three times more likely to receive a prison sentence. Similarly, low-risk defendants' sentences were 3.5 times longer if they were detained than if they were released before trial. Moderate- and high-risk defendants received sentences more than twice as long if they were detained compared to if they were released before trial.[250]

ii. Financial Impacts: Bond Affordability

Most people who are arrested are quite poor. Nationally, about 80% of defendants are represented by public defenders.[251] An overwhelming majority of individuals accused of crimes in

[242]"Particularly for defendants on low-level charges—who have been detained pretrial due to an inability to pay money bail, a lack of pretrial diversion options, or an inability to qualify for those options that are available—a guilty plea may, paradoxically, be the fastest way to get out of jail." Ram Subramanian et al., *Incarceration's Front Door: The Misuse of Jails in America*, VERA INSTITUTE OF JUSTICE 38 (Feb. 2015), available at http://archive.vera.org/sites/default/files/resources/downloads/incarcerations-front-door-report.pdf.

[243]Paul S. Heaton et al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN. L. REV. (forthcoming 2017), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2809840.

[244]*Id.*; see also Gupta, *supra*.

[245]Heaton et al., *supra* note 44.

[246]Megan Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes* (University of Pennsylvania Law School Working Paper), *available at* https://www.law.upenn.edu/cf/faculty/research/details.cfm?research_id=14047.

[247]Gupta, *Heavy Costs of Bail* at 23-24.

[248]Heaton et al., *supra* note 127.

[249]Stevenson, *supra* note 128.

[250]*Pretrial Criminal Justice Research*, LAURA & JOHN ARNOLD FOUNDATION 2 (Nov. 2013), *available at* http://www.arnoldfoundation.org/wpcontent/uploads/2014/02/LJAF-Pretrial-CJResearch-brief_FNL.pdf.

[251] Eve Brensike Primus, *Procedural Obstacles to Reviewing Ineffective Assistance of Trial Counsel Claims in State and Federal Postconviction Proceedings*, 24 CRIM. JUST. 6, 7 (2009).

Connecticut are also represented by public defenders. According to the Income Eligibility Guidelines issued by the Division of Public Defender Services (PD), a defendant accused of a felony qualifies for PD representation if, for example, the defendant no dependents and earns an income of $23,340 or less, or has two dependents and earns an income of $39,580.[252] For persons accused of misdemeanors, the income cutoff is even lower: $17,505 for a person with no dependents and $29,685 for a person with two dependents.[253]

Thus, people who are arrested typically have no extra money they can redirect from other expenses (such as rent, food, or transportation) to pay monetary bail or to support their families during a period when they cannot work because they are detained. Moreover, most Americans have few or no savings. A 2015 survey by Google and GOBankingrates found that 49% of Americans either did not have a bank account, or had a bank account with a balance of zero.[254] 71% of Americans have less than $1,000 in savings. Another 10% have between $1,000 and $5,000 in savings.[255] Though the top 14% of American savers have $10,000 or more in savings,[256] it is unlikely that many arrestees are drawn from this cohort.

Moreover, according to JB-CSSD data, a majority of defendants in Connecticut's pretrial detention system are nonwhite (mainly Hispanic and African-American) (see Table 16).[257] Poverty among Hispanic and African-American families tends to be more concentrated than among whites: the nonwhite poor are more likely to live in areas of concentrated poverty, meaning that their neighbors and relatives are also poor.[258] Thus low-income Hispanic and African-American arrestees are less likely than white arrestees to have non-poor relatives who might be in a position to assist them financially.[259] Unsurprisingly, then, a number of studies have found that "Black and Hispanic defendants are more likely to be detained pretrial than white defendants and less likely to be able to post money bail as a condition of release."[260] Table 16 sets out the racial and ethnic distribution of pretrial arrestees interviewed by JB-CSSD in Connecticut in 2013-15. The Flint Associates analysis

Table 16: Race and Ethnicity by Three Categories

	Frequency	Percent
White	40,317	39%
Hispanic	25,644	25%
Black	37,724	36%
Total	103,685	100%

[252] *Income Eligibility Guidelines*, DIVISION OF PUBLIC DEFENDER SERVICES (Mar. 16, 2016 10:46:30 AM), http://www.ct.gov/ocpd/cwp/view.asp?a=4089&q=549786.

[253] *Id.*

[254] Elyssa Kirkham, *62% of Americans Have Under $1,000 in Savings*, Survey Finds, GO BANKINGRATES (Oct. 5, 2015), https://www.gobankingrates.com/savings-account/62-percent-americans-under-1000-savings-survey-finds/.

[255] *Id.*

[256] *Id.*

[257] This data shows only JB-CSSD-interviewed defendants. Many defendants are released on a summons, promise to appear or on bond from police departments without being interviewed by the bail staff. It is unlikely, however, that those defendants look radically different from the breakdown of JB-CSSD-interviewed defendants.

[258] *See, e.g.* PAUL JARGOWSKY, ARCHITECTURE OF SEGREGATION, THE CENTURY FOUNDATION (Aug. 7, 2015), https://tcf.org/content/report/architecture-of-segregation/; DARIA ROITHMAYR, REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE (NYU Press, 2014).

[259] See Roithmayr, *supra* note 143.

[260] *Harvard Report* at 7; *see, e.g.*, Traci Schlesinger, *Racial and Ethnic Disparities in Pretrial Criminal Justice Processing*, 22 JUSTICE QUARTERLY 170, 187-88 (2005); Stephen DeMuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black and White Felony Arrestees*, 41 CRIMINOLOGY 873, 895, 897 (2003); Ian Ayres & Joel Waldfogel, *A Market Test for Race Discrimination in Bail Setting*, 46 STANFORD L. REV. 987 (1994).

did not conduct a regression analysis that could evaluate the statistical significance or nonsignificance of racial or ethnic differences in detention, release and bail conditions and control for other factors.

Even a court-ordered surety bond in an amount that is at the low end of the bail range (less than $20,000) may present an insurmountable financial barrier to many defendants. An accused person who (like most Americans) does not have $20,000 on hand and cannot borrow it from relatives will need to resort to a commercial surety. To post a $20,000 bond through a commercial surety, a defendant must come up with a bondsman's fee of $1,550. To qualify for a payment plan, a defendant would have to come up with 35% of bondsman's fee, which translates into $542.50.[261] The money is not refunded if the defendant appears at trial, or even upon acquittal. Such requirements can be onerous since, according to a 2015 Bankrate study, 62% of Americans do not have enough money in their accounts to cover a $500 emergency expense.[262]

Connecticut data is also consistent with the possibility that, for many accused, relatively small bail amounts (such as a $10,000 to $20,000 cash or surety) may price pretrial release out of reach. OPM has reported that 18.9% of current pretrial detainees are being held on bond amounts set at less than $20,000.[263] In addition, empirical evidence suggests that imposing any financial bond on a defendant may increase the likelihood of detention. Of 99,740 defendants interviewed by JB-CSSD over three years, 69% of defendants with financial bond were detained one day after arraignment, and 54% remained incarcerated 14 days after arraignment (see Table 17).

Table 17: Release Status by Non-financial and Financial Bonds

Release Status after Arraignment	Type of Bond				Total	
	Non-financial		Financial			
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Release status 1 day after arraignment						
Detained	509	1%	38,659	69%	39,168	39%
Released	43,387	99%	17,185	31%	60,572	61%
Total	43,896	100%	55,844	100%	99,740	100%
Release status 14 days after arraignment						
Detained	1,118	3%	30,251	54%	31,369	31%
Released	42,778	97%	25,593	46%	68,371	69%
Total	43,896	100%	55,844	100%	99,740	100%

iii. Financial Impacts: Employment

One of the most obvious consequences of pretrial detention is that arrestees who were employed at the time of their arrest are likely to lose their jobs.[264] A 2016 Crime and Justice Institute survey of persons on supervised pretrial release found, unsurprisingly, that longer periods of detention were associated with an elevated risk of job loss.[265] While 71.8% of the 955 survey respondents had been employed at the time of their arrest, those who had been detained for three or more days were 2.5 times more likely to have become unemployed by the time of the survey than those who had been released sooner.[266] Among persons who had been employed at the time of their arrest, only 6% of those who had been held for less than three days had lost their jobs by the time of

[261]Conn. Gen. Stat. § 38a-660b (2011).

[262]Claes Bell, *Budgets Can Crumble in Times of Trouble*, bankrate.com (Jan. 7, 2015), at http://www.bankrate.com/finance/smart-spending/money-pulse-0115.aspx.

[263]*OPM October Report*.

[264]*See* Saneta deVuono-powell et al., *Who Pays? The True Cost of Incarceration on Families*, ELLA BAKER CENTER (Sept. 2015), *available at* http://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf.

[265]Alexander M. Holsinger, *Analyzing Bond Supervision Survey Data: The Effects of Pretrial Detention on Self-Reported Outcomes*, CRIME AND JUSTICE INSTITUTE (June 2016), *available at* http://www.crj.org/page/-/publications/bond_supervision_report_R3.pdf.

[266]*Id.* at 11. Since employment is a factor in assessing risk, the group that was detained for more than three days was also less likely to have been employed at the time of arrest than those released sooner: 76.5% of those held for less than three days had been employed, compared to 62.6% of those held for longer.

the survey, compared to 22% of those who had been held for three days or longer.

iv. Financial Impacts: Housing

Similarly, persons who were detained for three days or longer were more likely to experience residential instability than those who were detained for less than three days.[267] The increased likelihood of eviction or other residential disruption affects not only the accused person, but also any dependents. A 2015 Ella Baker Center study found that 65% of families who had an incarcerated family member were unable to meet the family's basic needs after their incarceration. 49% of families struggled to meet their basic food needs, while another 48% struggled to meet basic housing needs. Moreover, 18% of families with an incarcerated member were evicted from their housing.[268]

v. Effects on Children and Families

The arrest and detention of a parent can be financially and emotionally devastating to children. Most pretrial detainees in Connecticut have dependent children. According to the Department of Correction (DOC), approximately 58.3% of detainees at the correctional centers at Bridgeport, Hartford, and New Haven report having dependents; the median number of dependents reported by pretrial detainees is 1.5 each.[269] These statistics are broadly consistent with findings by the federal Bureau of Justice Statistics ("BJS") indicating that, nationally, 52% of state prisoners (and 63% of federal prisoners) have minor children, reporting an average of two children each.[270] Nationally, 51.2% of incarcerated men and 61.7% of incarcerated women have children.[271] About 44% of these children are reportedly four years old or younger.[272]

Furthermore, the BJS study found that most parents who are incarcerated are responsible for their children. Most parents in state prisons (54% of fathers and 52% of mothers) said that they provided primary financial support to their children.[273] Forty-seven percent of incarcerated fathers and 64% of incarcerated mothers lived with their children in the month before their arrest. Three quarters of incarcerated mothers and 17% of incarcerated fathers had been single parents at the time of their arrest. About 18% of incarcerated fathers and 14% of incarcerated mothers had lived with their children in a two-parent household at the time of their arrest.[274]

The detention of a parent for weeks or months can have harsh impacts on the children. Where the detained mother or father lived with the child, the loss of the parent imposes a severe day-to-day change in the child's care arrangements. Where the detained parent was a single parent, or where the remaining parent is unable to care for the child, a child may have to be rehoused with other relatives, potentially causing not only emotional trauma and housing disruption, but also (if the new caregiver does not live in the same school district) a disruption to the child's schooling. A child may end up in the care of the state if no other relatives are available to care for him or her.

A recent survey conducted by IMRP researchers at the New Britain courthouse investigated the impact of pretrial detention on the children of parents who had been arrested in Connecticut.[275] The researchers interviewed 45 detained caregivers about the 108 children they had cared for during the month prior to their arrest. Respondent caregivers reported an average of 2.4 children each, whose average age was 6.7 years. Half of the children lived with the caregiver at the time of arrest

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[267]Holsinger, *supra* note 11.

[268]DeVuono-powell et al., *supra* note 9.

[269]Kim Buchanan, *Impacts of Pretrial Detention*, INSTITUTE FOR MUNICIPAL & REGIONAL POLICY (October 19, 2016), http://www.ct.gov/ctsc/lib/ctsc/Bail_presentn_Oct_19.pdf.

[270]Lauren E. Glaze & Laura M. Maruschak, *Parents in Prison and Their Minor Children*, BUREAU OF JUSTICE STATISTICS (2010), *available at* https://www.bjs.gov/content/pub/pdf/pptmc.pdf.

[271]*Id.*

[272]*Id.*

[273]*Id.*

[274]*Id.*

[275]James M. Conway et al., *Impact of Caregiver Arrest on Minor Children: Implications for Use of Family Impact Statements* in U.S. Courts, 13 JUST. POL'Y J. 6 (2016).

(50.9%), and 87% of the caregivers interviewed said they provided financial support to their children.[276]

Parents who are arrested play an active role in their children's lives, which is disrupted when the parent is detained. Nearly all caregivers (93%) reported providing some kind of support to their children. 86.3% of male caregivers and 96.4% of female caregivers reported that they had provided at least three kinds of support in the month prior to their arrest. All caregivers who had lived with their children had provided at least three kinds of support, as did 77% of nonresidential caregivers (see Table 18).[277]

About half of detained male caregivers lived with their children at the time of their arrest. Studies show that non-residential and low-income fathers also play an active role in their children's lives, even if they do not provide formal child support.[278]

Unsurprisingly, then, pretrial detainees report that detention disrupts their children's

Table 18: Percentage of Children (N=108) Who Had Been Receiving Support from Detained Caregiver in the Month Prior to Caregiver's Arrest.[279]

		By Caregiver Gender		By Caregiver Guardianship		By Caregiver Living Arrangement	
Type of Support	All (*N* = 108)	Male Caregiver (*n* = 80)	Female Caregiver (*n* = 28)	Legal Guardian (*n* = 79)	Non-Guardian (*n* = 29)	Living with Child (*n* = 55)	Not Living with Child (*n* = 53)
Financial support	87.0	82.5*	100*	89.9	79.3	90.9	83.0
Helping at least once a week with	86.4	81.0*	100*	81.0*	100*	92.9	80.6
Listening or helping with personal problems [a]	86.4	81.0*	100*	83.3	94.1	89.3	83.9
Talking with teachers, coaches, etc. [a]	81.4	73.8*	100*	76.2	94.1	92.9	71.0*
Transportation at least once a week	79.6	76.3	89.3	81.0	75.9	94.5	64.2*
Watching the child at least once a week	74.1	68.8*	89.3*	74.7	72.4	87.3	60.4*
Government assistance	59.3	52.5*	78.6*	62.0	51.7	76.4	41.5*
Care at least once a week for medical or special	25.0	22.5	32.1	29.1	13.8	32.7	17.0
At least 3 types of support	88.9	86.3	96.4	89.9	86.2	100.0*	77.4

relationships with them; the longer the period of pretrial detention, the more likely caregivers were to report negative impacts on children.[280] The arrest and detention of a parent can create multiple problems, such as: loss of financial support or eligibility for government benefits; stress and emotional trauma; financial costs associated with the parent's detention, such as expenses for travel and telephone calls; increased child care expenses to replace caregiving done by the detained parent; changes in child care or custody arrangements; disruption of the non-arrested parent's employment (whose ability to work may be limited by increased child care responsibilities); or difficulties in school.[281]

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[276] *Id.* at 6.

[277] *Id.* at 11.

[278] Jo Jones & William Mosher, *Fathers' Involvement With Their Children: United States, 2006-2010*, 71 NATIONAL HEALTH STATISTICS REPORTS (Dec. 20, 2013), *available at* https://www.cdc.gov/nchs/data/nhsr/nhsr071.pdf. Jennifer B. Kane et al., How Much In-Kind Support Do Low-Income Nonresident Fathers Provide? A Mixed-Method Analysis, 77 J. MARRIAGE & FAMILY 591 (June 2015).

[279] Conway, *supra* note 10.

[280] Holsinger, *supra* note 11.

[281] *See, e.g. Harvard Report* at 7.

B. Best Practices

1. Standards on Bail from Professional Organizations

A number of organizations, including the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA), have identified standards governing pretrial release and detention. As described below, the standards for both the ABA and the NAPSA provide that no one should be detained solely because of the inability to raise funds for monetary bail, and financial conditions should not be set by reference to a predetermined schedule of amounts fixed according to the nature of the charge. In addition, the standards for both organizations provide that preventive detention should be available in certain categories of cases, with appropriate procedural safeguards, where an accused is assessed as posing an unacceptably high risk to public safety or an unacceptably high risk of failure to appear.

a. American Bar Association

The ABA has long identified problems with pretrial detention. The ABA Standards for Criminal Justice: Pretrial Release, approved in 2002, notes in an introduction:

> The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings.[282]

The ABA Standards provide that release on financial conditions "should be used only when no other conditions will ensure appearance" and "should not be employed to respond to concerns for public safety." The Commentary to the Standards stresses that the practice of setting high money bail in situations where the defendant is regarded as posing a risk of dangerousness should be prohibited. Before imposing financial conditions of release, the ABA recommends, a court "should first consider releasing the defendant on an unsecured bond." If an unsecured bond is deemed insufficient, "bail should be set at the lowest level necessary to ensure the defendant's appearance and with regard to a defendant's financial ability to post bond."[283]

The ABA Standards state that "[t]he judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay."[284] The Commentary recommends that financial release conditions should be used "only as an incentive for released defendants to appear in court and not as a subterfuge for detaining defendants."[285] "Detention should only result from an explicit detention decision, at a hearing specifically designed to decide that question, not from the defendant's inability to afford the assigned bail."[286] The Standards also provide that "compensated sureties should be abolished." When financial bail is imposed, the ABA recommends, "the defendant should be released on the deposit of cash or securities with the court of not more than 10% of the amount of the bail, to be returned at the conclusion of the case."[287] According to the Standards, if a defendant is not released on personal recognizance, the judicial officer must "include in the record a statement, written or oral, of the reasons for this decision."[288]

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[282]ABA STANDARD 10-1.1, *Purposes of Pretrial Detention.* ABA STANDARDS FOR CRIMINAL JUSTICE: PRETRIAL RELEASE (3d ed. 2007).
[283]ABA STANDARD 10-1.4, *Conditions of Release*; *see also* ABA STANDARD 10-5.3, *Release on Financial Conditions.*
[284]ABA STANDARD 10-1.4, *Conditions of Release*.
[285]Commentary, ABA STANDARD 10-1.4, *Conditions of Release.*
[286]*Id.*
[287]ABA STANDARD 10-1.4, *Conditions of Release*.
[288]ABA STANDARD 10-5.1, *Release on Defendant's Own Recognizance*.

Under the Standards, a judicial officer should order detention only in certain categories of violent or dangerous offenses, offenses committed while under supervision, or where there is a substantial risk of flight, failure to appear, or obstruction of justice. Pretrial detention hearings should be subject to various procedural protections for defendants including that the government proves "by clear and convincing evidence that no condition or combination of conditions of release will reasonably ensure the defendant's appearance in court or protect the safety of the community or any person."[287]

In addition, the ABA Standards provide for a mandatory issue of citation for minor offenses, subject to certain exceptions, and state that it "should be the policy of every law enforcement agency to issue citations in lieu of arrest or continued custody to the maximum extent consistent with the effective enforcement of the law."[290]

b. National Association of Pretrial Services Agencies

In 2004, NAPSA approved updated Standards on Pretrial Release. Like the ABA Standards, the NAPSA Standards provide that "[t]he judicial officer should not impose a financial condition of release that results in the pretrial detention of a defendant solely due to the defendant's inability to pay." The Standards state that "[r]elease on financial conditions should be used only when no other conditions will provide reasonable assurance that the defendant will appear for court proceedings." In addition, "[f]inancial conditions should never be used in order to detain the defendant."[291]

According to the NAPSA Standards, when financial conditions are imposed, the court should first consider releasing the defendant on an unsecured bond. If security is deemed necessary, "bail should be set at the lowest level necessary to provide reasonable assurance that the defendant will appear for court proceedings and with regard to the defendant's financial ability to post the bail." Moreover, "[w]hen financial bail is imposed, the defendant should be released on the deposit of cash or securities with the court of not more than 10% of the amount of the bail, to be returned at the conclusion of the case." Like the ABA Standards described above, the NAPSA Standards provide that "[f]inancial conditions should not be employed to respond to concerns for public safety" and "compensated sureties should be abolished."[292]

2. Positions on Bail of Governmental Entities

Recently, governmental entities—including the U.S. Department of Justice (USDOJ), state attorneys general, and city attorneys and mayors—have expressed positions on the use of money bail.

The U.S. Department of Justice has expressed its views on money bail systems through a series of letters, position statements, and amicus briefs. On March 14, 2016, the USDOJ published a "Dear Colleague" letter that explains that "basic constitutional principles" require that "[c]ourts must not employ bail or bond practices that cause indigent defendants to remain incarcerated solely because they cannot afford to pay for their release." The letter stated: "As the Department of Justice set forth in detail in a federal court brief last year, and as courts have long recognized, any bail practices that result in incarceration based on poverty violate the Fourteenth Amendment."[293]

The USDOJ letter cited to its Statement of Interest filed in *Varden v. City of Clanton*, a federal case challenging an Alabama city's money bail practices.[294] In that Statement of Interest,

[289]ABA STANDARD 10-5.9, *Eligibility for Pretrial Detention and Initiation of the Detention Hearing*; ABA STANDARD 10-5.10, *Procedures governing pretrial detention hearings: judicial orders for detention and appellate review*.

[290]ABA STANDARD 10-2.2, *Mandatory Issuance of Citation for Minor Offenses*.

[291]NAPSA STANDARD 1.4.

[292]*Id.*

[293]Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division, and Lisa Foster, Director, Office for Access to Justice, *Joint "Dear Colleague" Letter* (March 14, 2016), *available at* https://www.justice.gov/crt/file/832461/download.

[294]Statement of Interest of the United States, *United States Varden v. City of Clanton*, No. 2:15-cv-34-MHT-WC, 2015 WL 5387219 (M.D. Ala., Feb. 13, 2015).

the USDOJ said: "Incarcerating individuals solely because of their inability to pay for their release, whether through payment of fines, fees, or a cash bond, violates the Equal Protection Clause of the Fourteenth Amendment."[295] The USDOJ stressed that this practice "not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy."[296]

The USDOJ also submitted an amicus brief in a case pending in the U.S. Court of Appeals for the Eleventh Circuit, *Walker v. City of Calhoun*. The USDOJ's brief urged the Eleventh Circuit to "affirm the district court's holding that a bail scheme violates the Fourteenth Amendment if, without a court's meaningful consideration of ability to pay and alternative methods of assuring appearance at trial, it results in the detention of indigent defendants pretrial."[297]

The Maryland Attorney General's Office of Counsel to the General Assembly recently issued an opinion letter relating to Maryland's cash bail system. The letter stated its view "that the Court of Appeals would conclude that the State's statutory law and court rules should be applied to require a judicial officer to conduct an individualized inquiry into a criminal defendant's ability to pay a financial condition of pretrial release."[298] In addition, the letter stated that, if ruling on the issue today, the Maryland appellate courts "would likely conclude that where the judicial officer has determined that pretrial detention is not warranted, the imposition of bail or other financial condition of release that a defendant cannot pay implicates substantive due process and equal protection considerations, and may be found to be excessive under the Eighth Amendment to the U.S. Constitution and Article 25 of the Maryland Declaration of Rights."[299]

In response to a challenge to Massachusetts' bail system, the Massachusetts Attorney General has urged the Supreme Judicial Court to refer the matter to the Court's rules committee "with a request that the Committee issue guidance that will ensure that no defendant is detained pending trial solely because he or she lacks the financial resources to post bail."

Finally, in response to a lawsuit challenging the San Francisco bail system, San Francisco City Attorney Dennis Herrera announced that the City would not be defending against the lawsuit.[300] Herrera noted that cash bail "creates a two-tiered system: one for those with money and another for those without."[301] According to Herrera: "It doesn't make anybody safer. It's not right, and it's not in keeping with our Constitution. It's time for it to stop. To echo U.S. Attorney General Loretta Lynch, we need to ensure that in the United States there is no price tag on justice."[302]

C. Policy Developments in Other States

In light of the recent increasing awareness of the costs and ineffectiveness of pretrial detention, and in line with recommendations for national best practices, there has been a trend toward evidence-based reforms to pretrial release and detention. Reforms in some jurisdictions have also been motivated by concerns that indigent defendants more frequently are subject to detention pending trial whereas those with resources can pay for their release. The selected jurisdictions below have recently introduced evidence-based reforms to their pretrial release practices and have reduced

[295] *Id.*

[296] *Id.*

[297] Brief for the United States as Amicus Curiae, *Walker v. City of Calhoun* No. 4:15-cv-0170-HLM (11th Cir. Aug. 18, 2016), https://www.documentcloud.org/documents/3031807-Walker-v-City-of-Calhoun-US-Amicus-Brief.html.

[298] Letter to Delegates from Sandra Benson Brantley (Counsel to the General Assembly), Office of Counsel to the General Assembly 11 (Oct. 11, 2016), *available at* http://www.marylandattorneygeneral.gov/News%20Documents/Rules_Committee_Letter_on_Pretrial_Release.pdf

[299] *Id.* at 7.

[300] Bob Egelko, *SF city attorney Dennis Herrera condemns state's bail system*, SFGATE (Nov. 1, 2016 8:07 PM), http://www.sfgate.com/bayarea/article/S-F-city-attorney-condemns-state-s-bail-cash-10436590.php.

[301] Paul Elias, *San Francisco calls on state to abolish cash bail for poor*, THE ORANGE COUNTY REGISTER (Nov. 1, 2016 4:41 PM), http://www.ocregister.com/articles/bail-733977-cash-francisco.html.

[302] *Herrera says state bail schedule is unconstitutional, announces he won't defend it in lawsuit*, CITY ATTORNEY OF SAN FRANCISCO (Nov. 1, 2016), http://www.sfcityattorney.org/2016/11/01/herrera-says-state-bail-schedule-unconstitutional-announces-wont-defend-lawsuit/.

the reliance on secured money bail in their systems:

2011: Kentucky

In 1976, Kentucky made it illegal to profit from bail, which effectively eliminated the bail bond industry. At that time, the state introduced the use of risk assessment to aid in bail determinations. Nevertheless, "jails continued to fill with defendants unable to afford [monetary] bail."[303]

In 2011, Kentucky enacted the Public Safety and Offender Accountability Act, omnibus legislation aimed at using evidence-based practices in the criminal justice system.[304] The legislation includes a requirement to use an empirically validated risk assessment instrument to predict the likelihood of re-arrest and failure to appear. (As a result, Kentucky now uses the Arnold Foundation's Public Safety Assessment.) In addition, the legislation provides that if an individual is assessed as having a low or moderate risk of flight, failure to appear, and danger to others, then the court shall order the defendant released on an unsecured bond or recognizance, subject to conditions the court may order. The legislation also defines crimes carrying sentences of "presumptive probation" and provides that an individual charged with such a crime shall be released on recognizance or on an unsecured bond, subject to conditions. Such individuals shall not to be subject to monetary bail unless the court finds (and documents in a written order) that the defendant presents a flight risk or is a danger to himself or others. Finally, the legislation caps the amount of monetary bail that may be imposed in some cases and institutes a system by which some defendants can "earn" money towards satisfying monetary bail for each day spent detained.

As of 2014, the failure to appear rate in Kentucky was 13%, and 13% of criminal defendants were arrested while awaiting trial.[305] These rates are below national averages.

2013: Colorado

In 2013, Colorado enacted legislation[306] that was the first major reform to the state's pretrial bail statutes since 1972.[307] The legislation redefines "bail" more broadly to encourage nonmonetary conditions of release and reduces reliance on charge-based bail schedules. The legislation creates a presumption in favor of the least restrictive appropriate conditions of release, requires judges to "consider all methods of bond and conditions of release to avoid unnecessary pretrial incarceration and levels of community supervision," and mandates that release conditions be based on individualized assessment of risk (which must include consideration of the results of empirically validated risk assessment tools). Nonmonetary release conditions must address specific individualized concerns. Release conditions must take into account "the person's financial condition," and monetary conditions must be "reasonable and necessary to ensure the appearance of the person in court or the safety of any . . . persons . . . in the community." The legislation also creates a right to file a motion for relief from monetary bail conditions. Finally, the legislation encourages judicial districts to create systems of pretrial services and supervision.

2014: Mecklenberg County, North Carolina

North Carolina's Mecklenberg County recently adopted reforms that have produced promising results. In particular, the county introduced an evidence-based risk assessment tool, created a pretrial services division, and adopted practices to identify low-risk detainees and find ways to release

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[303]Alysia Santo, *Kentucky's Protracted Struggle to Get Rid of Bail*, The Marshall Project (Nov. 12, 2015 7:15 AM), https://www.themarshallproject.org/2015/11/12/kentucky-s-protracted-struggle-to-get-rid-of-bail#.2YOdJ3cCB.

[304]HB 463, 2011 Reg. Sess. (Kentucky).

[305]Santo, *supra.*

[306]H.B. 13-1236 (Colo. 2013) http://www.leg.state.co.us/clics/clics2013a/csl.nsf/fsbillcont/6E02E86379A7876487257AF0007C1217?Open&file=1236_enr.pdf.

[307]For a thorough account of the history of Colorado's pretrial release system, and the 2013 legislation, see Timothy R. Schnacke, Best Practices in Bond Setting: Colorado's New Pretrial Bail Law (2013), https://www.pretrial.org/download/law-policy/Best%20Practices%20in%20Bond%20Setting%20-%20Colorado.pdf.

them safely. The county has reported that, by releasing low-risk accused from detention, the total jail population dropped by 40% as of July 2016 with no increase in crime.[308]

2014: New Jersey

In 2014, New Jersey enacted legislation to reform the state's bail system.[309] In addition, the state repealed the state constitutional right to bail through a ballot initiative. The reforms, which took effect on January 1, 2017, shift New Jersey's bail practices from a money-based to a risk-based system.

Under the reforms, a risk-based assessment of all "eligible defendants" must be conducted,[310] and such defendants may be held no longer than 48 hours after arrest before a release decision is made. Pretrial detention is available for certain crimes if, after a hearing, the court finds by "clear and convincing evidence that no amount of monetary bail, non-monetary conditions of pretrial release or combination of monetary bail and conditions would reasonably assure the eligible defendant's appearance in court when required, the protection of the safety of any other person or the community, and that the eligible defendant will not obstruct or attempt to obstruct the criminal justice process." In considering monetary bail, the court "may consider the amount of monetary bail only with respect to whether it will, by itself or in combination with non-monetary conditions, reasonably assure the eligible defendant's appearance in court when required." A presumption of release generally applies. However, certain crimes establish a presumption of pretrial detention, and the court may order detention in those cases when the prosecutor moves for a pretrial detention hearing and the eligible defendant fails to rebut the presumption. The legislation requires the creation of a statewide pretrial services program.

2016: New York City

In July 2015, New York City Mayor Bill de Blasio announced that $17.8 million would be available to supervise 3,000 eligible defendants in the community rather than detaining them in jail pending trial.[311] The program gives judges the option of releasing defendants to this "supervised release" program rather than setting monetary bail in their cases. The target population of the program is individuals assessed as a low public safety risk but who would likely have been subject to a monetary bail requirement absent the supervised release program.

2016: Illinois

In May 2015, the Illinois legislature passed legislation establishing a pilot project in Cook County (Chicago) for expedited resolution of cases against indigent persons accused of certain property offenses (e.g., trespassing and theft under $300).[312] In cases not resolved within 30 days, defendants will be released on their own recognizance or under electronic monitoring.

2016: Alaska

In 2016, Alaska enacted criminal justice reform legislation aimed at implementing evidence-based practices.[313] The legislation requires creation of a pretrial supervision program and the use of risk assessment tools. In addition, the legislation eliminates monetary bail for many lower-level offenses where the defendant is assessed as low risk (or, for some offenses, low or moderate risk). Monetary bail is permissible for higher risk individuals charged with these offenses, but only where

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[308] *Mecklenburg County Recognized as Model for Pretrial Reform*, MECKLENBURG COUNTY, NORTH CAROLINA NEWS (July 1, 2016), http://charmeck.org/mecklenburg/county/news/Pages/Mecklenburg-County-Recognized-as-Model-for-Pretrial-Reform.aspx.

[309] S946/A1910 (New Jersey, 2014).

[310] An "eligible defendant" is "a person for whom a complaint-warrant is issued for an initial charge involving an indictable offense or a disorderly persons offense" unless otherwise provided by the legislation.

[311] http://www1.nyc.gov/office-of-the-mayor/news/471-15/mayor-de-blasio-17-8-million-reduce-unnecessary-jail-time-people-waiting-trial.

[312] SB 202 (Illinois 2016), http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=099-0436; *see also* http://www.reuters.com/article/us-usa-chicago-bail-idUSKCN0PQ1UN20150716.

[313] SB 91 (Alaska 2016), http://www.legis.state.ak.us/PDF/29/Bills/SB0091Z.PDF.

the prosecution can show by "clear and convincing evidence" that no nonmonetary conditions of release can reasonably ensure trial appearance and public safety. The legislation requires that, in determining the conditions of release, the court must consider the "assets available to the person to meet monetary conditions of release."

2016: Indiana

In 2016, the Indiana Supreme Court adopted a new criminal procedure rule to address the state's bail system. Rule 26 took effect immediately in nine pilot county courts, and will become effective January 1, 2018 in all courts.[314] Under the rule, the court should release an arrestee without monetary bail or surety, unless the arrestee: (1) poses a "substantial" flight risk; (2) poses a "substantial" danger to themselves or others; (3) is charged with murder or treason; or (4) at the time of arrest, was on pretrial release for an unrelated offense, or on probation, parole or community supervision. To determine whether the arrestee poses a "substantial" danger or flight risk, the court should utilize a specified evidence-based risk assessment tool approved and administered by the Indiana Office of Court Services. The court does not have to order an assessment if administering the assessment will delay the person's release.

2016: New Mexico

In 2016, New Mexico voters approved a constitutional amendment addressing the state's bail system.[315] The amendment was proposed in response to the New Mexico Supreme Court's decision in *State v. Brown*, which held that intentionally setting a high and unattainable bail amount for the purpose of detention was unlawful.[316] Constitutional Amendment 1, passed by ballot initiative, provides that "[a] person who is not detainable on grounds of dangerousness nor a flight risk in the absence of bond and is otherwise eligible for bail shall not be detained solely because of financial inability to post a money or property bond." A defendant who is neither a danger nor a flight risk and "who has a financial inability to post a money or property bond" may file "a motion with the court requesting relief from the requirement to post bond" and "[t]he court shall rule on the motion in an expedited manner." Bail may be denied in felony cases "if the prosecuting authority requests a hearing and proves by clear and convincing evidence that no release conditions will reasonably protect the safety of any other person or the community." The court's decision denying bail is appealable, and such appeals "must be given preference over all other matters."[317]

D. Litigation Challenging the Release Decision

In the past several years, advocates have filed numerous lawsuits around the country challenging the use of financial conditions of release. In some cases, courts have entered injunctions requiring reforms. In other cases, jurisdictions have agreed to reform their systems and entered into settlement agreements. Some cases are still pending. Recent litigation has raised challenges to pretrial detention and fines based on equal protection and due process grounds.

One category of lawsuits challenging money bail systems involves claims that the pretrial detention of individuals based solely on their inability to meet the financial conditions of release violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment of the U.S. Constitution. Since the beginning of 2015, at least seventeen challenges of this nature have been filed in 20 different states by Equal Justice under Law, a non-profit civil rights organization.[318] Of those cases, nine have resulted in settlement agreements, six are still pending, and injunctions were

[314]http://www.in.gov/judiciary/files/order-rules-2016-0907-criminal.pdf.

[315]Constitutional Amendment 1 (New Mexico, 2016), http://www.sos.state.nm.us/uploads/files/CA1-SJM1-2016.pdf.

[316]*State v. Brown*, 338 P.3d 1276 (N.M. 2014). The states include Alabama, California, Georgia, [310]Kansas, Louisiana, Massachusetts, Mississippi, Missouri, Tennessee, and Texas.

[317]New Mexico Legislative Council Service, Summary of and Arguments For and Against the Constitutional Amendment Proposed by the Legislature in 2016, https://www.nmlegis.gov/Publications/New_Mexico_State_Government/Constitutional_Amendment/Constitutional_Amendments_2016.pdf.

[318] The states include Alabama, California, Georgia, Kansas, Louisiana, Massachusetts, Mississippi, Missouri, Tennessee, and Texas.

issued in the remaining two. Below, we describe the arguments asserted in these lawsuits and the results of the litigation in various jurisdictions.

In challenging money bail systems on equal protection and due process grounds advocates rely on three U.S. Supreme Court decisions: *Williams v. Illinois*,[319] *Tate v. Short*,[320] and *Bearden v. Georgia.*[321]

In *Williams v. Illinois*, the U.S. Supreme Court struck down on equal protection grounds an Illinois statute that required a misdemeanant who failed to pay court-ordered fines and court costs to be kept in jail beyond the term of his 12-month sentence. The Court reasoned that "a law nondiscriminatory on its face may be grossly discriminatory in its operation" and concluded that "the Illinois statute as applied to Williams, works an invidious discrimination solely because he is unable to pay the fine."[322] The Court observed that although "[o]n its face, the statute extends to all defendants an apparently equal opportunity for limiting confinement to the statutory minimum by satisfying a money judgment," this "equal opportunity" is an "illusory choice" for indigent defendants.[323]

The next year, in *Tate v. Short*, the Court struck down a statute that punished traffic offenders by imposing fines and allowed unpaid fines to be converted to imprisonment at the rate of five dollars for each day in jail. The Court concluded that "petitioner's imprisonment for nonpayment constitutes precisely the same unconstitutional discrimination" as in *Williams* because "petitioner was subjected to imprisonment solely because of his indigency."[324]

In *Bearden v. Georgia*, the defendant challenged the court's revocation of his probation for failure to pay a fine and restitution. The Court observed that "[d]ue process and equal protection principles converge in the Court's analysis in these cases" and concluded that "if the State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it."[325]

Building on these Supreme Court precedents, advocates assert that imprisoning someone pending trial based on their inability to make a monetary payment violates equal protection and due process rights. Advocates stress that the logic of *Williams*, *Tate*, and *Bearden*, all related to post-conviction detention, is all the more compelling in a pretrial context where guilt has not been established.

1. Equal Protection/Due Process Litigation and Settlement Agreements Nationwide

A significant case challenging the financial conditions of release is currently pending before the U.S. Court of Appeals for the Eleventh Circuit. *Walker v. City of Calhoun*, involves a constitutional challenge to a municipality's money bail system. The City of Calhoun imposes fixed amounts of secured money bail for traffic and misdemeanor offenses. Arrestees who cannot post money bail may wait several days before they can appear in court and seek an adjustment.

The U.S. District Court for the Northern District of Georgia granted plaintiffs' request for a preliminary injunction, stating: "Any bail or bond scheme that mandates payment of pre-fixed amounts for different offenses to obtain pretrial release, without any consideration of indigence or other factors, violates the Equal Protection Clause."[326] The court stated that "[a]ttempting to incarcerate

[319]Williams v. Illinois, 399 U.S. 235 (1970).
[320]Tate v. Short, 401 U.S. 395 (1971).
[321]Bearden v. Georgia, 461 U.S. 660 (1983).
[322]*Williams*, 399 U.S. at 242.
[323]*Id.*
[324]*Tate*, 401 U.S. at 298-99.
[325]*Bearden*, 461 U.S. at 667
[326]Walker v. City of Calhoun, Georgia, No. 4:15-cv-0170-HLM, 2016 WL 361612 (N.D. Ga. Jan. 28, 2016) (order granting preliminary injunction), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/04/Opinion-Granting-Preliminary-Injunction.pdf.

or to continue incarceration of an individual because of the individual's ability to pay a fine or fee is impermissible,"[327] and "[t]his is especially true where the individual being detained is a pretrial detainee who has not yet been found guilty of a crime."[328]

The City of Calhoun appealed the district court's decision to the Eleventh Circuit. Numerous organizations have submitted amicus briefs in the case, including the U.S. Department of Justice. The USDOJ's brief urges the Eleventh Circuit to affirm the district court's holding, and stresses that "a jurisdiction may not use a bail system that incarcerates indigent individuals without meaningful consideration of their indigence and alternative methods of assuring their appearance at trial."[329]

The USDOJ expressed similar views in *Varden v. The City of Clanton*, a lawsuit filed by Equal Justice under Law in federal court in Alabama. In *Varden*, the plaintiff alleged that the City of Clanton violated her Fourteenth Amendment rights because she was too poor to pay the amount of money bail required under the city's bail schedule.[330] The USDOJ filed a Statement of Interest in this case stating: "Incarcerating individuals solely because of their inability to pay for their release, whether through payment of fines, fees, or a cash bond, violates the Equal Protection Clause of the Fourteenth Amendment."[331] The USDOJ stressed that the practice of bail bond schedules "not only violates the Fourteenth Amendment's Equal Protection Clause, but also constitutes bad public policy."[332]

The parties in *Varden* ultimately reached a settlement agreement restricting the use of money bail.[333] In accepting the parties' agreement and entering final judgment, the court concluded that "the use of a secured bail schedule to detain a person after arrest, without an individualized hearing regarding the person's indigence and the need for bail or alternatives to bail, violates the Due Process Clause of the Fourteenth Amendment."

Lawsuits filed by Equal Justice under Law in Mississippi, Missouri, Louisiana, and Kansas have also resulted in settlement agreements. In accepting agreements, several courts have entered declaratory judgments stating: "No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond."[334] In *Thompson v. Moss Point* (Mississippi) and

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[327] Id. at *49-50.

[328] Id. at *51.

[329] Brief for the United States as Amicus Curiae at 29, *Walker v. City of Calhoun, Georgia*, No. 4:15-cv-0170-HLM (11th Cir. Aug. 18, 2016), *available at* https://www.documentcloud.org/documents/3031807-Walker-v-City-of-Calhoun-US-Amicus-Brief.html; *see also id.* at 32 ("[T]he Court should affirm the district court's holding that a bail scheme violates the Fourteenth Amendment if, without a court's meaningful consideration of ability to pay and alternative methods of assuring appearance at trial, it results in the detention of indigent defendants pretrial.").

[330] Varden v. The City of Clanton, No. 215CV34-MHT, 2015 WL 5387219 at *1 (M.D. Ala. Sept 14, 2015) (settlement agreement), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/04/Opinion-Granting-Declaratory-Judgment.pdf.

[331] Statement of Interest of the United States at 1, *Jones v. The City of Clanton*, No. 215CV34-MHT, 2015 WL 5387219 (M.D. Ala. Sept. 14, 2015), *available at* https://www.justice.gov/file/340461/download.

[332] *Id.*

[333] *Jones v. The City of Clanton*, No. 215CV34-MHT at *4 (M.D. Ala. Sept. 14, 2015) (opinion granting declaratory judgment) (available at http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/04/Opinion-Granting-Declaratory-Judgment.pdf). The agreement provides that all individuals arrested on misdemeanor violations will be released on unsecured appearance bonds unless they have an outstanding warrant for failure to appear. If an individual has such a warrant, a monetary bond may be imposed. In addition, release may be denied to an individual who poses a danger to himself or others. In such circumstances, a hearing must be held within 48 hours for an individualized determination of the person's ability to pay and alternatives to money bail. Another case challenging an Alabama city's bail system also reached a settlement agreement. *Cooper v. City of Dothan*, No. 1:15-CV-425-WKW, 2015 WL 10013003, at *1 (M.D. Ala. June 18, 2015).

[334] *Thompson v. Moss Point*, No. 1:15CV182CG-RHW, 2015 WL 10322003, at *1 (S.D. Miss. Nov. 6, 2015) (declaratory judgment); *Pierce v. City of Velda City*, No. 4:15-cv-570-HEA, 2015 WL 10013006 at *1 (E.D. Mo. June 3, 2015) (declaratory judgment); *Martinez*, et al. v. *City of Dodge City and Ford County*, No. 2:15-cv-09344-DDC-TJJ at 1 (D. Kan. Oct. 21, 2015) (declaratory judgment).

Pierce v. The City of Velda City (Missouri), the cities agreed to eliminate secured money bail for all individuals arrested for offenses that could be prosecuted by the cities.[335] In *Powell v. The City of St. Ann* and *Snow v. Lambert* (Louisiana), and *Martinez v. City of Dodge City* (Kansas), the cities agreed to eliminate secure money bonds with a few exceptions.[336]

Lawsuits filed by Equal Justice under Law in Massachusetts, Texas, California, and Tennessee are still pending. In Commonwealth v. Wagle (Massachusetts), the court set money bail at $250 for a defendant charged with drug possession without a determination of the defendant's ability to pay that amount.[337] The petitioner has sought review from the Massachusetts Supreme Judicial Court arguing that "[d]espite the presumption of release without financial conditions and the requirement of consideration of financial resources, trial courts . . . routinely condition defendants' release on payment of money without first ensuring that those defendants have the ability to pay."[338] The petitioner alleges that courts violate due process and equal protection rights when they detain defendants pretrial "solely because the defendants cannot afford to meet financial conditions of release that were imposed without first ensuring that defendants have the ability to pay."[339] The Attorney General of Massachusetts has responded by asking the Court to refer the matter to the Court's Standing Advisory Committee on the Rules of Criminal Procedure "with a request that the Committee issue guidance that will ensure that no defendant is detained pending trial solely because he or she lacks the financial resources to post bail."[340]

In *Rodriguez v. Providence Community Corrections*, the plaintiff brought a class action lawsuit against several parties, including Rutherford County in Tennessee.[341] The U.S. District Court for the Middle District of Tennessee granted the plaintiff's preliminary injunction, stating that "the use of secured money bonds has the undeniable effect of imprisoning indigent individuals where those with financial means who have committed the same or worse probation violations can purchase their

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[335] *Thompson v. Moss Point*, No. 1:15CV182CG-RHW, slip op. at 2 (S.D. Miss. Nov. 12, 2015) (settlement agreement) and *Pierce v. City of Velda City*, No. 4:15-cv-570-HEA, 2015 WL 10013006 at *1 (E.D. Mo. June 3, 2015) (declaratory judgment), *available at* http://equaljusticeunderlaw.org/wp/wp-content/uploads/2015/04/Velda-City-Final-Judgment-and-Injunction.pdf.

[336] *Powell et al. v. The City of St. Ann*, No. 4:15-cv-00840-RWS, slip op. at 2 (E.D. Mo. Sept. 3, 2015) (settlement agreement) (no money bail except for individuals charged with intentionally assaultive or threatening conduct); *Snow v. Lambert*, No. CV 15-567-SDD-RLB, 2015 WL 5071981 at *2 (M.D. La. Sept. 3, 2015) (settlement agreement) (no money bail except for certain offenses including assault and operating a vehicle while intoxicated); *Martinez, et al. v. City of Dodge City and Ford County*, No. 2:15-cv-09344-DDC-TJJ at 1 (D. Kan. Oct. 21, 2015) (declaratory judgment) (no money bail except for charges such as assault and domestic violence).

[337] Amended Petition for Relief at 10, *Commonwealth v. Wagle*, No. SJ-2016-0334 (Sept. 23, 2016). At a subsequent bail-review hearing, the court did not reduce the petitioner's bail. The court again did not make a finding that the defendant could pay the $250 bail, and instead based its refusal to reduce bail on the legal conclusion that the fact that a person cannot afford a bail amount does not make that bail unreasonable. *Id.* at 11-12.

[338] *Id.* at 5. The petitioner is not facially challenging the Massachusetts bail statute, which requires judges to consider defendants' financial resources when setting bail. *Id.* at 1

[339] *Id.* at 16.

[340] Letter to Justice Hines from Atty. Kimberly West (Chief, Criminal Bureau) & Atty. Genevieve Nadeau (Chief, Civil Rights), *available at* http://www.ma-appellatecourts.org/display_docket.php?src=party&dno=SJ-2016-0334I.

[341] *Rodriguez v. Providence Cmty. Corr., Inc.*, No. 3:15-CV-01048, 2015 WL 9239821 at *1 (M.D. Tenn. Dec. 17, 2015) (order granting preliminary injunction), *appeal dismissed* (Mar. 15, 2016). Although this case involved probation violations specifically, the plaintiff alleged that individuals who can afford to pay the bond payment are able to purchase immediate freedom and return for their revocation hearings whereas those who cannot afford to make the payment are detained until their hearings.

[342] *Id.* at *7.

freedom."[342] After initially appealing, the defendants voluntarily dismissed the appeal and settlement negotiations are ongoing in the district court.[343]

In both cases pending in California, the courts denied the plaintiffs' preliminary injunction requests but allowed some claims in the cases to move forward.[344] In the case challenging San Francisco's bail system, the court allowed the equal protection and due process claims to advance against the county sheriff.[345] Following this ruling, in November 2016, San Francisco City Attorney Dennis Herrera announced that the city would not be defending against the lawsuit.[346] Herrera stated that he agreed that the cash bail requirement is unconstitutional because it "creates a two-tiered system: one for those with money and another for those without."[347]

2. Potential Equal Protection/Due Process Challenge in Connecticut

The Connecticut Supreme Court in *State v. Anderson* recently upheld a monetary bond as a condition of release of the defendant charged with new violent crimes at the psychiatric facility.[348] But that case did not involve a claim that Connecticut's bail system violates the equal protection and substantive due process rights of indigent defendants.[349] Such a claim has not been raised yet in Connecticut's state or federal courts.

The basic argument asserted by Equal Justice under Law in jurisdictions around the country is that it is a violation of equal protection and due process rights to hold a person in custody after arrest solely because the person is too poor to post a monetary bond. Thus, the advocates assert, a system is unconstitutional if it detains an individual for failing to meet a financial condition of release that was imposed without first ensuring that the individual has an ability to meet the condition.

Although many of Equal Justice under Law's challenges have been filed in jurisdictions that use bail schedules (i.e., that fix bail according to the charged offense), the logic of the constitutional argument extends to jurisdictions where there is discretion to impose bail. Indeed, in Massachusetts, as in Connecticut, courts have discretion to set the money bail amount at a defendant's first court appearance. Both Massachusetts[350] and Connecticut[351] have statutes that allow a judge to consider a defendant's "financial resources" in imposing money bail. As a result, similarly-situated defendants

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[343]Several recent cases have challenged the constitutionality of "debtor's prisons," in which people are jailed because they cannot afford to pay fines and fees in misdemeanor cases. The plaintiffs in these cases, like in the lawsuits directly challenging money bail, allege an equal protection issue because "[at] any moment, a wealthier person in the Plaintiffs' position could have paid a sum of cash and been released from jail." *Fant v. City of Ferguson*, 107 F. Supp. 3d 1016, 1021 (E.D. Mo. 2015), *on reconsideration*, No. 4:15-CV-00253-AGF, 2015 WL 4232917 (E.D. Mo. July 13, 2015). Like the lawsuits regarding bail, the plaintiffs also allege that their rights are violated under the Fourteenth Amendment because they are imprisoned without any inquiry into their ability to pay. Complaint at 2, *Cain et al. v. City of New Orleans*, No. 2:15-cv-04479-SSV-JCW (E.D. La. Sept. 17, 2015). Thus far, two of the "debtor's prison" cases have reached settlement agreements that also reduce the use of secured money bonds. See *Bell v. The City of Jackson*, No. 3:15-cv-732 TSL-RHW, slip op. at 15 (S.D. Miss. June 20, 2016) (settlement agreement) (providing that individuals arrested for misdemeanors shall not be required to post money bonds); *Jenkins et al. v. City of Jennings*, No. 4:15-cv-00252-CEJ (E.D. Mo. July 13, 2016) (order granting permanent injunction) (providing that every person arrested must be offered release on their own recognizance or an unsecured bond as soon as practicable after booking, with the exception of assaultive offenses).

[344]Order on Pending Motion at 9, *Buffi000000n, et al. v. City and County of San Francisco, et al.*, No. 15-cv-04959-YGR (N.D. Cal. Feb. 1, 2016); *Welchen v. Harris et al.*, No. 2:16-cv-00185-TLN-KJN at *4-5 (E.D. Cal. Feb. 4, 2016) (order

[345]Maria Dinzeo, *Parts of Money Bail Fight in California Advance*, COURTHOUSE NEWS SERVICE (Oct. 17, 2016, 6:39 PM), http://www.courthousenews.com/2016/10/17/parts-of-money-bail-fight-in-california-advance.htm.

[346]Bob Egelko, *SF city attorney Dennis Herrera condemns state's bail system*, SFGATE, (Nov. 1, 2016 8:07 PM), http://www.sfgate.com/bayarea/article/S-F-city-attorney-condemns-state-s-bail-cash-10436590.php.

[347]Paul Elias, *San Francisco calls on state to abolish cash bail for poor*, THE ORANGE COUNTY REGISTER (Nov. 1, 2016 4:41 PM), http://www.ocregister.com/articles/bail-733977-cash-francisco.html.

[348]*Anderson*, 319 Conn. at 309.

[349]This case is discussed in further detail in the Connecticut Jurisprudence section of this report. *See supra* Pretrial Release and Detention in Connecticut.

[350]Mass. Gen. Laws ch. 276 §58

[351]Under Conn. Gen. Stat. § 54-64a, the court may consider the person's financial resources in determining his conditions of release.

with identical charges, risk assessment score, and even bond amounts may be released or detained simply based on their ability to post bail. This may open Connecticut to constitutional challenges based on equal protection and due process.

3. Recent Challenges to Bail Systems on Other Grounds

The lawsuits discussed above focus on equal protection and substantive due process challenges to the practice of detaining individuals who are unable to meet financial conditions of release. However, other challenges to money bail systems have been asserted in jurisdictions around the country.

The Eighth Amendment prohibits "excessive bail," which has been understood to mean that bail may not be set unreasonably high simply for the purpose of detaining a defendant.[352] In addition to Eighth Amendment challenges, some litigation efforts have been grounded on state constitutional provisions that guarantee a right to bail, and provide that such bail many not be excessive.

In *State v. Brown*, the New Mexico Supreme Court held that the trial court erred by requiring a $250,000 bond in a murder case based on the seriousness of the offense. The court held that the defendant "presented the district court with uncontroverted evidence demonstrating that nonmonetary conditions of pretrial release were sufficient to reasonably assure that defendant was not likely to pose a flight or safety risk."[353]

At the time, the New Mexico constitution guaranteed all persons be released from custody without being required to post excessive bail, except in certain capital cases and for narrow categories of repeat offenders. In reversing the decision of the trial court, the New Mexico Supreme Court observed that "[n]either the New Mexico Constitution nor our rules of criminal procedure permit a judge to set high bail for the purpose of preventing a defendant's pretrial release." The Court stated: "intentionally setting bail so high as to be unattainable is simply a less honest method of unlawfully denying bail altogether. If a defendant should be detained pending trial under the New Mexico Constitution, then that defendant should not be permitted any bail at all. Otherwise the defendant is entitled to release on bail, and excessive bail cannot be required."[354]

[352]U.S. Const. Amend. VIII.

[353]*Brown*, 338 P.3d at 1276.

[354]The decision had a far-reaching impact on pretrial practices in New Mexico and is discussed further in the *Policy Developments* in Other States section of this report. *See supra* Current Reforms.

RECOMMENDATIONS

Recommendation 1.

Legislation should be enacted requiring the court to make a finding on the record before imposing secured financial conditions in misdemeanor cases.

The Commission recommends that the General Assembly enact legislation requiring a sitting superior court judge to make a finding before ordering secured financial conditions of release in misdemeanor cases.

The Commission recommends the following proposal for consideration:

If the crime charged is a family violence misdemeanor, then no monetary condition may be imposed unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will:

- fail to appear as required in court;
- obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror, or
- engage in conduct that threatens the safety of another person.

If the crime charged is a non-family violence misdemeanor, then no monetary condition may be imposed unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will:

- fail to appear as required in court.

This recommendation would prevent the imposition of monetary conditions at the first appearance in misdemeanor cases unless there are specific findings that the condition is justified. The intent of the recommendation is to create a higher burden than exists under current law for the imposition of monetary conditions in misdemeanor cases.

While the Commission adopted this report unanimously, certain commissioners (Judge White, Attorney Farr, and Attorney Pierre) raised the possibility of including in Recommendation 1 a proposal that "public safety" be considered by the court in setting bond for all misdemeanors, not just those misdemeanors involving family violence offenses. The Commission agreed to submit with this report for consideration by the General Assembly the issue as raised by Judge White, Attorney Farr, and Attorney Pierre.

Recommendation 2.

The bail review period should be shortened and modified for certain individuals who remain detained after the imposition of secured financial conditions.

The Commission recommends adopting a shortened bail review period for certain individuals held on secured financial conditions along with a requirement that the defendant be released absent a finding justifying the continued detention.

The Commission recommends that, if a defendant is charged with a misdemeanor offense, then the defendant must return to court if still detained 14 days after the first appearance.

Upon the defendant's return to court, the court must remove the monetary condition of release for defendants charged with a family violence misdemeanor unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will:

- fail to appear as required in court;
- obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror; or

- engage in conduct that threatens the safety of another person.

Upon the defendant's return to court, the court must remove the monetary condition of release for defendants charged with a non-family violence misdemeanor unless the court finds that the monetary condition is necessary because, absent the condition, there is a serious risk that the defendant will:

- fail to appear as required in court;

The defendant may waive the requirement that return to court.

This recommendation provides for review after two weeks of monetary conditions imposed in misdemeanor cases that have caused a defendant to remain detained. In these circumstances, to support the continued imposition of the monetary condition, the court must make specific findings that justify the condition. This recommendation is designed to work in conjunction with Recommendation 1 to reduce the unnecessary pretrial detention of low-risk, indigent defendants.

Recommendation 3.

Legislation should be enacted permitting a defendant to deposit 10% of the bond amount with the court whenever a surety bond of $10,000 or less is imposed.

The proposal should provide that:

- A deposit of 10% of the bond amount in cash will automatically satisfy bonds of $10,000 or under. That is, a defendant with an imposed bond of $10,000 or less will be able to post that bond with a bail bondsmen or by posting 10% with the court.
- An arrestee may utilize this 10% option while detained at the police station after arrest and before court appearance.

Currently, the Practice Book permits judges to enter an order allowing a bond to be satisfied by the deposit of 10% of the bond amount in cash with the clerk. If the bond is not forfeited, the money is returned at the end of the case. See Connecticut Practice Book 38-8 ("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.").

Currently, if a judge does not enter an order permitting the 10% cash option, the option is not available. The 10% cash option is not available at all to arrestees at police stations prior to the first court appearance.

Recommendation 4.

Judicial Branch bail staff should have adequate opportunity to review and make release decisions following every warrantless custodial arrest.

The Commission recommends that the legislature increase access to bail commissioners during booking to allow for pretrial screening and risk-based release decision making shortly after each warrantless arrest. The Commission recommends that the relevant provision of the Connecticut General Statutes be amended as follows:

- The police may release someone without a bond or may release on a non-surety bond. However, police may not set surety bond amounts.
- The police must contact JB-CSSD promptly after an arrest and processing. A bail commissioner must interview an arrestee promptly (which can be done either in person or by video-conference).
- Bail commissioners may release an arrestee with no bond or set a bond amount.

- If the police disagree with the decision of the bail commissioner, the state's attorney can be contacted and can override the bail commissioner's decision.

Currently, the police may release someone without a bond or may set a surety or non-surety bond amount. Bail staff from the Judicial Branch Court Support Services Division may access arrestees while they are detained at police stations (prior to their first court appearance) and conduct interviews and risk assessments. Bail commissioners may change the bond amount set by the police (or may eliminate the bond). If the police disagree with the decision of the bail commissioner, the state's attorney can be contacted and can override the bail commissioner's decision. In 2015, about 40,000 custodial arrestees were released from police stations prior to interviews with the JB-CSSD bail staff.[355]

The Commission is mindful of the limited resources of the police departments, the Judicial Branch, and municipalities. This proposal cannot be an unfunded mandate and can only succeed if funding is provided for (1) the necessary videoconferencing equipment in every police station for bail staff to promptly interview arrestees or (2) additional JB-CSSD bail staff to travel to police departments around the state and/or conduct video conference interviews.

Recommendation 5.

The Commission should continue to evaluate the effectiveness and fairness of Connecticut's pretrial justice system.

The Commission recommends a continuing evaluation of Connecticut's pretrial justice system. Although the current evaluation and this report are comprehensive, the research conducted by the Commission revealed several significant areas that can benefit from further analysis. The Commission recommends that a mandate be enacted directing the Commission to continue its evaluation and submit annual reports on the state of pretrial justice system in Connecticut to the General Assembly and the governor by January 2018, January 2019, and January 2020.

Recommendation 6.

Lawyers, judges, and other stakeholders should receive regular training on current best practices in the area of pretrial release and detention decision making.

The Commission recommends that police officers, state's attorneys, public defenders, and the defense bar, judges and other court staff who are part of the pretrial decision-making process should receive regular training on pretrial release and detention decision making. More specifically, the Commission recommends that:

- An education plan and training program be developed for police departments, public defenders, prosecutors, and judges. The educational plan should include (but not be limited to):
  - The purpose and history of bail
  - Constitutional principles
  - Risk principles and the methodology behind the risk assessment tool.
- The Commission host (within available resources) an annual one-day summit on the latest developments in pretrial justice, research and best practices and invite participation from all stakeholders (law enforcement, prosecutors, state's attorneys, public defenders, members of the defense bar, legislators, and other interested parties).

[355]About half of these arrestees were released on financial conditions. JB-CSSD cautions that these figures are approximate. JB-CSSD: Follow-up to Questions posed During CTCS's Pretrial Release/Detention Meeting on 1/3/2017. Appendix G, Table 14.

Recommendation 7.

The Division of Criminal Justice should have adequate support and opportunity to establish screening and intake units. The Division of Public Defender Services should have adequate attorney, investigator, and social work staff and resources to investigate defendant's individual circumstances for purposes of making comprehensive bail and diversion arguments at arraignment. In addition, the Judicial Branch should have the personnel and resources to accommodate implementation of this recommendation.

These units will be able to (1) make decisions about whether incoming cases are appropriately charged and identify those cases which should be nolled, dismissed, or diverted at or prior to the first court appearance and (2) make informed and considered bail recommendations.[356]

The decision on whether to prosecute can be informed by input from defense attorneys, bail staff, and others including police and victims. Defense attorneys need time to interview defendants and discuss alternatives with prosecutors who can make more informed recommendations to the court. The Judicial Branch (which includes the Division of Public Defender Services) would need resources to support the implementation of this recommendation, which presumably could result in fewer cases going to court and the savings associated with that outcome.

Recommendation 8.

The Commission should continue to investigate the feasibility of a carefully limited preventive detention system.

The Commission recommends that it continue to evaluate the feasibility of creating a carefully limited preventive detention model to keep the most dangerous defendants in jail. In order to ensure that the most dangerous defendants stay in jail during their pretrial process, it may eventually require a constitutional amendment to substitute preventive detention for the current practice of imposing high-dollar bonds on defendants.[357] A high-dollar bond may keep some individuals in jail. However, some individuals who have access to funds for posting a bond can be released into the community. In addition, the Connecticut Supreme Court has continuously recognized that "the excessive bail clause of article first, § 8, prevents a court from fixing bail in an unreasonably high amount so as to accomplish indirectly what it could not accomplish directly, that is, denying the right to bail."[358] Thus, purposefully keeping a defendant in jail with the use of money bail is unconstitutional.

Preventive detention, if used properly as part of a compressive set of bail laws that contain a statutory presumption and culture of release, can be reserved for a small category of defendants who present a serious risk of a dangerous re-offense. This intellectually honest practice will ensure that, after an adversarial hearing, the defendants that the state deems too dangerous to reasonably assure public safety and their court appearance will not be released into the community.

The Commission recognizes that preventive detention may lead to over- incarceration if not planned carefully and thoroughly. A high legal standard should be put in place to assure that only the most dangerous and risky defendants are preventively detained.

The Commission also recognizes that preventive detention hearings require funding and resources that are in short supply given the state's current fiscal difficulties. The Commission will continue to evaluate preventive detention. If the state moves forward to provide funding for this model, the Commission respectfully requests that it be included in the deliberations for developing an implementation plan for preventive detention.

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[356] In any given year, between 4% and 5% of cases of defendants interviewed by JB-CSSD bail staff are disposed of at arraignment. 1,341 cases in 2015 and 1,188 cases in 2016. *Id.*

[357] The data shows that many high-risk defendants charged with felonies are currently released by posting bond. *See infra* Appendix G, Table 14.

[358] *Menillo*, 159 Conn. at 268.

APPENDICES

Appendix A

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:

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

(a)(1) Except as provided in subdivision (2) of this subsection and subsection (b) of this section, when any arrested person is presented before the Superior Court, said court shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient to reasonably ensure the appearance of the arrested person in court: (A) Upon his execution of a written promise to appear without special conditions, (B) upon his execution of a written promise to appear with nonfinancial conditions, (C) upon his execution of a bond without surety in no greater amount than necessary, (D) upon his execution of a bond with surety in no greater amount than necessary. In addition to or in conjunction with any of the conditions enumerated in subparagraphs (A) to (D), inclusive, of this subdivision the court may, when it has reason to believe that the person is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such person.

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

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

(b) (1) When any arrested person charged with the commission of a class A felony, a class B felony, except a violation of section 53a-86 or 53a-122, a class C felony, except a violation of section 53a-87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, section 53a-72a, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, or a family violence crime, as defined in section 46b-38a, is presented before the Superior Court, said court shall, in bailable offenses, promptly order the release of such person upon the first of the following conditions of release found sufficient to reasonably ensure the appearance of the arrested person in court and that the safety of any other person will not be endangered: (A) Upon such person's execution of a written promise to appear without special conditions, (B) upon such person's execution of a written promise to appear with nonfinancial conditions, (C) upon such person's execution of a bond without surety in no greater amount than necessary, (D) upon such person's execution of a bond with surety in no greater amount than necessary. In addition to or in conjunction with any of the conditions enumerated in subparagraphs (A) to (D), inclusive, of this subdivision, the court may, when it has reason to believe that the person is drug-dependent and where necessary, reasonable and appropriate, order the person to submit to a urinalysis drug test and to participate in a program of periodic drug testing and treatment. The results of any such drug test shall not be admissible in any criminal proceeding concerning such person.

(2) The court may, in determining what conditions of release will reasonably ensure the appearance of the arrested person in court and that the safety of any other person will not be endangered, consider the following factors: (A) The nature and circumstances of the offense, (B) such person's record of previous convictions, (C) such person's past record of appearance in court after being admitted to bail, (D) such person's family ties, (E) such person's employment

record, (F) such person's financial resources, character and mental condition, (G) such person's community ties, (H) the number and seriousness of charges pending against the arrested person, (I) the weight of the evidence against the arrested person, (J) the arrested person's history of violence, (K) whether the arrested person has previously been convicted of similar offenses while released on bond, and (L) the likelihood based upon the expressed intention of the arrested person that such person will commit another crime while released.

(3) When imposing conditions of release under this subsection, the court shall state for the record any factors under subdivision (2) of this subsection that it considered and the findings that it made as to the danger, if any, that the arrested person might pose to the safety of any other person upon the arrested person's release that caused the court to impose the specific conditions of release that it imposed.

(c) If the court determines that a nonfinancial condition of release should be imposed pursuant to subparagraph (B) of subdivision (1) of subsection (a) or (b) of this section, the court shall order the pretrial release of the person subject to the least restrictive condition or combination of conditions that the court determines will reasonably ensure the appearance of the arrested person in court and, with respect to the release of the person pursuant to subsection (b) of this section, that the safety of any other person will not be endangered, which conditions may include an order that the arrested person do one or more of the following: (1) Remain under the supervision of a designated person or organization; (2) comply with specified restrictions on such person's travel, association or place of abode; (3) not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant or a controlled substance; (4) provide sureties of the peace pursuant to section 54-56f under supervision of a designated bail commissioner or intake, assessment and referral specialist employed by the Judicial Branch; (5) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense; (6) maintain employment or, if unemployed, actively seek employment; (7) maintain or commence an educational program; (8) be subject to electronic monitoring; or (9) satisfy any other condition that is reasonably necessary to ensure the appearance of the person in court and that the safety of any other

person will not be endangered. The court shall state on the record its reasons for imposing any such nonfinancial condition.

(d) If the arrested person is not released, the court shall order him committed to the custody of the Commissioner of Correction until he is released or discharged in due course of law.

(e) The court may require that the person subject to electronic monitoring pursuant to subsection (c) of this section pay directly to the electronic monitoring service provider a fee for the cost of such electronic monitoring services. If the court finds that the person subject to electronic monitoring is indigent and unable to pay the costs of electronic monitoring services, the court shall waive such costs. Any contract entered into by the Judicial Branch and the electronic monitoring service provider shall include a provision stating that the total cost for electronic monitoring services shall not exceed five dollars per day. Such amount shall be indexed annually to reflect the rate of inflation.

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

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

(b) Notwithstanding the provisions of subsection (a) of this section, any person who has not made bail and is detained in a [community correctional center] correctional facility pursuant to the issuance of a bench warrant of arrest or for arraignment, sentencing or trial for an offense classified as a class D or E felony or as a misdemeanor, except a person charged with a crime in another state and detained pursuant to chapter 964 or a person detained for violation of [his] parole

pending a parole revocation hearing, shall be presented to the court having cognizance of the offense within thirty days of the date of [his] the person's detention, unless such presentment is waived by the person. On such presentment, the court may reduce, modify or discharge the bail or may for cause shown remand the person to the custody of the Commissioner of Correction. On the expiration of each successive thirty-day period, the person shall again be presented to the court for such purpose.

(c) (1) Notwithstanding the provisions of subsection (a) or (b) of this section, any person who has not made bail and is detained in a correctional facility for no offense other than a misdemeanor, except a person charged with a crime in another state and detained pursuant to chapter 964 or a person detained for violation of parole pending a parole revocation hearing, shall be presented to the court having cognizance of the offense within fourteen days of the date of the person's arraignment, unless such presentment is waived by the person.

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

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

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

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

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

(a)(1) In any criminal case in which a bond is allowable or required and the amount of such bond has been determined, the accused person, or any person on the accused person's behalf, (A) may deposit, with the clerk of the court having jurisdiction of the offense with which the accused person stands charged or any assistant clerk of such court who is bonded in the same manner as the clerk or any person or officer authorized to accept bail, a sum of money equal to the amount called for by such bond, or (B) may pledge real property, the equity of which is equal to the amount called for by such bond, provided the person pledging such property is the owner of such real property, and such accused person shall thereupon be admitted to bail.

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

(3) When real property is pledged, the pledge shall constitute a lien on the real property upon the filing of a notice of lien in the office of the town clerk of the town in which the real property is located. The lien shall be in an amount equal to the bond set by the court. The notice of lien shall be on a form prescribed by the Office of the Chief Court Administrator. Upon order of forfeiture of the underlying bond, the state's attorney for the judicial district in which the forfeiture is ordered shall refer the matter to the Attorney General and the Attorney General may, on behalf of the state, foreclose such lien in the same manner as a mortgage. The lien created by this subsection shall expire six years after the forfeiture is ordered unless the Attorney General commences an action to foreclose it within that period of time and records a notice of lis pendens in evidence thereof on the land records of the town in which the real property is located. If the bond has not been ordered forfeited, the clerk of the court shall authorize the recording of a release of such lien upon final disposition of the criminal matter or upon order of the court. The release shall be on a form prescribed by the Office of the Chief Court Administrator.

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

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

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

(4) If such bond is forfeited, the accused person shall be liable for the full amount of the bond. Upon discharge of the bond, the ten per cent cash deposit shall be returned to the person depositing the same.

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

(2) When the accused person whose bond has been forfeited is returned to custody pursuant to the rearrest warrant or a capias within six months of the date such bond was ordered forfeited or, if a stay of execution was extended, within the time period inclusive of such extension of the date such bond was ordered forfeited, the bond shall be automatically terminated and the person who offered cash bail, [or] pledged real property or deposited ten per cent of the amount of the bond on behalf of the accused person shall be released from such obligation and the court shall order new conditions of release for the accused person in accordance with section 54-64a.

(3) When the accused person whose bond has been forfeited returns to court voluntarily within five business days of the date such bond was ordered forfeited, the court may, in its discretion, and after finding that the accused person's failure to appear was not wilful, vacate the forfeiture order and reinstate the bond.

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

Appendix B

Dannel P. Malloy
GOVERNOR
STATE OF CONNECTICUT

November 5, 2015

Justice David Borden, Chair
Connecticut Sentencing Commission
Office of Policy and Management
450 Capitol Avenue
Hartford, CT 06106

Andrew J. Clark, Acting Executive Director
Connecticut Sentencing Commission
Institute for Municipal & Regional Policy (IMRP)
Central Connecticut State University (CCSU)
Downtown Campus, Room 212
New Britain, CT 06050

RE: Study of Bail Reform and Diversionary Programs

Dear Justice Borden and Mr. Clark:

I am writing today to ask the Sentencing Commission to examine two important issues relating to my Second Chance Society initiatives:

1) Connecticut's current bail bond system and the possibility for its reform, and
2) Connecticut's numerous diversionary programs, their efficacy and cost-effectiveness.

In Connecticut today, there are approximately six-hundred people in jail whose bond is less than $20,000, and another six-hundred people whose bond is less than $50,000. People who are not able to post the amount of bail required to get out of jail on such low bond – typically just a few hundred dollars – are people who most likely have no job and no support network. A large proportion of these people are non-violent, low-level offenders who would be able to get out of jail if they had a credit card, or a friend or family member who could loan them the small amount of money required to do so. Many are homeless, drug addicted, mentally ill and unemployed. They are also often veterans.

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governor.malloy@ct.gov

These people are not incarcerated because they are dangerous or a flight risk, but merely because they are poor; there are others just like them who have committed similar crimes under similar circumstances who are walking free because of the simple fact that they have the financial means to do so.

Many jurisdictions have begun to reconsider whether existing bail systems are fair and just, and it is time that we do the same in Connecticut. In 2014, for example, New Jersey changed its laws to permit courts, beginning January 1, 2017, to deny pretrial release of certain persons in criminal cases, and to permit monetary bail only when no other conditions of release will reasonably assure the eligible defendant's appearance in court.

I would like to request that the Sentencing Commission examine the bail systems in other jurisdictions, such as New Jersey, Massachusetts, Kentucky, and Oregon, as well as any recent reforms that have been made to those systems. Please include in your examination an analysis of potential ways Connecticut can focus pretrial incarceration efforts on individuals who are dangerous and/or a flight risk, as well as ways to reduce "bail inflation" in Connecticut, and report back to me with your recommendations.

The second issue I would like the Sentencing Commission to consider is the state of Connecticut's existing jail diversionary programs. Connecticut has a wide array of diversionary programs that provide services to individuals to keep them out of jail and to get them back on their feet. Individuals may be eligible to participate in a variety of diversionary programs related to substance use disorder, alcohol rehabilitation, and a history of sexual or domestic violence, among others. These programs are currently operated by both state-funded entities and non-profit organizations through contracts with the state.

I would like to know more about how these programs are meeting the needs of the state and its citizens. In particular, I have heard concerns from prosecutors, judges, defense attorneys and victims that the variety of diversionary programs available in Connecticut is confusing. I have heard that use of these programs has become automatic, resulting in offenders being shifted from one program to another without a case-by-case analysis of their situation, and may postpone the time by which an individual defendant's needs are addressed in a comprehensive way. I am concerned that the existing diversity of programs results in the opposite of the desired effect, and that the overly complicated administration of these programs may be wasteful of judicial resources.

To address these concerns, I would like to solicit your expertise in helping to assess the scope of the diversionary programs that are currently in existence, and to determine how effective those programs are. Please review existing diversionary programs and analyze their cost and funding mechanisms, as well as how effective and efficient they are at both treating the populations they

seek to help and at preventing recidivism. In addition, please study best practices in diversionary programs generally, and examine whether having one generic diversionary program, with one application process, and one length of time, would benefit the participants of the program, as well as reduce the fiscal and administrative burden on the state.

Please let my office know by January 15, 2016 how soon you will be able to provide recommendations on these topics.

Thank you for your help on these important initiatives. My hope is that through our joint efforts, we can find a way to give more incarcerated individuals a "second chance" to succeed.

Sincerely,

Dannel P. Malloy
Governor

CONNECTICUT SENTENCING COMMISSION

Hon. David M. Borden
Chair

John Santa
Vice Chair

Alex Tsarkov
Executive Director

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

January 13, 2017

The Honorable
Dannel P. Malloy
Governor
State of Connecticut
210 Capitol Avenue
Hartford, CT 06106

RE: Study of Bail Reform and Diversionary Programs

Dear Governor Malloy:

We are writing in response to your November 5th request to examine Connecticut's current bail bond system along with the state's pretrial diversionary programs. The Connecticut Sentencing Commission welcomes these requests and has resolved to examine both issues effective immediately. The Commission intends to complete these evaluations within a year and develop recommendations for submission during the 2017 legislative session. Throughout our analysis, the Commission will utilize technical assistance from the National Institute of Corrections, an agency within the U.S. Department of Justice, Federal Bureau of Prisons.

Finally, we would like to invite you to attend our next Commission meeting to speak about your request. The Commission's next meeting is scheduled for Thursday, January 14th at 2:00pm in the Legislative Office Building.

We would be honored if you would accept this invitation. Please let us know if you will be able to join us and please do not hesitate to contact us if you have any questions about the meeting.

Sincerely,

John Santa
Vice- Chair

Alex Tsarkov
Executive Director

ADOPTED
12/17/2015

Appendix C

CONNECTICUT SENTENCING COMMISSION

No. 2015-6

Resolution Regarding a Study of Connecticut's Bail Bond System

Resolution

RESOLVED, That the Connecticut Sentencing Commission study Connecticut's current bail bond system and the possibility for its reform.

Report

On November 5, 2015, Governor Dannel Malloy wrote a letter to the Connecticut Sentencing Commission requesting a study of "Connecticut's current bail bond system and the possibility of its reform."

The Governor asked the Commission to focus on the non-violent, low level pretrial population. These defendants may be incarcerated not because they are dangerous or a flight risk, but simply because they do not have the financial resources to post a bond. Nevertheless, in asking the Commission to examine bail systems and reform efforts in other American jurisdictions, he Governor also requested that the Commission provide "an analysis of potential ways Connecticut can focus pretrial incarceration efforts on individuals who are dangerous and/or a flight risk, as well as ways to reduce 'bail inflation'" in the state. Thus, the request covers both "bail" and "no bail" – detention and release – and therefore provides an excellent opportunity for Connecticut to thoroughly and thoughtfully examine the current state of the pretrial justice system.

The letter concludes by asking the Commission to let the Governor's office know by January 15, 2016, how soon the Commission could provide recommendations on the raised topics.

Following the model used by other states, we can predict with some confidence that once the study group is created, it will likely be able to make substantial recommendations within approximately one year, completing its work before the beginning of the 2017 legislative session. The Commission will utilize technical assistance from the National Institute of Corrections (NIC) and will collaborate with other state and national stakeholders for this study. This resolution serves as an acceptance of the governor's request along with a formal commitment to examine and analyze Connecticut's current bail bond system.

Appendix D

Introduction

CONNECTICUT SENTENCING COMMISSION

Study Scope of Pretrial Release and Detention in Connecticut

Every time a person is arrested, justice system authorities must decide whether to release or detain that person before trial. These decisions balance the defendant's constitutional liberty interest with the important governmental goals of ensuring the defendant's good behavior during the pretrial period and the defendant's return to court. Pretrial judicial decisions regarding the release or detention of the accused can have enormous consequences on the safety of the community, the integrity of the judicial process, and the utilization of criminal justice resources.

In recent years, there has been a marked increase in the amount of historical, legal, and pretrial research encouraging states to change their policies, practices, and laws to reflect what has been termed "legal and evidence-based practices" at bail. States that have examined this topic in depth have uniformly concluded that certain remedies are necessary to address what is, essentially, the fundamental question in the country today with regard to "bail" and "no bail": Are we releasing and detaining the wrong people? 1

More specifically, the constitutional and statutory law broadly requires states to release most defendants pretrial, but it nonetheless allows states to detain a much smaller percentage of those defendants who cannot be effectively managed in the community. Within those boundaries, states can determine for themselves which defendants should be released and which should be detained. Moreover, the law allows for two constitutionally valid purposes for limiting or conditioning pretrial freedom: to secure the court appearance of the accused and public safety. States can use a variety of methods to achieve those purposes.

There is a question as to whether some of those incarcerated pretrial individuals present a substantial risk of failure to appear in court or a threat to public safety, or whether they simply lack the financial means to be released. Despite the presumption of innocence, some individuals may warrant pretrial detention because of the risk of flight or threat to public safety. However, some defendants with financial means may be released despite a risk of flight or threat to public safety. These defendants have the ability to post bond with the use of the bond system.

Pretrial release mitigates the collateral consequences of spending weeks or months awaiting trial or plea agreement. Pretrial detention can result in loss of employment and disintegrated social relationships, which in turn may increase the likelihood of reoffending upon release.

The challenge of the pretrial release and detention is to effectively balance the presumption of innocence, the assignment of the least restrictive intervention for defendants, and the need to ensure community safety.

This document defines the parameters of the Connecticut Sentencing Commission's evaluation of pretrial release and detention, establishes a time frame for completion of the evaluation and its component parts, and provides context for said evaluation.

Foundational Principles

- *Presumption of Innocence* – A fundamental principal of U.S. Criminal Law is that an individual accused of a crime is presumed to be innocent until convicted.[2]

- *Right to Counsel* – A defendant has a right under the Sixth Amendment to assistance of counsel for his or her defense. The U.S. Supreme Court has held that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge

[1] The term "bail" is defined differently by different jurisdictions. The definition most conforming to the English and American history of bail as well as the laws that have grown around that history (including U.S. Supreme Court language), however, equates "bail" with release or a process of conditional release, and "no bail" with detention or a process of detention. *See* Timothy R. Schnacke, *Fundamentals of Bail, A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform* (NIC 2014).

[2] "The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law." *Coffin v. United States*, 156 U.S. 432, 453 (1895)

against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel."[3]

- *Right against Self-Incrimination* – Under the Fifth Amendment applicable to the states through the Fourteenth Amendment, no person "shall be compelled, in any criminal case, to be a witness against himself…."

- *Right to Due Process of Law* – The Fifth Amendment provides that "No person shall be …deprived of life, liberty, or a property without due process of law." The Fourteenth Amendment places the same restrictions on the states.

- *Right to Equal Protection under the Law* – Under the Fourteenth Amendment, no state shall "deny to any person within its jurisdiction the equal protection of the laws."

- *Right to Bail that is not Excessive*- The Eighth Amendment provides that "excessive bail shall not be required," when bail is granted. The Eighth Amendment does not guarantee the right to bail as it is silent in regard to the initial determination of whether to grant bail at all.

- *Connecticut State Constitution* - Article First, §8, of the Connecticut State Constitution provides: "In all criminal prosecutions, the accused shall have a right…to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great…."

Pretrial Decision-Making in Connecticut

In Connecticut, the purpose of bail is twofold. First, bail serves to ensure that the accused will stand trial and submit to sentencing if found guilty. Second, bail serves to ensure the accused's good behavior upon release.

Multiple criminal justice entities play a role in the decision to release or detain a defendant before trial. In Connecticut, bail is set by the police, a bail commissioner or intake assessment and referral specialist (bail staff), and judges of the superior court. Police officers set bail at the time of arrest and are required to notify bail staff when a defendant cannot post the bond amount that they set. Bail staff then conduct an interview to get personal information from the defendant and review the bond amount set by the police. Bail staff may increase or decrease the amount set by the police.

In order to post a bond, a defendant can either post the full cash value or contract with a licensed bail bondsman or a commercial bond company that posts a defendant's bail for a fee. Other types of bond mechanisms include a real estate bond and 10% cash bail where the defendants pay 10% cash to the court and get that amount back at the conclusion of the proceedings. Bail may be posted at a police department where a defendant is locked up, at a courthouse or at a correctional facility where the defendant is being held.

Bail staff use a validated risk instrument to guide their decisions regarding pretrial release and detention. [4] The instrument factors are called "weighted release criteria" and include factors such as, (1) the nature and circumstances of the offense; (2) prior convictions; (3) prior failure to appear in court; (4) employment record; (5) financial resources, character, and mental condition; (6) the defendant's family ties; and (7) community ties.

[3] *Rothgery v. Gillespie County*, 554 U.S. 191, 213 (2008).
[4] Connecticut's risk assessment instrument was revalidated in 2015.

The bail commissioner or the court may impose nonfinancial conditions of release, which may require that the defendant to do any of the following: remain under the supervision of a designated person or organization; comply with restrictions on the person's travel, people they associate with or where they live; not engage in specified activities, including the use or possession of a dangerous weapon, an intoxicant or controlled substance; avoid all contact with the alleged victim of the crime or with a potential witness who may testify about the offense; or satisfy any other condition that is reasonably necessary to assure that the person comes to court.

If a defendant violates the conditions of release, he or she can be charged with a new crime or the bond can be modified or revoked by the court and a new bond imposed.

If the released defendant misses his or her court date, a judge may order a failure to appear warrant for that defendant's arrest or the issuance of a bail commissioner's letter with a new court date.

After every arraignment when the defendant is incarcerated because he or she cannot post the money bail, jail re-interview staff review every bond less than $100,000 within 5 days. Jail re-interview is a program designed to help defendants who have not posted bond. As a result of a re-interview, the amount of the bond or the conditions of release may be modified. The jail re-interview staff may also refer defendants for treatment. These treatment plans are presented at the defendant's next date through the bond modification process.

Existing Research on Pretrial Decision-Making

Pretrial research is critical in informing decision-makers on what works to maximize release while simultaneously ensuring a defendant's good behavior during the pretrial period and court appearances. Several publications go into great detail about the historical and legal foundations of pretrial justice and the current practices being implemented across the country.[5]

Improving bail administration and pretrial decision-making are topics that have been consistently addressed in the academic literature since the 1950s. This research has typically focused on the effects of pretrial detention on subsequent trial outcomes; the factors that influence bail decisions; and the factors that suggest failure to appear or reoffending while the client is out on bail.

Research on pretrial risk assessment and supervised pretrial release and other conditions of pretrial release is a body of literature that is still developing. Recently, pretrial risk assessment instruments have been developed and tested in different jurisdictions across the country. Researchers have also attempted to determine to what extent, if any, secured monetary forms of pretrial release improve the likelihood of court appearance and ensuring a defendant's good behavior during the pretrial period over non-monetary forms of pretrial release.

Governor's Request

On November 5, 2015, Governor Dannel Malloy wrote a letter to the Connecticut Sentencing Commission requesting a study of "Connecticut's current bail bond system and the possibility of its reform."

The Governor asked the Commission to focus on the non-violent, low level pretrial population. These defendants may be incarcerated not because they are dangerous or a flight risk, but simply because they do not have the financial resources to post bond. Nevertheless, in asking the Commission to examine bail systems and reform efforts in other American jurisdictions, the Governor also requested that the Commission provide "an analysis of potential ways Connecticut can focus pretrial incarceration efforts on individuals who are dangerous and/or a

[5] See Federal Journal (September 2007) Volume 71, Number 2, Special Issue on the 25th Anniversary of Pretrial Services in the Federal System. See also the Pretrial Justice Institute's webpage on the history of bail: http://www.pretrial.org/pages/history-of-bail.aspx.

flight risk, as well as ways to reduce 'bail inflation'" in the state. Thus, the request covers both "bail" and "no bail" – detention and release– and therefore provides an excellent opportunity for Connecticut to thoroughly and thoughtfully examine the current state of its pretrial justice system.

The letter concludes by asking the Commission to let the Governor's office know by January 15, 2016, how soon the Commission could provide recommendations on the raised topics.

Objective

The primary objective of this evaluation is to identify the current strengths and barriers of the Connecticut pretrial justice system as it relates to maximizing the right to release, maximizing court appearance, and maximizing public safety.

Areas of Analysis

This evaluation will:

- Examine Connecticut's current pretrial release and detention process and complete a gap analysis of its elements. This will include but is not limited to:
    - the methods for pretrial risk assessment
    - the methods for assigning pretrial release conditions
- Analyze Connecticut's and other states' laws and practices in the pretrial justice system.
- Include a comprehensive jail population analysis
- Include a survey of best practices nationwide
- Identify factors that are predictive of pretrial misconduct including failure to appear (FTA), rearrests, and danger to the community.
- Explore the process of preventive detention and its connection to promoting public safety.
- Examine the efficacy of financial conditions of release in ensuring a defendant's good behavior during the pretrial period
- Examine the racial and socioeconomic impact, if any, of Connecticut's current pretrial release and detention practices.

Successful Models

States that have made successful strides toward improving their release and detention systems appear to be following a single pattern. First, those states bring together criminal justice leaders into a group with statewide representation and influence to begin the analysis. Creating such a group follows well-known criminal justice research and literature going back decades and consistently illustrating the best way to make improvements to criminal justice practices, which is to follow a "systems approach." A systems approach recognizes that the various agencies and levels of government, while autonomous, are nonetheless linked in many ways, where one agency's activities can affect other agencies within criminal justice system. Included in the broader system, of course, is the pretrial justice system, which involves interactions among police and other law enforcement entities, jail staff, pretrial services agency personnel, general government leaders, court staff, prosecutors, defense attorneys, judges, and even local treatment providers. The Sentencing Commission is ideally positioned to create such a study group with its broad membership representing all the major criminal justices agencies in the state.

Second, that group typically undertakes a period of intense education, focusing on the topics needed to make intelligent recommendations for reform. The education process involves

several aspects that bail scholars have concluded are necessary to fully understand the issues. They include:

(1) the need for reform (as suggested above, research and education will help the study group discover its most pressing issues, which may be unique to Connecticut);
(2) the history of release and detention, a topic that is crucial for understanding bail reform generally in addition to discreet bail issues, such as those highlighted in the recent Connecticut Supreme Court opinion in *State v. Anderson,* 319 Conn. 288 (2015).
(3) federal and state pretrial legal foundations, which include the presumption of innocence; due process, the right to non-excessive bail, counsel, and equal protection; the freedom from compulsory self-incrimination; individualization; and the right to bail itself (a complete legal analysis involves comparing fundamental legal principles of national application with the various elements of the state's legal "mix," including its constitutional bail provisions, statutes, court rules, and case law);
(4) the pretrial research, which includes the most recent research on risk assessment and risk mitigation; and
(5) the national best practice standards for pretrial release and detention.

All of these foundational aspects of pretrial release and detention are studied together with research on policies and practices currently used in Connecticut. Not surprisingly, this study may point to the need for a completely different focus from the one in another state. For example, after individual studies in three different jurisdictions, one jurisdiction might find that law enforcement arrest and citation practices need particular attention; another may find an acute need to incorporate a statistically derived risk assessment instrument; still another may focus on the use of money as a condition of release. Although some aspects of "bail reform" are universal, much of what must be done is recognized only after some period of education and study of a particular state's various needs. Because of increased attention, research and literature recently focused on pretrial release and detention, we can expect to complete a comprehensive study of this issue in a matter of months. Nevertheless, as in other states, specific attention will most assuredly be devoted to assessing Connecticut's specific legal and practical infrastructure for application to its law enforcement and judicial evidence-based practices. The study will include a review of pretrial risk assessments and whether differential supervision is done in fair, effective, and nondiscriminatory ways.

Third, once this period of education is complete, the group typically puts forth findings and recommendations for making changes to (or maintaining current) policies, practices, and statutes.

Project Timeline

Following the model used by other states, we can predict with some confidence that once the study group is created, it will likely be able to make substantial recommendations within approximately one year, completing its work before the beginning of the 2017 legislative session. The Commission will utilize technical assistance from the National Institute of Corrections (NIC), an agency within the U.S. Department of Justice, and will collaborate with other state and national stakeholders to complete the evaluation.

January – February 2016: Present draft evaluation scope to the Sentencing Commission, the Governor's office and legislative leaders.

February – June 2016: With the technical assistance of the National Institute of Corrections, involve key stakeholders by establishing a multi-disciplinary project advisory group, conduct a legal analysis of Connecticut's pretrial release and detention laws, compile background information; review current pretrial justice system and agency functions, conduct interviews with

agency staff, commercially licensed bail bondsmen, bail enforcement agents, and pretrial defendants; examine systems and reform efforts in other states.

March 10, 2016: The National Institute of Corrections (NIC) will present on pretrial release and detention at the Sentencing Commission meeting. This presentation will include the nature and scope of their technical assistance to support the Commission's evaluation of pretrial release and detention.

March 11, 2016: The National Institute of Corrections will meet with Commission staff and the Commission's pretrial release and detention advisory group. The advisory group will meet as needed over the course of the evaluation and will consist of the following members of the Commission or their designees:

- John Santa, Vice Chairman of the Sentencing Commission
- Judge Patrick Carroll, III, Chief Court Administrator
- Stephen Grant, Court Support Services Division
- Chief Kulhawik, Norwalk Police Department
- Kevin Kane, Chief State's Attorney
- Susan Storey, Chief Public Defender
- Commissioner Scott Semple, Department of Correction
- Natasha Pierre, State Victim Advocate

April-May: The National Institute of Corrections will work with Sentencing Commission staff to develop an in-depth action plan which will be the guide to reach the goals of the evaluation.

May – October 2016: With the technical assistance of the National Institute of Corrections, conduct analyses using information gathered from pretrial system and agency functions, utilization of bonds, relationship of financial conditions of release to defendant detention.

November – December 2016: Compile findings and submit recommendation to the Sentencing Commission.

December 2016: Sentencing Commission votes on the recommendations and submits final report to the Governor and the General Assembly.

Appendix E

Hon. David M. Borden
Chair

Undersecretary Mike Lawlor
Vice Chair

Alex Tsarkov
Executive Director

Leland J. Moore,
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CONNECTICUT SENTENCING COMMISSION

December 11, 2015

Lorie Brisbin
Technical Assistance Manager
Community Services Division
National Institute of Corrections
320 First Street, NW
Washington DC, 20534
USA

Request for Technical Assistance

Dear Ms. Brisbin:

The Connecticut Sentencing Commission would like to request technical assistance from the National Institute of Corrections to improve Connecticut's system of pretrial release and incarceration.

Specifically, technical assistance is being sought in connection with the development of an evaluation and analysis of Connecticut's current bail bond system. This request includes, but is not limited to, assistance with strategic planning and design (high priority), research support, policy analysis, and any other available assistance.

The technical assistance being requested will support the Commission's efforts to provide an examination and analysis of Connecticut's pretrial justice system as requested by Governor Dannel Malloy in his letter dated November 5, 2015 (attached).

I look forward to hearing from you and working with your staff to strengthen pre-trial justice in Connecticut. I am available to answer any questions in relation to this request and would welcome the opportunity of developing with your staff the details of a suitable program of technical assistance in the identified areas, and coordinating as appropriate with other organizations involved in assisting us meet our goals in this respect.

Sincerely,

Alex Tsarkov
Executive Director
Connecticut Sentencing Commission

Appendix F

CONNECTICUT SENTENCING COMMISSION

Pretrial Release & Detention Advisory Group

Members

Name	Title	Office
Atty. Theresa Dalton	Supv. Asst. Public Defender	G.A. 4 Public Defender
Hon. Robert Devlin, Jr.	Chief Administrative Judge: Criminal Matters	Judicial Branch—Superior Court
Chief Thomas Kulhawik	Chief of Police	Norwalk Police Department
Karl Lewis	Acting Director	Department of Correction—Programs & Treatment Division
Atty. Natasha Pierre	State Victim Advocate	Office of the Victim Advocate
Gary A. Roberge	Director	CSSD-Adult Probation & Bail Services
Atty. Sarah F. Russell	Professor of Law	Quinnipiac University School of Law
Chair John Santa	Acting Chairman	Sentencing Commission/ Malta Justice Initiative
Atty. David Shepack	State's Attorney	Litchfield County State's Attorney
Bryan Sperry	Systems Developer	CSSD-Research, Program Analysis & Quality Improvement
Alex Tsarkov	Executive Director	Connecticut Sentencing Commission

Additional Participants

Kim Buchanan, Professor of Law
Jennifer Hedlund, Associate Professor, CCSU Department of Criminology & Criminal Justice
Kevin Kane, Chief State's Attorney, Division of Criminal Justice

JB-CSSD Bail Staff
James Carollo, Northern and Eastern Regional Manager
Robert Cristiano, Southern and Western Regional Manager
Michael Hines, Assistant Director of Bail Services
Susan Glass, Program Manager 1

Sentencing Commission Staff
Atty. Leland Moore, Staff Attorney
Gus Marks-Hamilton, University of Connecticut School of Social Work
Samantha Oden, Quinnipiac University School of Law

Other
Richard Taff
Timothy Everett, Clinical Professor of Law, UCONN

Appendix G

Connecticut Pretrial Study

December 28, 2016

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Introduction

In 2016 the Connecticut Sentencing Commission requested technical assistance from the National Institute of Corrections (NIC) to support the Commission's efforts to provide an examination and analysis of Connecticut's pretrial justice system. As part of that technical assistace, NIC chose Flint Springs Assocaites (FSA), a Vermont-based consulting firm to assist the Commission with data analysis.

In early August, FSA Senior Partners Joy Livingston, PhD, and Donna Reback, MSW, LICSW conducted a two-day site visit to Connecticut, meeting with:

- Alex Tsarkov, Executive Director of the Connecticut (CT)Sentencing Commission
- Bryan Sperry, Center for Research, Program Analysis and Quality Improvement, Judicial Branch, State of CT, Judicial Branch Court Support Services Division (JB-CSSD)
- Jamie Carollo, Regional Manager of Bail Services, Judicial Branch, State of CT, Court Services and Support Division

The purposes of those meetings included:

- clarifying the research question(s)
- understanding CSSD's current pre-trial decision making processes and assessment criteria
- identifying needed data to conduct the research analysis
- agreeing on data that CSSD would provide to FSA for the analysis
- agreeing on timelines for receiving data and completing the analysis

In conversations with Connecticut the research question was further refined to include the following:

- To what extent is the state of Connecticut detaining individuals who are assessed as low risk to public safety because they lack resources to post bond?
- To what extent do decisions to release or detain defendants who are similar in terms of criminal charge, level of assessed risk and amount of bond differ due to one's ability to pay bond?

The original timelines could not be met as CSSD's legal protocols for sharing its data with an outside organization took more than two months to meet. As a result, the analysis got underway in November. On November 30 and December 1, 2016 FSA made a second site visit to present initial data and findings to the Sentencing Commission Advisory Group on Pretrial Release and Detention, during which a robust question and answer session revealed the need for additional analysis of the data.
The report that follows presents a full description of the data analyzed and findings intended to respond to the above research question.

Flint Springs Associates would like to acknowledge CSSD's significant contribution to this analysis evidenced by the quality of the data it provided to FSA and the time that individual staff from the Center for Research, Program Analysis and Quality Improvement spent over the phone and through emails with FSA. In particular Bryan Sperry and Susan Glass made themselves available to answer questions, review findings and provide additional data points needed to address questions raised from the Sentencing Commission's Executive Director and members of the Pretrial Subcommittee.

Finally we want to thank Sentencing Commission Executive Director Alex Tsarkov for his astute questions, ongoing guidance, desire to understand the findings and determination to get answers to key questions. Alex brought the concerns of key stakeholders to the research and made sure that, to the extent possible, the research responded to those concerns.

Summary of Findings

Research Questions:

- To what extent is the state of Connecticut detaining individuals who are assessed as low risk to public safety because they lack resources to post bond?
- To what extent do decisions to release or detain defendants who are similar in terms of criminal charge, level of assessed risk and amount of bond differ due to one's ability to pay bond?

Method

CSSD provided data via Access files for cases of custodial arrest during the calendar years 2013 through 2015. All cases involved defendants that had been interviewed by CSSD and received a CSSD Pretrial Risk Assessment. The data set did not include defendants released by police who were not interviewed by the Judicial Branch Court Support Services Division (JB-CSSD) bail staff. It is important to emphasize that many defendants are released either on a summons, promise to appear, or by posting a bond from the police departments without being interviewed by the JB-CSSD bail staff.

The data included one record for each arrest incident. An individual defendant might have multiple charges in one arrest incident, however, the data set included just one of those possible multiple charges, the most severe charge. One individual might have multiple arrest incidents during the time period (January 2013 through December 2015); each of these that involved a CSSD interview was included in the data set. Therefore, data was unduplicated in terms of specific arrest cases, but not unduplicated in terms of persons.

In order to look at similarly situated defendants, the following measures were used:

- Charge (misdemeanor or felony) and class of charge
- Scores on CSSD Risk Assessment Point Scale and Financial Bond Guideline (FBG)
- Type of bond
    - Non-financial
    - Type of financial bond
- Court Ordered Bond amount
    - Maximum – if multiple charges with bonds for each charge, this is the largest of the bond amounts
    - Aggregate – the sum total off all bond amounts associated with the arrest incident
- Pre-trial release status:
    - Detained or released 1 day after arraignment (based on whether or not the defendant was incarcerated on the day after the arraignment date)
    - Detained or released 14 days after arraignment (based on whether or not the defendant was incarcerated on the 14th day after the arraignment date)

Description of the Population

Demographics

As shown in Table 1, the majority of cases involved defendants who were white, Hispanic or black. Table 2 provides the distribution with these three categories alone. The vast majority of defendants were male (80%), as seen in Table 3.

Table 1: Race and Ethnicity

	Frequency	Percent
American Indian/Alaskan Native	139	0.1%
Asian/Pacific Islander	572	1%
Black	37,724	36%
Hispanic	25,644	24%
Missing	379	0.4%
Unknown	354	0.3%
White	40,317	38%
Total	105,129	100%

Table 2: Race and Ethnicity by Three Categories

	Frequency	Percent
White	40,317	39%
Hispanic	25,644	25%
Black	37,724	36%
Total	103,685	100%

Table 3: Gender

	Frequency	Percent
Female	20,852	20%
Male	84,277	80%
Total	105,129	100%

Charge and Class

More than half of the charges were felonies, distributed across four offense categories (robbery, assault, property, and drug). Misdemeanors comprised 41% of all charges, two-thirds of which were Misdemeanor A charges.

Table 4: Number of Defendants by Type and Class of Charge

Primary Charge	Class of Charge						Total	
	A	B	C	D	Un-classified	Capital Felony	Freq	Percent
1. Homicide	227	94	48	20	6	5	400	0%
2. Sex Offense	119	810	655	211	13	1	1,809	2%
3. Robbery	634	1,874	1,660	4,167	106	0	8,442	8%
4. Assault	814	970	6,026	3,371	240	0	11,423	11%
5. Property	668	865	1,457	4,964	2,017	1	9,972	10%
6. Drug Offense	979	119	659	8,916	9,788	0	20,467	20%
7. Misdemeanor	31,751	7,943	8,431	1,360	2,019	0	51,727	50%
Total	35,192	12,675	18,936	23,009	14,189	7	104,240	100%

CSSD Risk Assessment and Financial Bond Guideline (FBG) Scores

CSSD conducts an interview with defendants using the Pretrial Risk Assessment Point Scale, and assigns a score from low risk (a positive number) to high risk (a negative number). Defendants in this population scored from +18 to -28, with a median score = -4, and mean score = -3.3 (standard deviation = 6.0).

Table 5: Distribution of CSSD Pretrial Risk Assessment Scores

CSSD Pretrial Risk Assessment Score	Frequency	Percent
Score 0 or higher	32,475	31%
Score -3 to -1	19,367	18%
Score -4 to -7	26,102	25%
Score -12 to -8	21,908	21%
Score -13 to -28	5,285	5%
Total	105,137	100%

Table 6: CSSD Pretrial Risk Assessment Point Scale Scores by Financial/Non-Financial Bond

CSSD Pretrial Risk Assessment Point Scale	Non-financial Bond		Financial Bond		Total	
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Score 0 or more	22,483	51%	8,338	15%	30,821	31%
Score -3 to -1	8,164	19%	10,267	18%	18,431	18%
Score -4 to -7	8,385	19%	16,314	29%	24,699	25%
Score -12 to -8	4,443	10%	16,253	29%	20,696	21%
Score -13 to -28	421	1%	4,672	8%	5,093	5%
Total	43,896	100%	55,844	100%	99,740	100%

*Note: Table does not include 3,830 cases that were disposed.

If the CSSD determines that a financial bond is appropriate, most often for defendants with Risk Assessment scores of 0 or lower, the Financial Bond Guideline (FBG) rating score is used, in combination with the type and class of charge, to determine a recommended bond amount. The FBG rating score is based on the offense characteristics (from least to most severe) and client risk (based on the CSSD Risk Assessment Point Scale.

Table 7 shows that the majority of FBG rating scores (63%) were in the -4 to -1 range; 29% were from 0 to 6; and, 8% were -6 to -5. Further analyses will use the following six categories: 0-6; -1, -2, -3, -4, -6 to -5 for these scores (see Table 7).

Table 7: Distribution of CSSD Pretrial Financial Bond Guideline Rating Scores
(Defendants with financial bonds only)

FBG Score Categories	FBG Rating Score	Frequency	Percent
Category 1 (scores 0 to 6)	6	166	0.3%
	5	292	1%
	4	618	1%
	3	1,200	2%
	2	2,342	5%
	1	3,846	8%
	0	6,607	13%
Category 2	-1	8,084	16%
Category 3	-2	9,576	19%
Category 4	-3	7,901	16%
Category 5	-4	5,404	11%
Category 6 (scores -6 to -5)	-5	2,464	5%
	-6	1,550	3%
Total		50,050	100%

Type of Bond

About half (n= 55,844, 56%) of the bonds were financial (see Table 8); and, of these 92% were surety bonds. In Connecticut, 10% bond requires a deposit of 10% cash with the court. The defendant would get that deposit back if he/she shows up for his/her court appearances. Cash bond requires a full bond to be deposited as cash with the court. Surety bond in Connecticut requires a deposit of 10% with a bail bondsmen for bonds of $500-$5,000 and 7% for bonds of over $5,000. In addition, defendants may qualify for payment plans with bail bondmen if they are able to put down 35% of the 10% or 7% premium rate of the surety bond.

Table 8: Types of Bond

Court or Non-Court Ordered Type of Bond	Non-financial		Financial	
	Frequency	Percent	Frequency	Percent
Written Promise to Appear	20,515	47%	0	0%
Non-Surety with Conditions	459	1%	0	0%
Non-Surety Bond	192	0%	0	0%
Conditions	22,730	52%	0	0%
10% bond	0	0%	667	1%
10% Bond with Conditions	0	0%	679	1%
Cash Bond	0	0%	2,391	4%
Cash Bond with Conditions	0	0%	558	1%
Conditions with Surety	0	0%	20,140	36%
Surety Bond	0	0%	31,409	56%
Total	43,896	100%	55,844	100%

Felony defendants primarily received financial bonds; about half of defendants with misdemeanor charges also received financial bonds, as can be seen in Table 9.

Table 9: Charge Type and Class by Type of Bond

Charge Type and Class	Type of Bond				Total	
	Non-financial		Financial			
	Frequency	Percent	Frequency	Percent	Frequency	Percent
V	163	89%	21	11%	184	100%
MU	582	70%	251	30%	833	100%
MD	209	71%	87	29%	296	100%
MC	5,568	75%	1,891	25%	7,459	100%
MB	5,543	73%	2,095	27%	7,638	100%
MA	17,589	55%	14,594	45%	32,183	100%
FU	4,630	36%	8,287	64%	12,917	100%
FD	5,905	27%	16,195	73%	22,100	100%
FC	3,266	31%	7,415	69%	10,681	100%
FB	419	9%	4,227	91%	4,646	100%
FA	21	3%	774	97%	795	100%
Total	43,896	44%	55,844	56%	99,740	100%

Release Status

Table 10 : Release status after arraignment across all types of bond

Status after arraignment	Number of Days After Arraignment			
	1 day		14 days	
	Frequency	Percent	Frequency	Percent
Detained	40,387	38%	32,512	31%
Released	64,750	62%	72,625	69%
Total	105,137	100%	105,137	100%

Nearly all the defendants with non-financial bonds were released, while 69% of those with financial bond were detained one day after arraignment, and 54% remained incarcerated 14 days after arraignment.

Table 11 : Release Status by Non-financial and Financial Bonds

Release Status after Arraignment	Type of Bond				Total	
	Non-financial		Financial			
	Frequency	Percent	Frequency	Percent	Frequency	Percent
Release status 1 day after arraignment						
Detained	509	1%	38,659	69%	39,168	39%
Released	43,387	99%	17,185	31%	60,572	61%
Total	43,896	100%	55,844	100%	99,740	100%
Release status 14 days after arraignment						
Detained	1,118	3%	30,251	54%	31,369	31%
Released	42,778	97%	25,593	46%	68,371	69%
Total	43,896	100%	55,844	100%	99,740	100%

Note: The defendants detained at 1 day after arraignment on non-financial bonds include 54 cases without any indication of a financial bond. The remained 455 cases had received a financial bond through police (n=395), non-court (n=97), warrant (n=85), and/or court (n=13 non-surety bonds). Of the 455 cases with a financial bond prior to the final bond recorded, there was a court ordered bond recorded for 272 cases that was one of the following: conditions (n=184), non-surety (n=13) or written promise to appear (n=75). The remaining 237 cases (of the 455 with some sort of financial bond prior to the final recorded non-financial bond) were primarily non-court promise to return (n=215), as well as conditions (n=20) and non-surety (n=2).

Bond Amount

Financial bond amounts varied widely, even within specific types of bonds (see Table 12).

Table 12: Aggregate and Maximum Court-Ordered Bond Amount by types of Financial Bonds
(Defendants with Financial Bonds only)

Type of Bond		Aggregate	Maximum
10% bond	Median	$ 2,500.00	$ 2,500.00
	Mean	$ 11,135.12	$ 9,295.39
	Std. Deviation	$ 28,211.84	$ 21,302.45
	Minimum	$ 20.00	$ 20.00
	Maximum	$ 350,000.00	$ 250,000.00
	Number of cases	664	664
10% Bond with Conditions	Median	$ 5,000.00	$ 5,000.00
	Mean	$ 17,423.04	$ 15,758.70
	Std. Deviation	$ 46,089.32	$ 43,594.07
	Minimum	$ 160.00	$ 160.00
	Maximum	$ 750,000.00	$ 750,000.00
	Number of cases	679	679
Cash Bond	Median	$ 10,000.00	$ 10,000.00
	Mean	$ 49,732.24	$ 41,123.86
	Std. Deviation	$ 169,055.26	$ 158,490.71
	Minimum	$ 5.00	$ 5.00
	Maximum	$ 5,000,000.00	$ 5,000,000.00
	Number of cases	2160	2160
Cash Bond with Conditions	Median	$ 17,000.00	$ 15,000.00
	Mean	$ 55,336.88	$ 51,282.36
	Std. Deviation	$ 119,740.91	$ 115,231.82
	Minimum	$ 20.00	$ 20.00
	Maximum	$ 1,075,000.00	$ 1,000,000.00
	Number of cases	557	557
Conditions with Surety	Median	$ 15,000.00	$ 15,000.00
	Mean	$ 55,901.57	$ 51,298.58
	Std. Deviation	$ 137,093.80	$ 127,546.98
	Minimum	$ 1.00	$ 1.00
	Maximum	$ 3,500,000.00	$ 3,500,000.00
	Number of cases	20082	20082
Surety Bond	Median	$ 25,000.00	$ 20,000.00
	Mean	$ 65,962.44	$ 56,454.17
	Std. Deviation	$ 170,373.03	$ 158,844.05
	Minimum	$ 2.00	$ 2.00
	Maximum	$ 5,000,000.00	$ 5,000,000.00
	Number of cases	27446	27446
Total	Median	$ 20,000.00	$ 15,000.00
	Mean	$ 59,907.12	$ 52,606.87
	Std. Deviation	$ 155,667.41	$ 145,042.84
	Minimum	$ 1.00	$ 1.00
	Maximum	$ 5,000,000.00	$ 5,000,000.00
	Number of cases	51588	51588

Relationships between Charge/Class, Risk and Detention Rates

Tables 13 presents the detention rates (at 1 and 14 days after arraignment) for misdemeanor charges, at each level of risk (defined by CSSD Risk Assessment Score). The detention rate increases as risk and severity of charge increase. Tables 23 and 24, found in the appendix, add bond amount – which is higher for in cases of detention than release. Nevertheless, when all conditions are held constant, detention rates are not consistent—that is some defendants are released while others are detained.

Table 13: Detention Rate for Misdemeanor Charges by Class of Charge and Risk Score

	CSSD Risk Assessment Scores	Detained 1 day after Arraignment			Detained 14 days after Arraignment		
		Frequency	Percent	Total	Frequency	Percent	Total
MU	Score 0 or higher	68	10%	678	46	7%	678
	Score -3 to -1	39	30%	131	33	25%	131
	Score -4 to -7	26	39%	66	22	33%	66
	Score -12 to -8	1	14%	7	1	14%	7
	Total	134	15%	882	102	12%	882
MD	Score 0 or higher	16	7%	232	5	2%	232
	Score -3 to -1	7	15%	46	6	13%	46
	Score -4 to -7	12	34%	35	9	26%	35
	Score -12 to -8	5	56%	9	4	44%	9
	Total	40	12%	322	24	7%	322
MC	Score 0 or higher	207	5%	3,901	161	4%	3,901
	Score -3 to -1	354	22%	1,611	280	17%	1,611
	Score -4 to -7	573	30%	1,921	474	25%	1,921
	Score -12 to -8	297	43%	692	258	37%	692
	Score -13 to -28	0	0%	1	1	100%	1
	Total	1,431	18%	8,126	1,174	14%	8,126
MB	Score 0 or higher	246	6%	4,021	185	5%	4,021
	Score -3 to -1	308	21%	1,478	213	14%	1,478
	Score -4 to -7	499	30%	1,687	391	23%	1,687
	Score -12 to -8	355	43%	827	308	37%	827
	Score -13 to -28	5	71%	7	5	71%	7
	Total	1,413	18%	8,020	1,102	14%	8,020
MA	Score 0 or higher	1,172	9%	13,217	674	5%	13,217
	Score -3 to -1	1,811	27%	6,618	1,248	19%	6,618
	Score -4 to -7	3,135	38%	8,280	2,347	28%	8,280
	Score -12 to -8	3,183	52%	6,065	2,658	44%	6,065
	Score -13 to -28	316	65%	485	283	58%	485
	Total	9,617	28%	34,665	7,210	21%	34,665
Total	Score 0 or higher	1,709	8%	22,049	1,071	5%	22,049
	Score -3 to -1	2,519	25%	9,884	1,780	18%	9,884
	Score -4 to -7	4,245	35%	11,989	3,243	27%	11,989
	Score -12 to -8	3,841	51%	7,600	3,229	42%	7,600
	Score -13 to -28	321	65%	493	289	59%	493
	Total	12,635	24%	52,015	9,612	18%	52,015

Table 14 shows detention rates for cases with felony charges, across charge class and level of assessed risk. As with misdemeanor charges, detention rates for low levels of assessed risk are again relatively small, and these detention rates increase as the level of assessed risk increases.

Table 14: Detention Rate for Felony Charges by Class of Charge and Risk Score

Charge	CSSD Risk Assessment Scores	Detained 1 day after Arraignment			Detained 14 days after Arraignment		
		Frequency	Percent	Total	Frequency	Percent	Total
FU	Score 0 or higher	562	18%	3,197	381	12%	3,197
	Score -3 to -1	960	36%	2,684	707	26%	2,684
	Score -4 to -7	2,088	52%	4,037	1,669	41%	4,037
	Score -12 to -8	1,970	62%	3,175	1,639	52%	3,175
	Score -13 to -28	265	80%	330	244	74%	330
	Total	5,845	44%	13,423	4,640	35%	13,423
FD	Score 0 or higher	790	20%	4,050	509	13%	4,050
	Score -3 to -1	1,704	42%	4,020	1,208	30%	4,020
	Score -4 to -7	3,387	55%	6,108	2,646	43%	6,108
	Score -12 to -8	4,628	71%	6,523	3,984	61%	6,523
	Score -13 to -28	1,730	80%	2,167	1,577	73%	2,167
	Total	12,239	54%	22,868	9,924	43%	22,868
FC	Score 0 or higher	368	16%	2,270	246	11%	2,270
	Score -3 to -1	659	35%	1,888	491	26%	1,888
	Score -4 to -7	1,347	51%	2,627	1,053	40%	2,627
	Score -12 to -8	2,072	69%	2,986	1,807	61%	2,986
	Score -13 to -28	980	82%	1,196	891	74%	1,196
	Total	5,426	49%	10,967	4,488	41%	10,967
FB	Score 0 or higher	250	39%	646	198	31%	646
	Score -3 to -1	488	63%	772	414	54%	772
	Score -4 to -7	857	74%	1,162	738	64%	1,162
	Score -12 to -8	1,155	83%	1,386	1,083	78%	1,386
	Score -13 to -28	766	92%	835	724	87%	835
	Total	3,516	73%	4,801	3,157	66%	4,801
FA	Score 0 or higher	39	55%	71	33	46%	71
	Score -3 to -1	64	69%	93	62	67%	93
	Score -4 to -7	141	86%	164	127	77%	164
	Score -12 to -8	204	88%	231	196	85%	231
	Score -13 to -28	245	95%	257	245	95%	257
	Total	693	85%	816	663	81%	816
Total	Score 0 or higher	2,009	20%	10,234	1,367	13%	10,234
	Score -3 to -1	3,875	41%	9,457	2,882	30%	9,457
	Score -4 to -7	7,820	55%	14,098	6,233	44%	14,098
	Score -12 to -8	10,032	70%	14,304	8,712	61%	14,304
	Score -13 to -28	3,990	83%	4,789	3,685	77%	4,789
	Total	27,726	52%	52,882	22,879	43%	52,882

Detention Rates for Defendants in Similar Circumstances

In order to examine the question about detention rates for defendants who are similar in terms of charge, level of assessed risk and amount of bond, three samples were drawn from the data set based on charges:

- Misdemeanor A
- Felony Class D
- Felony Class C

These three groups were selected because taken together they represented 70% of the cases.

The samples were further refined to include defendants with financial bonds in the form of surety or surety with conditions bonds – this accounted for 92% of the financial bond cases.

To match on bond amount, the court ordered aggregate amount was selected as it represents the amount a defendant would have to raise to make bond. For each charge, the distribution of court ordered aggregate bond amounts was examined and three values selected to represent the largest proportion of cases.

Finally, risk levels were defined by the CSSD Risk Assessment Scores. Distributions of scores were reviewed for each charge, and scores representing the largest proportion of the distribution were selected to define the sample.

Misdemeanor A

Table 15 indicates that defendants charged with a Misdemeanor Class A, and matched by risk score, type of bond (surety or surety with conditions), and amount of court ordered aggregate bond are sometimes detained, and other times not detained. Detention cannot be explained by charge, risk score, type and amount of bond. Detention rates do increase as the amount of bond increases.

Similar results were found in analyses of Felony Class D and Class C cases (see Tables 17 and 19).

Table 15: Detention Rates for Defendants matched for Misdemeanor A Charge, Risk Assessment Score, Type of Bond, and Court Ordered Aggregate Bond Amount

CSSD Risk Assessment Score	Aggregate Bond Amount	Number Detained 14 Days after Arraignment	Percent Detained	Total Number of Cases
-5	$1000 or less	34	29%	119
	$5,000	61	48%	126
	$10,000	51	50%	103
-6	$1000 or less	30	26%	116
	$5,000	50	46%	108
	$10,000	69	63%	109
-7	$1000 or less	50	45%	111
	$5,000	69	58%	118
	$10,000	75	67%	112
-8	$1000 or less	60	44%	136
	$5,000	71	56%	126
	$10,000	54	62%	87

Tables 16, 18, and 20 add race to the mix. There are no clear, consistent patterns in detention rates that can be attributed to race. Once again, higher detention rates tend to be associated with higher bond amounts.

Table 16: Detention Rate by Race/Ethnicity for Misdemeanor A Class Charges

CSSD Risk Assessment Score	Court Ordered Aggregate Bond Amount	Detention Rate 14 Days after Arraignment		
		White Defendants	Hispanic Defendants	Black Defendants
-5	$1000 or less	39%	19%	23%
	$5,000	53%	58%	37%
	$10,000	49%	50%	50%
-6	$1000 or less	24%	26%	27%
	$5,000	44%	36%	55%
	$10,000	67%	69%	55%
-7	$1000 or less	42%	64%	39%
	$5,000	62%	54%	58%
	$10,000	60%	68%	78%
-8	$1000 or less	43%	34%	49%
	$5,000	54%	45%	65%
	$10,000	46%	61%	73%

Felony Class D

As noted above, all things held constant, there is not a consistent detention rate for Felony Class D charge cases.

Table 17: Detention Rates for Defendants matched for Felony Class D Charge, Risk Assessment Score, Type of Bond, and Court Ordered Aggregate Bond Amount

CSSD Risk Assessment Score	Court Ordered Aggregate Bond Amount	Number Detained 14 Days after Arraignment	Percent Detained	Total Number of Cases
-5	$10,000	45	39%	116
	$25,000	56	58%	97
	$50,000	77	76%	101
-7	$10,000	75	55%	136
	$25,000	85	65%	130
	$50,000	84	74%	113
-9	$10,000	74	62%	120
	$25,000	103	79%	130
	$50,000	87	79%	110
-11	$10,000	66	67%	98
	$25,000	75	68%	110
	$50,000	93	85%	109
-13	$10,000	48	68%	71
	$25,000	59	75%	79
	$50,000	70	88%	80

Table 18: Detention Rate by Race/Ethnicity for Felony Class D Charges

CSSD Risk Assessment Score	Court Ordered Aggregate Bond Amount	Detention Rate 14 Days after Arraignment		
		White Defendants	Hispanic Defendants	Black Defendants
-5	$10,000	43%	23%	41%
	$25,000	73%	47%	44%
	$50,000	66%	83%	87%
-7	$10,000	53%	57%	56%
	$25,000	62%	68%	68%
	$50,000	81%	74%	67%
-9	$10,000	70%	59%	53%
	$25,000	82%	78%	77%
	$50,000	81%	76%	79%
-11	$10,000	67%	71%	63%
	$25,000	67%	76%	63%
	$50,000	89%	88%	78%
-13	$10,000	57%	79%	71%
	$25,000	83%	83%	63%
	$50,000	88%	85%	88%

Felony Class C

Again, the Felony C Class data indicate that there is not a consistency in detention rates when all conditions are held constant.

Table 19: Detention Rates for Defendants matched for Felony Class C Charge, Risk Assessment Score, Type of Bond, and Court Ordered Aggregate Bond Amount

CSSD Risk Assessment Score	Court Ordered Aggregate Bond Amount	Number Detained 14 Days after Arraignment	Percent Detained	Total Number of Cases
-5	$10,000	15	48%	31
	$25,000	19	46%	41
	$50,000	30	58%	52
-7	$10,000	17	47%	36
	$25,000	21	50%	42
	$50,000	31	57%	54
-9	$10,000	15	44%	34
	$25,000	28	74%	38
	$50,000	17	47%	36
-11	$10,000	24	73%	33
	$25,000	23	61%	38
	$50,000	33	80%	41
-13	$10,000	17	74%	23
	$25,000	14	56%	25
	$50,000	33	83%	40

Table 20: Detention Rate by Race/Ethnicity for Felony Class C Charges

CSSD Risk Assessment Score	Court Ordered Aggregate Bond Amount	Detention Rate 14 Days after Arraignment		
		White Defendants	Hispanic Defendants	Black Defendants
-5	$10,000	60%	36%	50%
	$25,000	67%	33%	31%
	$50,000	67%	50%	53%
-7	$10,000	69%	29%	36%
	$25,000	58%	36%	53%
	$50,000	79%	43%	61%
-9	$10,000	27%	50%	53%
	$25,000	86%	63%	69%
	$50,000	86%	84%	88%
-11	$10,000	69%	29%	36%
	$25,000	58%	36%	53%
	$50,000	79%	43%	61%
-13	$10,000	60%	36%	50%
	$25,000	67%	33%	31%
	$50,000	67%	50%	53%

Race/Ethnicity

Table 21 presents bond amounts for white and non-white defendants with similar levels of assessment risk and class of misdemeanor charge. The only consistent pattern is the wide variance in bond amounts across all classes of misdemeanor and levels of assessed risk.

Table 21: Court Ordered Bond Amount by Race, Risk & Class of Misdemeanor Charge

Charge & Class	FBG rating score categories	Race		Court Ordered Bond Amount	
				Aggregate	Maximum
MC	0 to 6	White (n=200)	Median	$ 2,000	$ 1,750
			Mean	$ 5,857	$ 5,728
			Std. Deviation	$ 11,408	$ 11,319
		Non-White (n=189)	Median	$ 1,000	$ 1,000
			Mean	$ 3,705	$ 3,651
			Std. Deviation	$ 7,143	$ 7,131
	-1	White (n=113)	Median	$ 2,500	$ 2,500
			Mean	$ 8,473	$ 8,313
			Std. Deviation	$ 25,749	$ 24,896
		Non-White (n=130)	Median	$ 2,500	$ 2,500
			Mean	$ 7,806	$ 7,206
			Std. Deviation	$ 17,319	$ 16,606
	-2	White (n=142)	Median	$ 5,000	$ 5,000
			Mean	$ 10,409	$ 8,132
			Std. Deviation	$ 42,183	$ 21,750
		Non-White (n=145)	Median	$ 2,500	$ 2,500
			Mean	$ 6,739	$ 6,451
			Std. Deviation	$ 11,372	$ 11,196
	-3	White (n=89)	Median	$ 5,000	$ 5,000
			Mean	$ 8,106	$ 7,739
			Std. Deviation	$ 11,281	$ 10,875
		Non-White (n=120)	Median	$ 5,000	$ 5,000
			Mean	$ 8,520	$ 7,772
			Std. Deviation	$ 15,096	$ 14,213
	-4	White (n=73)	Median	$ 5,000	$ 5,000
			Mean	$ 10,572	$ 9,675
			Std. Deviation	$ 14,118	$ 13,145
		Non-White (n=87)	Median	$ 7,500	$ 7,500
			Mean	$ 10,879	$ 10,431
			Std. Deviation	$ 13,345	$ 12,814
	-6 to -5	White (n=35)	Median	$ 10,000	$ 10,000
			Mean	$ 18,289	$ 16,903
			Std. Deviation	$ 28,300	$ 27,751
		Non-White (n=53	Median	$ 10,000	$ 10,000
			Mean	$ 17,158	$ 14,044
			Std. Deviation	$ 21,113	$ 13,905

Table 21A: Court Ordered Bond Amount (Aggregate and Maximum) by Race, Risk & Class of Misdemeanor Charge

Charge & Class	FBG rating score	Race		Court Ordered Bond Amount	
				Aggregate	Maximum
MB	0 to 6	White	Median	$ 5,000	$ 2,500
		(n=214)	Mean	$ 7,825	$ 7,138
			Std. Deviation	$ 13,576	$ 12,725
		Non-White	Median	$ 2,500	$ 2,500
		(n=246)	Mean	$ 7,359	$ 6,977
			Std. Deviation	$ 14,979	$ 14,835
	-1	White	Median	$ 5,000	$ 5,000
		(n=169)	Mean	$ 10,379	$ 9,996
			Std. Deviation	$ 14,326	$ 14,313
		Non-White	Median	$ 5,000	$ 5,000
		(n=139)	Mean	$ 10,245	$ 9,831
			Std. Deviation	$ 17,706	$ 17,579
	-2	White	Median	$ 5,000	$ 5,000
		(n=115)	Mean	$ 11,601	$ 10,197
			Std. Deviation	$ 19,452	$ 16,393
		Non-White	Median	$ 5,000	$ 5,000
		(n=142)	Mean	$ 12,752	$ 11,590
			Std. Deviation	$ 20,334	$ 16,794
	-3	White	Median	$ 10,000	$ 10,000
		(n=136)	Mean	$ 18,304	$ 17,035
			Std. Deviation	$ 32,996	$ 32,712
		Non-White	Median	$ 10,000	$ 10,000
		(n=125)	Mean	$ 27,573	$ 25,905
			Std. Deviation	$ 134,664	$ 134,260
	-4	White	Median	$ 7,500	$ 7,500
		(n=55)	Mean	$ 17,791	$ 15,745
			Std. Deviation	$ 31,929	$ 29,786
		Non-White	Median	$ 10,000	$ 10,000
		(n=75)	Mean	$ 18,131	$ 17,791
			Std. Deviation	$ 21,150	$ 20,833
	-6 to -5	White	Median	$ 10,000	$ 10,000
		(n=30)	Mean	$ 20,183	$ 17,717
			Std. Deviation	$ 21,707	$ 19,468
		Non-White	Median	$ 10,500	$ 10,000
		(n=52)	Mean	$ 23,442	$ 21,500
			Std. Deviation	$ 24,317	$ 23,805

Table21A: Court Ordered Bond Amount (Aggregate and Maximum) by Race, Risk & Class of Misdemeanor Charge

Charge & Class	FBG rating score	Race		Court Ordered Bond Amount	
				Aggregate	Maximum
MA	0 to 6	White (n=1,601)	Median	$ 5,000	$ 2,500
			Mean	$ 9,514	$ 7,899
			Std. Deviation	$ 18,518	$ 15,197
		Non-White (n=2,146)	Median	$ 3,500	$ 2,500
			Mean	$ 8,870	$ 7,482
			Std. Deviation	$ 16,715	$ 14,503
	-1	White (n=803)	Median	$ 5,000	$ 5,000
			Mean	$ 15,262	$ 12,312
			Std. Deviation	$ 43,491	$ 41,586
		Non-White (n=950)	Median	$ 5,000	$ 5,000
			Mean	$ 11,854	$ 9,946
			Std. Deviation	$ 20,559	$ 18,861
	-2	White (n=808)	Median	$ 10,000	$ 7,500
			Mean	$ 17,630	$ 13,836
			Std. Deviation	$ 30,615	$ 24,483
		Non-White (n=1,293)	Median	$ 10,000	$ 7,500
			Mean	$ 16,632	$ 13,774
			Std. Deviation	$ 26,925	$ 23,243
	-3	White (n=712)	Median	$ 10,000	$ 10,000
			Mean	$ 18,053	$ 14,884
			Std. Deviation	$ 23,763	$ 19,352
		Non-White (n=1,002)	Median	$ 10,000	$ 10,000
			Mean	$ 20,170	$ 17,755
			Std. Deviation	$ 36,232	$ 33,132
	-4	White (n=441)	Median	$ 15,000	$ 10,000
			Mean	$ 25,470	$ 21,690
			Std. Deviation	$ 53,946	$ 52,417
		Non-White (n=670)	Median	$ 11,000	$ 10,000
			Mean	$ 24,100	$ 20,594
			Std. Deviation	$ 37,191	$ 33,191
	-6 to -5	White (n=319)	Median	$ 20,000	$ 15,000
			Mean	$ 29,339	$ 25,422
			Std. Deviation	$ 32,466	$ 28,432
		Non-White (n=491)	Median	$ 20,500	$ 20,000
			Mean	$ 33,874	$ 28,234
			Std. Deviation	$ 51,185	$ 34,128

Table 22 provides data on bond amounts for white and non-white defendants matched by felony charge class and assessed risk level. Again, as with misdemeanors, the most notable pattern is the wide variation in bond amounts among similarly situated defendants.

Table 22: Court Ordered Bond Amount (Aggregate and Maximum) by Race, Risk & Class of Felony Charge

Charge & Class	FBG rating score categories	Race		Court Ordered Bond Amount	
				Aggregate	Maximum
FU	0 to 6	White (n=749)	Median	$ 15,000	$ 10,000
			Mean	$ 41,413	$ 35,149
			Std. Deviation	$ 97,295	$ 84,195
		Non-White (n=1,112)	Median	$ 20,000	$ 20,000
			Mean	$ 48,080	$ 41,138
			Std. Deviation	$ 106,098	$ 92,075
	-1	White (n=378)	Median	$ 25,000	$ 20,000
			Mean	$ 52,567	$ 44,459
			Std. Deviation	$ 100,389	$ 88,464
		Non-White (n=780)	Median	$ 25,000	$ 25,000
			Mean	$ 57,467	$ 47,461
			Std. Deviation	$ 91,368	$ 80,308
	-2	White (n=519)	Median	$ 25,150	$ 25,000
			Mean	$ 53,000	$ 45,854
			Std. Deviation	$ 97,034	$ 92,603
		Non-White (n=1,015)	Median	$ 50,000	$ 35,000
			Mean	$ 74,734	$ 61,640
			Std. Deviation	$ 110,378	$ 83,645
	-3	White (n=287)	Median	$ 37,000	$ 25,000
			Mean	$ 64,432	$ 53,686
			Std. Deviation	$ 91,838	$ 75,424
		Non-White (n=761)	Median	$ 50,000	$ 50,000
			Mean	$ 91,884	$ 75,636
			Std. Deviation	$ 124,963	$ 106,476
	-4	White (n=221)	Median	$ 50,000	$ 35,000
			Mean	$ 89,035	$ 72,918
			Std. Deviation	$ 132,849	$ 120,217
		Non-White (n=567)	Median	$ 75,000	$ 75,000
			Mean	$ 125,151	$ 102,955
			Std. Deviation	$ 183,078	$ 161,550
	-6 to -5	White (n=106)	Median	$ 50,000	$ 50,000
			Mean	$ 98,718	$ 83,546
			Std. Deviation	$ 116,263	$ 109,627
		Non-White (n=347)	Median	$ 100,000	$ 90,000
			Mean	$ 172,638	$ 148,288
			Std. Deviation	$ 214,351	$ 199,593

Table 22A: Court Ordered Bond Amount (Aggregate and Maximum) by Race, Risk & Class of Felony Charge

Charge & Class	FBG rating score categories	Race		Court Ordered Bond Amount	
				Aggregate	Maximum
FD	0 to 6	White (n=1,717)	Median	$ 10,000	$ 10,000
			Mean	$ 25,921	$ 20,749
			Std. Deviation	$ 52,511	$ 43,349
		Non-White (n=2,090)	Median	$ 10,150	$ 10,000
			Mean	$ 28,466	$ 24,308
			Std. Deviation	$ 62,729	$ 54,935
	-1	White (n=945)	Median	$ 20,000	$ 10,000
			Mean	$ 33,145	$ 26,297
			Std. Deviation	$ 60,465	$ 52,509
		Non-White (n=1,192)	Median	$ 20,000	$ 15,000
			Mean	$ 40,012	$ 31,935
			Std. Deviation	$ 121,404	$ 60,514
	-2	White (n=1,153)	Median	$ 25,000	$ 25,000
			Mean	$ 42,933	$ 32,332
			Std. Deviation	$ 71,455	$ 53,036
		Non-White (n=1,544)	Median	$ 25,000	$ 25,000
			Mean	$ 45,336	$ 36,439
			Std. Deviation	$ 84,459	$ 59,334
	-3	White (n=1,055)	Median	$ 30,000	$ 25,000
			Mean	$ 46,966	$ 37,437
			Std. Deviation	$ 54,358	$ 45,124
		Non-White (n=1,502)	Median	$ 40,000	$ 25,000
			Mean	$ 62,229	$ 51,366
			Std. Deviation	$ 88,374	$ 74,298
	-4	White (n=621)	Median	$ 35,000	$ 25,000
			Mean	$ 54,038	$ 43,691
			Std. Deviation	$ 66,390	$ 55,397
		Non-White (n=1,089)	Median	$ 50,000	$ 40,000
			Mean	$ 79,322	$ 67,030
			Std. Deviation	$ 122,983	$ 105,976
	-6 to -5	White (n=397)	Median	$ 50,000	$ 50,000
			Mean	$ 85,362	$ 68,438
			Std. Deviation	$ 104,710	$ 90,334
		Non-White (n=762)	Median	$ 75,000	$ 75,000
			Mean	$ 124,726	$ 106,238
			Std. Deviation	$ 157,358	$ 136,327

Table 22B: Court Ordered Bond Amount (Aggregate and Maximum) by Race, Risk & Class of Felony Charge

Charge & Class	FBG rating score categories	Race		Court Ordered Bond Amount	
				Aggregate	Maximum
FC	0 to 6	White (n=666)	Median	$ 20,000	$ 15,000
			Mean	$ 41,040	$ 38,208
			Std. Deviation	$ 89,689	$ 88,809
		Non-White (n=1,149)	Median	$ 20,000	$ 20,000
			Mean	$ 38,872	$ 35,303
			Std. Deviation	$ 69,708	$ 66,152
	-1	White (n=399)	Median	$ 30,000	$ 25,000
			Mean	$ 47,739	$ 41,951
			Std. Deviation	$ 53,111	$ 46,292
		Non-White (n=724)	Median	$ 35,000	$ 25,000
			Mean	$ 58,749	$ 52,028
			Std. Deviation	$ 120,059	$ 107,975
	-2	White (n=369)	Median	$ 35,000	$ 35,000
			Mean	$ 73,533	$ 65,989
			Std. Deviation	$ 127,051	$ 122,400
		Non-White (n=754)	Median	$ 50,000	$ 50,000
			Mean	$ 83,368	$ 70,675
			Std. Deviation	$ 158,451	$ 114,104
	-3	White (n=320)	Median	$ 50,000	$ 42,500
			Mean	$ 81,295	$ 70,330
			Std. Deviation	$ 128,639	$ 97,631
		Non-White (n=705)	Median	$ 50,000	$ 50,000
			Mean	$ 92,571	$ 82,343
			Std. Deviation	$ 126,456	$ 117,827
	-4	White (n=187)	Median	$ 45,000	$ 35,000
			Mean	$ 79,825	$ 68,310
			Std. Deviation	$ 109,301	$ 87,942
		Non-White (n=497)	Median	$ 70,000	$ 50,000
			Mean	$ 107,481	$ 89,033
			Std. Deviation	$ 138,915	$ 112,958
	-6 to -5	White (n=136)	Median	$ 92,500	$ 75,000
			Mean	$ 126,571	$ 109,868
			Std. Deviation	$ 139,179	$ 112,161
		Non-White (n=379)	Median	$ 100,000	$ 75,000
			Mean	$ 158,617	$ 133,371
			Std. Deviation	$ 213,089	$ 155,730

Table 22C: Court Ordered Bond Amount (Aggregate and Maximum) by Race, Risk & Class of Felony Charge

Charge & Class	FBG rating score categories	Race		Court Ordered Bond Amount Aggregate	Court Ordered Bond Amount Maximum
FB	0 to 6	White (n=343)	Median	$ 50,000	$ 50,000
			Mean	$ 77,255	$ 72,293
			Std. Deviation	$ 103,317	$ 97,977
		Non-White (n=627)	Median	$ 50,000	$ 50,000
			Mean	$ 88,934	$ 82,659
			Std. Deviation	$ 126,393	$ 118,875
	-1	White (n=201)	Median	$ 75,000	$ 75,000
			Mean	$ 120,096	$ 112,063
			Std. Deviation	$ 157,241	$ 153,182
		Non-White (n=398)	Median	$ 91,000	$ 75,000
			Mean	$ 153,223	$ 142,609
			Std. Deviation	$ 283,166	$ 274,142
	-2	White (n=233)	Median	$ 100,000	$ 100,000
			Mean	$ 147,915	$ 139,406
			Std. Deviation	$ 194,486	$ 188,674
		Non-White (n=521)	Median	$ 100,000	$ 100,000
			Mean	$ 159,457	$ 148,290
			Std. Deviation	$ 170,932	$ 163,932
	-3	White (n=171)	Median	$ 100,000	$ 99,000
			Mean	$ 151,918	$ 141,237
			Std. Deviation	$ 181,668	$ 177,710
		Non-White (n=365)	Median	$ 101,000	$ 100,000
			Mean	$ 189,948	$ 176,889
			Std. Deviation	$ 209,916	$ 199,625
	-4	White (n=117)	Median	$ 100,000	$ 100,000
			Mean	$ 168,239	$ 156,526
			Std. Deviation	$ 156,352	$ 145,319
		Non-White (n=323)	Median	$ 150,000	$ 150,000
			Mean	$ 242,587	$ 226,461
			Std. Deviation	$ 229,296	$ 223,098
	-6 to -5	White (n=124)	Median	$ 202,500	$ 200,000
			Mean	$ 272,670	$ 247,790
			Std. Deviation	$ 259,238	$ 235,883
		Non-White (n=403)	Median	$ 200,000	$ 200,000
			Mean	$ 305,064	$ 264,579
			Std. Deviation	$ 331,692	$ 265,825

Table 22D: Court Ordered Bond Amount (Aggregate and Maximum) by Race, Risk & Class of Felony Charge

Charge & Class	FBG rating score categories	Race		Court Ordered Bond Amount	
				Aggregate	Maximum
FA	0 to 6	White (n=37)	Median	$ 75,000	$ 75,000
			Mean	$ 261,243	$ 257,027
			Std. Deviation	$ 584,131	$ 584,446
		Non-White (n=65)	Median	$ 100,000	$ 100,000
			Mean	$ 271,031	$ 265,892
			Std. Deviation	$ 398,945	$ 400,907
	-1	White (n=32)	Median	$ 150,000	$ 150,000
			Mean	$ 445,922	$ 440,125
			Std. Deviation	$ 646,152	$ 638,553
		Non-White (n=68)	Median	$ 250,000	$ 250,000
			Mean	$ 447,268	$ 446,015
			Std. Deviation	$ 494,906	$ 495,070
	-2	White (n=30)	Median	$ 150,000	$ 150,000
			Mean	$ 410,167	$ 403,333
			Std. Deviation	$ 661,646	$ 664,735
		Non-White (n=77)	Median	$ 250,000	$ 250,000
			Mean	$ 547,721	$ 520,377
			Std. Deviation	$ 589,045	$ 562,450
	-3	White (n=36)	Median	$ 200,000	$ 200,000
			Mean	$ 323,583	$ 323,306
			Std. Deviation	$ 337,549	$ 337,776
		Non-White (n=87)	Median	$ 250,000	$ 250,000
			Mean	$ 543,994	$ 532,874
			Std. Deviation	$ 620,027	$ 602,704
	-4	White (n=29)	Median	$ 250,000	$ 250,000
			Mean	$ 609,655	$ 608,621
			Std. Deviation	$ 627,693	$ 628,358
		Non-White (n=74)	Median	$ 405,000	$ 375,000
			Mean	$ 658,273	$ 643,284
			Std. Deviation	$ 689,685	$ 666,057
	-6 to -5	White (n=32)	Median	$ 375,000	$ 375,000
			Mean	$ 480,031	$ 479,188
			Std. Deviation	$ 437,190	$ 437,715
		Non-White (n=157)	Median	$ 500,000	$ 500,000
			Mean	$ 756,667	$ 738,156
			Std. Deviation	$ 643,380	$ 633,209

Conclusion

The analysis of CSSD case data addressed the following two questions:

- To what extent is the state of Connecticut detaining individuals who are assessed as low risk to public safety because they lack resources to post bond?
    - Results indicate that the state of Connecticut detains a small proportion of defendants who are assessed as low risk to public safety.
    - As the level of assessed risk increases, the proportion of defendants detained increases.
    - For defendants who were detained, bond amounts were consistently higher than those who were released, regardless of assessed level of risk. It is reasonable to assume that detained defendants were not able to post bond.
- To what extent do decisions to release or detain defendants who are similar in terms of criminal charge, level of assessed risk and amount of bond differ due to one's ability to pay bond?
    - Comparisons of similarly situated defendants, matched in terms of criminal charge, class of charge, level of assessed risk and amount of bond showed different detention rates. Thus, again indicating that detention was impacted by defendants' ability to pay bond.

Table 23: Release Status by Charge/Class, Type of Bond, Risk Score, and Amount of Bond

Defendants with Misdemeanor Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
MA	10% bond/10% with conditions	0 to 6	Detained	$ 2,500	$ 8,424	$ 12,610	$ 50,000	29
			Released	$ 1,500	$ 4,285	$ 14,580	$ 200,000	203
		-1	Detained	$ 5,000	$ 6,417	$ 7,007	$ 30,000	15
			Released	$ 2,000	$ 3,366	$ 4,991	$ 25,500	32
		-2	Detained	$ 5,643	$ 8,849	$ 10,717	$ 50,000	24
			Released	$ 2,500	$ 5,884	$ 8,888	$ 50,000	53
		-3	Detained	$ 10,000	$ 11,133	$ 9,286	$ 30,000	15
			Released	$ 2,750	$ 6,588	$ 12,128	$ 64,150	30
		-4	Detained	$ 6,250	$ 6,150	$ 5,186	$ 15,000	10
			Released	$ 5,000	$ 11,433	$ 15,271	$ 50,000	15
		-6 to -5	Detained	$ 10,000	$ 14,063	$ 10,517	$ 35,000	8
			Released	$ 4,000	$ 4,056	$ 2,709	$ 10,000	9
	Cash bond/cash with conditions	0 to 6	Detained	$ 5,000	$ 13,603	$ 25,064	$ 175,000	79
			Released	$ 250	$ 1,876	$ 11,135	$ 150,000	208
		-1	Detained	$ 6,375	$ 17,125	$ 25,343	$ 99,000	48
			Released	$ 400	$ 2,996	$ 8,651	$ 50,000	48
		-2	Detained	$ 2,500	$ 15,227	$ 28,371	$ 150,000	56
			Released	$ 495	$ 3,715	$ 9,153	$ 50,000	45
		-3	Detained	$ 10,000	$ 20,004	$ 26,825	$ 101,000	51
			Released	$ 500	$ 3,978	$ 9,588	$ 50,000	34
		-4	Detained	$ 9,000	$ 25,217	$ 33,862	$ 120,000	38
			Released	$ 300	$ 596	$ 654	$ 2,000	9
		-6 to -5	Detained	$ 12,625	$ 22,038	$ 23,481	$ 85,000	26
			Released	$ 150	$ 481	$ 791	$ 2,650	10
	Surety Bond/surety with conditions	0 to 6	Detained	$ 5,000	$ 13,598	$ 21,449	$ 275,000	1182
			Released	$ 3,000	$ 7,615	$ 14,471	$ 250,000	1995
		-1	Detained	$ 8,000	$ 17,515	$ 30,154	$ 350,000	800
			Released	$ 5,000	$ 8,928	$ 13,226	$ 150,000	800
		-2	Detained	$ 10,000	$ 21,781	$ 33,267	$ 350,000	1131
			Released	$ 5,000	$ 12,505	$ 21,271	$ 250,002	832
		-3	Detained	$ 10,000	$ 22,855	$ 36,942	$ 500,000	1022
			Released	$ 10,000	$ 14,695	$ 20,753	$ 150,000	554
		-4	Detained	$ 20,000	$ 28,825	$ 49,121	$ 1,000,000	742
			Released	$ 10,000	$ 16,663	$ 33,743	$ 500,000	297
		-6 to -5	Detained	$ 25,000	$ 35,353	$ 42,952	$ 600,000	570
			Released	$ 15,000	$ 27,769	$ 53,262	$ 525,000	187

Table 23A: Release Status by Charge/Class, Type of Bond, Risk Score, and Amount of Bond

Defendants with Misdemeanor Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
MB	10% bond/10% with conditions	0 to 6	Detained	$ 500	$ 600	$ 224	$ 1,000	5
			Released	$ 2,500	$ 3,447	$ 3,055	$ 10,000	19
		-1	Detained	$ 3,500	$ 6,583	$ 9,200	$ 25,000	6
			Released	$ 2,500	$ 5,600	$ 8,065	$ 20,000	5
		-2	Detained	$ 3,750	$ 3,750	$ 1,768	$ 5,000	2
			Released	$ 5,000	$ 3,700	$ 1,857	$ 5,000	5
		-3	Detained	$ 10,000	$ 20,500	$ 26,602	$ 60,000	4
			Released	$ 1,500	$ 2,429	$ 1,835	$ 5,000	7
		-4	Detained	$ 5,000	$ 5,000	$ 4,062	$ 10,000	5
			Released	$ 5,500	$ 5,500	$ 6,364	$ 10,000	2
		-6 to -5	Detained	$ 5,000	$ 7,500	$ 6,614	$ 15,000	3
			Released	$ 500	$ 600	$ 224	$ 1,000	5
	Cash bond/cash with conditions	0 to 6	Detained	$ 2,500	$ 6,497	$ 7,814	$ 25,000	16
			Released	$ 500	$ 3,549	$ 7,831	$ 30,000	20
		-1	Detained	$ 10,000	$ 11,125	$ 9,391	$ 25,000	8
			Released	$ 400	$ 499	$ 354	$ 995	4
		-2	Detained	$ 500	$ 4,450	$ 8,697	$ 20,000	5
			Released	$ 650	$ 3,743	$ 4,609	$ 10,000	7
		-3	Detained	$ 10,000	$ 9,125	$ 7,449	$ 20,000	8
			Released	$ 150	$ 150	.	$ 150	1
		-4	Detained	$ 10,000	$ 10,000	.	$ 10,000	1
			Released	$ 300	$ 300	.	$ 300	1
		-6 to -5	Detained	0	0	0	0	0
			Released	0	0	0	0	0
	Surety Bond/surety with conditions	0 to 6	Detained	$ 5,000	$ 10,406	$ 18,746	$ 150,000	134
			Released	$ 2,500	$ 6,785	$ 12,641	$ 101,000	258
		-1	Detained	$ 5,000	$ 11,877	$ 17,765	$ 150,000	151
			Released	$ 5,000	$ 9,180	$ 14,553	$ 100,000	133
		-2	Detained	$ 5,000	$ 15,607	$ 24,493	$ 150,000	137
			Released	$ 5,000	$ 9,301	$ 12,649	$ 65,000	99
		-3	Detained	$ 10,000	$ 20,951	$ 34,829	$ 250,000	156
			Released	$ 10,000	$ 29,679	$ 162,838	$ 1,500,000	84
		-4	Detained	$ 10,000	$ 22,144	$ 30,684	$ 200,000	80
			Released	$ 6,250	$ 12,595	$ 15,341	$ 75,000	42
		-6 to -5	Detained	$ 20,000	$ 25,973	$ 24,777	$ 100,000	56
			Released	$ 7,500	$ 16,325	$ 19,587	$ 75,000	20

Table 23B: Release Status by Charge/Class, Type of Bond, Risk Score, and Amount of Bond

Defendants with Misdemeanor Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
MC	10% bond/10% with conditions	0 to 6	Detained	$ 1,000	$ 21,000	$ 44,169	$ 100,000	5
			Released	$ 1,000	$ 1,750	$ 1,464	$ 5,000	14
		-1	Detained	$ 500	$ 500	.	$ 500	1
			Released	$ 2,500	$ 3,786	$ 3,251	$ 10,000	7
		-2	Detained	$ 2,500	$ 3,000	$ 1,904	$ 5,000	5
			Released	$ 2,000	$ 3,056	$ 2,888	$ 10,000	9
		-3	Detained	$ 2,750	$ 5,917	$ 9,399	$ 25,000	6
			Released	$ 1,500	$ 2,250	$ 1,848	$ 5,000	4
		-4	Detained	$ 2,875	$ 2,875	$ 3,005	$ 5,000	2
			Released	$ 1,000	$ 1,000	.	$ 1,000	1
		-6 to -5	Detained	$ -	$ -	$ -	$ -	0
			Released	$ 2,500	$ 3,000	$ 1,354	$ 5,000	4
	Cash bond/cash with conditions	0 to 6	Detained	$ 500	$ 1,648	$ 3,397	$ 10,000	8
			Released	$ 200	$ 1,452	$ 4,492	$ 25,000	35
		-1	Detained	$ 7,500	$ 7,918	$ 7,142	$ 20,000	6
			Released	$ 200	$ 488	$ 773	$ 2,650	10
		-2	Detained	$ 4,000	$ 78,129	$ 186,433	$ 500,000	7
			Released	$ 286	$ 3,601	$ 6,171	$ 20,000	13
		-3	Detained	$ 225	$ 638	$ 912	$ 2,000	4
			Released	$ 200	$ 232	$ 144	$ 500	9
		-4	Detained	$ 3,000	$ 4,667	$ 4,726	$ 10,000	3
			Released	$ -	$ -	$ -	$ -	0
		-6 to -5	Detained	$ 1,050	$ 1,050	$ 1,344	$ 2,000	2
			Released	$ 543	$ 543	$ 60	$ 585	2
	Surety Bond/surety with conditions	0 to 6	Detained	$ 2,500	$ 5,886	$ 10,252	$ 75,000	153
			Released	$ 1,500	$ 4,180	$ 7,203	$ 50,000	168
		-1	Detained	$ 5,000	$ 11,918	$ 28,574	$ 260,000	130
			Released	$ 2,500	$ 3,847	$ 5,938	$ 35,000	88
		-2	Detained	$ 5,000	$ 7,271	$ 8,156	$ 50,000	158
			Released	$ 2,500	$ 7,116	$ 13,108	$ 85,000	93
		-3	Detained	$ 5,000	$ 10,295	$ 14,556	$ 100,000	117
			Released	$ 3,750	$ 7,156	$ 13,222	$ 100,000	68
		-4	Detained	$ 10,000	$ 11,979	$ 13,215	$ 80,000	98
			Released	$ 2,500	$ 9,594	$ 15,209	$ 75,000	53
		-6 to -5	Detained	$ 10,000	$ 21,919	$ 27,236	$ 150,000	58
			Released	$ -	$ -	$ -	$ -	0

Table 24: Release Status by Felony Class, Type of Bond, FBG, and Amount of Bond

Defendants with Felony Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
FA	10% bond/10% with conditions	0 to 6	Detained	$ -	$ -	$ -	$ -	
			Released	$ 25,000	$ 117,000	$ 145,542	$ 300,000	5
		-1	Detained	$ 200,000	$ 200,000	.	$ 200,000	1
			Released	$ 150,000	$ 150,000	$ 100,000	$ 250,000	3
		-2	Detained	-	-	-	-	0
			Released	$ 250,000	$ 250,000	.	$ 250,000	1
		-3	Detained	-	-	-	-	0
			Released	$ 110,000	$ 110,000	$ 127,279	$ 200,000	2
		-4	Detained	$ 150,000	$ 162,250	$ 75,279	$ 250,000	4
			Released	-	-	-	--	0
		-6 to -5	Detained	$ 60,000	$ 60,000	$ 56,569	$ 100,000	2
			Released	$ 50,000	$ 50,000	.	$ 50,000	1
	Cash bond/cash with conditions	0 to 6	Detained	$ 75,000	$ 649,800	$ 909,320	$ 2,100,000	5
			Released	-	-	-	-	0
		-1	Detained	$ 100,000	$ 180,800	$ 148,814	$ 410,000	5
			Released	-	-	-	-	0
		-2	Detained	$ 500,000	$1,146,583	$ 1,444,345	$ 5,000,000	12
			Released	-	-	-	-	0
		-3	Detained	$ 150,000	$ 396,907	$ 600,505	$ 3,000,000	54
			Released	$ 67,500	$ 124,881	$ 180,914	$ 1,000,000	42
		-4	Detained	$ 250,000	$ 612,210	$ 777,162	$ 5,000,000	75
			Released	$ 50,000	$ 169,952	$ 288,425	$ 1,000,000	21
		-6 to -5	Detained	$ 250,000	$ 590,593	$ 653,416	$ 3,000,000	91
			Released	$ 100,000	$ 183,250	$ 208,059	$ 750,000	14
	Surety Bond/surety with conditions	0 to 6	Detained	$ 250,000	$ 541,659	$ 707,526	$ 5,000,000	107
			Released	$ 150,000	$ 290,000	$ 364,743	$ 1,000,000	13
		-1	Detained	$ 500,000	$ 692,926	$ 681,135	$ 3,500,000	94
			Released	$ 50,200	$ 101,067	$ 131,121	$ 250,000	3
		-2	Detained	$ 500,000	$ 724,203	$ 611,572	$ 3,056,000	171
			Released	$ 100,000	$ 222,857	$ 265,892	$ 700,000	7
		-3	Detained	$ -	$ -	$ -	$ -	0
			Released	$ 25,000	$ 117,000	$ 145,542	$ 300,000	5
		-4	Detained	$ 200,000	$ 200,000	.	$ 200,000	1
			Released	$ 150,000	$ 150,000	$ 100,000	$ 250,000	3
		-6 to -5	Detained	-	-	-	-	0
			Released	$ 250,000	$ 250,000	.	$ 250,000	1

Table 24 A: Release Status by Felony Class, Type of Bond, Risk Score, and Amount of Bond

Defendants with Felony Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
FB	10% bond/10% with conditions	0 to 6	Detained	$ 150,000	$ 183,333	$ 104,083	$ 300,000	3
			Released	$ 20,000	$ 26,927	$ 27,888	$ 100,000	27
		-1	Detained	$ 17,500	$ 18,750	$ 13,769	$ 35,000	4
			Released	$ 25,000	$ 67,000	$ 92,844	$ 225,000	5
		-2	Detained	$ 137,500	$ 137,500	$ 159,099	$ 250,000	2
			Released	$ 20,000	$ 45,000	$ 47,697	$ 100,000	3
		-3	Detained	$ 165,000	$ 165,000	$ 120,208	$ 250,000	2
			Released					
		-4	Detained	$ 81,000	$ 81,000	.	$ 81,000	1
			Released	$ 30,000	$ 30,000	.	$ 30,000	1
		-6 to -5	Detained	$ 80,500	$ 109,250	$ 104,374	$ 300,000	12
			Released	$ 22,500	$ 34,084	$ 43,565	$ 225,000	36
	Cash bond/cash with conditions	0 to 6	Detained	$ 50,000	$ 85,407	$ 118,402	$ 500,000	34
			Released	$ 10,000	$ 12,150	$ 10,076	$ 26,000	15
		-1	Detained	$ 75,000	$ 109,037	$ 136,982	$ 500,000	17
			Released	$ 12,500	$ 48,375	$ 93,842	$ 239,000	6
		-2	Detained	$ 49,500	$ 73,100	$ 99,066	$ 550,000	32
			Released	$ 149,500	$ 156,000	$ 82,829	$ 250,000	4
		-3	Detained	$ 62,500	$ 82,630	$ 88,943	$ 500,000	30
			Released					
		-4	Detained	$ 90,000	$ 135,450	$ 180,915	$ 1,000,000	30
			Released					
		-6 to -5	Detained	$ 99,000	$ 172,885	$ 256,627	$ 1,250,000	43
			Released					
	Surety Bond/surety with conditions	0 to 6	Detained	$ 75,000	$ 114,736	$ 147,710	$ 1,000,000	501
			Released	$ 40,000	$ 57,090	$ 76,617	$ 999,999	397
		-1	Detained	$ 100,000	$ 180,740	$ 296,032	$ 3,500,000	390
			Released	$ 50,000	$ 70,743	$ 67,436	$ 500,000	181
		-2	Detained	$ 100,000	$ 188,075	$ 279,443	$ 5,000,000	566
			Released	$ 50,000	$ 87,653	$ 98,338	$ 750,000	150
		-3	Detained	$ 150,000	$ 205,264	$ 218,995	$ 1,500,000	415
			Released	$ 75,000	$ 86,838	$ 74,495	$ 350,000	90
		-4	Detained	$ 173,500	$ 241,394	$ 219,093	$ 1,010,000	376
			Released	$ 50,000	$ 96,545	$ 107,103	$ 500,000	33
		-6 to -5	Detained	$ 250,000	$ 323,271	$ 327,140	$ 2,000,001	442
			Released	$ 100,000	$ 153,143	$ 139,237	$ 500,000	42

Table 24 B: Release Status by Felony Class, Type of Bond, Risk Score, and Amount of Bond

Defendants with Felony Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
FC	10% bond/10% with conditions	0 to 6	Detained	$15,000	$21,250	$21,360	$50,000	4
			Released	$5,000	$16,863	$27,252	$150,000	55
		-1	Detained	$25,000	$18,500	$14,098	$35,000	5
			Released	$20,000	$32,125	$34,130	$100,000	20
		-2	Detained	$60,000	$60,000	.	$60,000	1
			Released	$10,000	$17,357	$17,997	$50,000	7
		-3	Detained	$25,000	$94,167	$135,239	$250,000	3
			Released	$12,500	$31,000	$34,380	$75,000	6
		-4	Detained	$200,000	$200,000	.	$200,000	1
			Released	$67,500	$67,500	$45,962	$100,000	2
		-6 to -5	Detained	$142,500	$142,500	$187,383	$275,000	2
			Released	$9,250	$9,250	$1,061	$10,000	2
	Cash bond/cash with conditions	0 to 6	Detained	$25,000	$50,431	$67,323	$350,000	35
			Released	$1,500	$13,965	$27,455	$75,000	13
		-1	Detained	$37,500	$49,118	$46,042	$155,000	26
			Released	$50,500	$45,167	$32,827	$75,000	3
		-2	Detained	$25,000	$93,982	$196,252	$1,000,000	28
			Released	$7,500	$23,125	$34,724	$75,000	4
		-3	Detained	$50,000	$78,176	$93,233	$502,500	40
			Released	$7,250	$7,250	$5,303	$11,000	2
		-4	Detained	$75,000	$70,361	$41,826	$150,000	28
			Released	$80,000	$67,925	$54,861	$150,000	6
		-6 to -5	Detained	$75,000	$82,829	$72,214	$255,000	38
			Released	$75,000	$75,000	$-	$75,000	2
	Surety Bond/surety with conditions	0 to 6	Detained	$25,000	$59,907	$108,225	$1,100,000	761
			Released	$10,000	$24,872	$37,257	$500,000	940
		-1	Detained	$50,000	$69,333	$130,815	$2,750,000	608
			Released	$25,000	$38,855	$44,950	$275,000	461
		-2	Detained	$50,000	$94,069	$170,129	$3,000,000	743
			Released	$26,500	$50,824	$74,110	$750,000	339
		-3	Detained	$55,000	$97,394	$136,391	$1,400,000	743
			Released	$50,000	$66,682	$97,795	$800,000	227
		-4	Detained	$65,000	$112,468	$142,578	$1,195,000	513
			Released	$25,000	$58,908	$89,470	$700,000	136
		-6 to -5	Detained	$100,000	$181,752	$322,080	$5,000,000	403
			Released	$70,000	$85,378	$90,785	$450,000	73

Table 24 C: Release Status by Felony Class, Type of Bond, Risk Score, and Amount of Bond

Defendants with Felony Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
FD	10% bond/10% with conditions	0 to 6	Detained	$10,000	$12,180	$12,706	$63,000	25
			Released	$5,000	$12,576	$23,326	$150,000	95
		-1	Detained	$15,000	$25,545	$29,777	$90,000	11
			Released	$10,000	$45,541	$142,945	$750,000	27
		-2	Detained	$28,500	$41,533	$71,729	$280,000	15
			Released	$5,000	$10,611	$10,911	$40,000	32
		-3	Detained	$12,500	$24,250	$24,946	$75,000	10
			Released	$9,000	$11,525	$10,496	$40,000	20
		-4	Detained	$23,000	$33,643	$33,572	$100,000	7
			Released	$6,250	$11,083	$11,642	$30,000	6
		-6 to -5	Detained	$50,000	$125,000	$134,629	$350,000	5
			Released	$2,250	$7,625	$11,600	$25,000	4
	Cash bond/cash with conditions	0 to 6	Detained	$20,000	$43,857	$80,677	$500,000	91
			Released	$2,500	$23,897	$77,169	$500,000	85
		-1	Detained	$20,000	$42,617	$52,345	$250,000	75
			Released	$1,183	$29,875	$108,399	$500,000	21
		-2	Detained	$35,000	$74,696	$202,344	$2,100,000	111
			Released	$10,000	$65,308	$133,009	$500,000	19
		-3	Detained	$49,500	$77,185	$126,591	$1,000,000	110
			Released	$15,000	$44,439	$59,681	$250,000	22
		-4	Detained	$50,000	$96,108	$155,141	$900,000	89
			Released	$10,000	$40,800	$47,045	$99,000	5
		-6 to -5	Detained	$52,500	$93,377	$123,653	$750,000	90
			Released	$35,000	$44,750	$39,961	$99,000	4
	Surety Bond/surety with conditions	0 to 6	Detained	$20,000	$37,070	$63,488	$1,007,500	1541
			Released	$10,000	$20,106	$52,336	$1,750,000	1937
		-1	Detained	$25,000	$47,293	$125,532	$3,500,000	1188
			Released	$10,000	$22,155	$36,266	$700,000	813
		-2	Detained	$25,000	$50,957	$78,594	$1,300,000	1682
			Released	$20,000	$28,993	$45,926	$900,000	842
		-3	Detained	$49,000	$63,395	$80,044	$1,000,000	1756
			Released	$25,000	$34,413	$46,933	$500,000	640
		-4	Detained	$50,000	$77,120	$112,023	$1,500,000	1252
			Released	$25,000	$41,370	$57,439	$500,150	350
		-6 to -5	Detained	$75,000	$121,209	$150,067	$1,150,000	894
			Released	$35,000	$70,030	$99,395	$750,000	161

Table 24 D: Release Status by Felony Class, Type of Bond, Risk Score, and Amount of Bond

Defendants with Felony Charges and Financial Bonds								
Charge Class	Bond Type	FBG Scores	Release status 14 days after arraignment	Median	Mean	St. Dev	Maximum	Number of Cases
FU	10% bond/10% with conditions	0 to 6	Detained	$10,000	$30,333	$38,166	$100,000	6
			Released	$7,750	$16,921	$21,280	$75,000	38
		-1	Detained	$90,000	$90,000	.	$90,000	1
			Released	$20,000	$21,542	$17,745	$55,000	12
		-2	Detained					
			Released	$8,000	$11,583	$10,443	$35,000	15
		-3	Detained	$20,000	$20,000	.	$20,000	1
			Released	$10,000	$12,214	$8,376	$25,000	7
		-4	Detained	$20,000	$20,000	.	$20,000	1
			Released	$6,250	$11,000	$13,222	$30,000	4
		-6 to -5	Detained	$30,000	$30,000	$7,071	$35,000	2
			Released	$100,000	$100,000	.	$100,000	1
	Cash bond/cash with conditions	0 to 6	Detained	$35,000	$39,424	$28,918	$99,000	33
			Released	$3,500	$25,050	$43,726	$200,000	33
		-1	Detained	$65,000	$80,333	$74,744	$300,000	28
			Released	$25,000	$63,840	$90,937	$300,000	10
		-2	Detained	$40,000	$41,822	$38,523	$198,000	56
			Released	$25,000	$46,419	$65,084	$250,000	16
		-3	Detained	$50,000	$58,300	$41,944	$250,000	45
			Released	$75,000	$64,700	$38,596	$100,000	11
		-4	Detained	$75,000	$102,992	$111,887	$600,000	46
			Released	$62,500	$138,881	$280,481	$1,000,000	12
		-6 to -5	Detained	$75,000	$74,315	$48,431	$225,000	52
			Released	$80,000	$149,000	$176,505	$500,000	6
	Surety Bond/surety with conditions	0 to 6	Detained	$25,000	$64,721	$126,037	$1,500,000	727
			Released	$15,000	$33,968	$85,885	$2,000,000	1018
		-1	Detained	$30,000	$66,990	$107,304	$1,000,000	623
			Released	$25,000	$41,244	$74,810	$1,000,000	485
		-2	Detained	$50,000	$87,980	$203,574	$5,000,000	900
			Released	$25,000	$47,381	$81,487	$1,500,000	545
		-3	Detained	$50,000	$97,421	$131,306	$1,000,000	678
			Released	$30,000	$64,329	$91,352	$750,000	306
		-4	Detained	$75,000	$125,091	$182,674	$2,500,000	535
			Released	$50,000	$90,147	$137,069	$1,000,000	190
		-6 to -5	Detained	$100,000	$178,537	$224,551	$2,500,000	310
			Released	$100,000	$123,549	$124,816	$750,000	83

APPENDIX H

Connecticut Jurisprudence

The right to bail has been constitutionally recognized in one form or another since adoption of Connecticut's first state constitution in 1818. The current Connecticut Constitution, adopted in 1965, recognizes a defendant's right to bail in all proceedings, except for a subset of capital cases: "[i]n all Criminal prosecutions, the accused shall have a right . . . to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great[362]. . . ." The provision on bail is only slightly altered from its original form in Article I, § 14 of the 1818 Constitution. Moreover, the fundamental right to bail in Connecticut predates 1818, as there is statutory evidence of the right dating to the colonial era.[363] Indeed, a 1673 Connecticut statute provided:

> That no mans person shall be Restrained or Imprisoned by any authority whatsoever, before the Law hath sentenced him thereunto if he can put in sufficient securit , bayl or mainprize for his appearance and good behavior in the meantime, unless it be in Crimes Capital, and Contempt in open Court, or in such cases where some express Law doth allow it.[364]

A right to bail was included in Connecticut's Declaration of Rights in 1750, in language nearly identical to the 1673 statute. This Declaration of Rights, in the time before the Connecticut Constitution, "[was] treated by both the legislature and the people as standing above ordinary statutes."[365] The rights included in the Declaration were rooted in Connecticut common law and were deemed "inviolate."[366]

At common law, Connecticut courts understood the right to bail under the Declaration of Rights and by statute to favor the "personal liberty of the subject" facing prosecution and also to ensure "his appearance at the court."[367] Prior to the Constitution's ratification jurists believed that the right to bail was assured based on the 1673 statute.[368] Whether the purpose of bail was solely to ensure the defendant's appearance in court or for additional reasons was not addressed by courts prior to the Constitution's adoption.[369] None of the iterations of Connecticut's Constitution[370] expressly states that ensuring appearance is a purpose of bail, so articulation of that purpose has been left to the courts and the legislature.

Early Connecticut Case Law on the Right to Bail

The earliest Connecticut case regarding bail came in 1786 in *State v. Beach*.[371] In *Beach*, the state Supreme Court, in a one sentence decision, held that "[t]here had been some doubts with the

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[362]CONN. CONST. art. I, § 8 (1965).

[363]See Maureen J. Mann, Comment, *Overlooking the Constitution: The Problem with Connecticut's Bail Reform*, 24 CONN. L. REV. 915, 933 (1992) (arguing that the inclusion of the right to bail in the 1750 Declaration of Rights indicates that bail was a natural, fundamental right that was guaranteed to all citizens of Connecticut).

[364]THE GENERAL LAWS AND LIBERTIES OF THE CONNECTICUT COLONIE, Revision of 1673, at 32; *see also* Mann, *supra* note 363, at 929–930 (stating that this law remained unchanged throughout multiple revisions of the General Laws in the early 1700s). This law mirrors the Massachusetts Body of Liberties (1641) and both were drafted by Robert Ludlow. Id. at 929 n.67.

[365]Christopher Collier, *The Connecticut Declaration of Rights Before the Constitution of 1818: A Victim of Revolutionary Redefinition*, 15 CONN. L. REV. 87, 94 (1982).

[366]*See id.* ("[These Rights] were treated by both the legislature and the people as standing above ordinary statutes.").

[367]Dickinson v. Kingsbury, 2 Day 1, 11 (Conn. 1805); see *also* Hubbard v. Shaler, 2 Day 195, 196 (Conn. 1805) (ruling that the object of bail was to enforce the defendant's appearance at court).

[368]2 ZEPHANIAH SWIFT, A SYSTEM OF LAWS OF THE STATE OF CONNECTICUT 391 (1796).

[369]*See* Mann, *supra* note 363, at 933 (arguing that the primary purpose of requiring bail in pre-Constitution Connecticut was to "assure the defendant's appearance before the court").

[370]Given that appearance as a purpose of bail was assumed under English common law, it actually was not mentioned in many other colonial constitutions.

[371]2 Kirby 20 (Conn. 1786).

Court formerly whether the Court had right to bail after conviction and before judgement—but it was not settled—and the Court admitted bail to be taken." While there is no indication of any prior rulings by Connecticut courts, the wording of this holding suggests that there was already an established right to bail, which the Court extended to defendants awaiting judgment.[372]

Nineteen years later, in *Dickinson v. Kingsbury*,[373] the Connecticut Supreme Court declared: "The personal liberty of the subject is to be favored, as far as is practicable and safe, until conviction. Bail for his appearance at the Court, in which his guilt or innocence is to be tried, is, at once, the mode of favoring that liberty, and securing the appearance for trial."

In *Dickinson*, the state treasurer filed an action against a sheri f who had taken a $200 bond in surety for the release of a defendant who had unable to post the bond at his arraignment when the court had set the surety amount.[374] The Court ruled the actions by the sheriff were legal. The Court averred that "[t]he regular and only proper time for such bail to be given, is when the accused is brought before the justice for examination" but the Court also recognized "that this should be the time, or the only opportunity, is not, either expressly, or by implication, declared in any statute." Finding that the sheriff had acted "merely in a ministerial capacity" and that there was no regulation on the subject, the Court held that "it was deemed proper, by a majority of this Court, to allow the practice, until such regulation is adopted."[375]

In *Potter v. Kingsbury*,[376] the Connecticut Supreme Court held that a justice of the peace had the authority to adjourn court while determining whether there was probable cause to proceed to trial against a criminal defendant and that a defendant could be held in jail during the adjournment, but that it was the "the duty of the justice of the peace to take bail, if good and sufficient be o fered, for the appearance of the prisoner."[377] The Court added that "in the exercise of this power, [justices] should take bonds sufficient to enforce an appearance of the prisone , according to the nature and enormity of the offence."[378]

The Constitutional Right to Bail

Connecticut adopted the right to bail in its first Constitution in 1818, including it among "the great and essential principles of liberty and free government."[379] Section 14 of Article I provided that:

> [a]ll prisoners shall, before conviction, be bailable by sufficient sureties, except for capital offences, where the proof is evident or the presumption great; and the privileges of the writ of Habeas Corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it; nor in any case, but by legislature.[380]

Zephaniah Swift wrote that "[t]he consequence of this law is, that all offences are bailable, which are not capital."[381] The text went unaltered until Connecticut amended its Constitution in 1965, at which time the right to bail was incorporated into Article I, § 8, so as to provide: "In all Criminal prosecutions, the accused shall have a right . . . to be released on bail upon sufficient securit , except in capital offenses, where the proof is evident or the presumption great . . . ."[382] In 1970 the Supreme Court of Connecticut declared: "for a century and a half, in all noncapital cases, an accused has been

[372] *Id.; see also* Peck v. State, 1 Root 331 (Conn. 1791) (admitting a defendant to bail when he petitioned for a new trial); Cnty. Treasurer v. Burr, 1 Root 392 (Conn. 1792) ("A bond taken by a justice in a criminal prosecution, conditioned that the defendant shall appear, answer, and abide judgment, is a good bond.").

[373] 2 Day 1 (Conn. 1805).

[374] *Id.*

[375] *Id.*

[376] 4 Day 98 (Conn. 1809).

[377] *Id.* at 99.

[378] *Id.* at 100.

[379] CONN. CONST., art. I (1818).

[380] CONN. CONST., art. I, § 14 (1818). This language mirrored the Pennsylvania Great Law of 1682.

[381] SWIFT, *supra* note 368, at 391.

[382] *See supra* note 362 and accompanying text.

entitled to pre-conviction release on bail in a reasonable amount."[383] That this entitlement extends only to pre-conviction release has been largely undisputed, given that once a defendant is convicted of the crimes alleged in the prosecution, the presumption of innocence is properly rebutted. [384] In *State v. Chisolm*, [385] for example, a trial court held that post-conviction bail was not protected by the Constitution, but rather is inherently a matter of judicial discretion.[386]

The fundamental right to bail under the Connecticut Constitution extends further than the right guaranteed to a criminal defendant under the United States Constitution. The Eighth Amendment protects defendants from excessive bail amounts, but "there has been no square holding by the United States Supreme Court on whether such a right [to bail] exists…."[387]

Throughout the history of Connecticut's right to bail, state courts have considered two critical questions: (1) when may a defendant be denied bail?; and (2) what is reasonable bail with respect to bond amount and purpose for a bailable offense?

Menillo and the "Capital Offense" Exception

Article I, § 8 of the Connecticut Constitution contains one express exception to the proposition that all offenses are bailable offenses: bail may be denied for "capital offenses, where the proof is evident or the presumption great."[388] Surprisingly though, the seminal case for the capital offense exception, *State v. Menillo*, did not come to the Supreme Court until 1970: "this is the first time that a claim for bail in a capital case has been made, to our knowledge, in a Connecticut court."[389] In *Menillo*, the trial court had rejected the defendant's claim that the state bore the burden of proving either that the proof was evident or the presumption great so as to put the defendant "within the exception disentitling him to bail"; instead the trial court ruled as a matter of law that "the defendant, having been indicted for first-degree murde , was not entitled to bail."[390]

In *Menillo* the Supreme Court considered Connecticut's grand jury procedure "prohibiting the trial of any person for 'any crime, punishable by death or life imprisonment, unless on a presentment of an indictment of a grand jury.'"[391] The issue before the Court was whether *after* indictment and before trial of a capital offense a defendant retains the right to a bail hearing or or whether the grand jury's indictment serves as "conclusive proof" that the "proof is evident or the presumption great," thereby disentitling the defendant to release on reasonable bail.[392] The *Menillo* Court rejected the state's argument that an indictment constitutes "conclusive proof" satisfying the capital exception, though it recognized "much force" in the state's alternative argument "as to the prima facie evidential

[383]State v. Menillo, 159 Conn. 264, 268 (1970).

[384]*See* A. PAUL SPINELLA, CONNECTICUT CRIMINAL PROCEDURE 351 (1996). The probability of an attempted escape by a defendant is much higher following conviction. *Id.* One exception to this denial of post-conviction right to bail has been recognized in cases in which denial of bail while a defendant awaits appellate review could cause incarceration to equal the initial sentence. *Id.* at 351 n.7.

[385]29 Conn. Supp. 339 (Conn. Super. Ct. 1971).

[386]*Id.* at 343–44. See also State v. McCahill, 261 Conn. 492, 510-12 (2002) ("We have never departed from the principles announced in [State v.] Vaughan[, 71 Conn. 457, 461 (1899)]" which presented "compelling evidence of the inherent, common-law powers possessed by the Superior Court to exercise its discretion to grant postconviction bail 'in all cases . . . .' Id.").

[387]SPINELLA, *supra* note 23, at 350, 350–51 n.5; U.S. CONST. amend. VIII. Spinella looks to the Court's language in *Carlson v. Landon*, in which it was suggested that Congress may properly pass laws defining classes of cases where bail may (or may not) be assigned. SPINELLA, *supra* note 384, at 350–51 n.5 (citing Carlson v. Landon, 342 U.S. 524, 545 (1952)).

[388]*Menillo*, 159 Conn. at 268–69.

[389]*Menillo*, 159 Conn. at 267.

[390]*Id.* at 268.

[391]*Id.* at 273 (citing CONN. CONST., art. 1, § 8 (1965) ("No person shall be held to answer for any crime, punishable by death or life imprisonment, unless upon probable cause shown at a hearing in accordance with procedures prescribed by law . . . ."). In 1982 Article XVII amended section 8 of the Article 1 of the constitution, removing the requirement of a grand jury indictment in capital cases and replacing it with a requirement of that probable cause be "shown at a hearing in accordance with procedures prescribed by law". See CONN. GEN. STAT. § 54-46 and § 54-46a.

[392]*Menillo*, 159 Conn. at 270–71.

force of the indictment where the usual Connecticut grand jury procedure is followed."[393] A grand jury indictment may serve as weighty evidence that the proof is evident or the presumption great, but it is not conclusive as a matter of law. A capital defendant does not have any burden of proof to negate a *prima facie* case presented to a grand jury.[394] Instead the *Menillo* Court placed the burden of proof on the prosecution to establish the constitutional exception. Thus a capital defendant would be constitutionally entitled to bail unless the prosecution has met the burden of proof necessary to disentitle the defendant to bail release.

The Capital Offense Exception in the absence of Capital punishment in Connecticut

In 1972, the Connecticut Supreme Court addressed the prohibition of the death penalty and its impact on the constitutional right to bail in *State v. Aillon*. [395] In *Aillon*, the defendant was detained after being arrested on three bench warrants, each for murder.[396] Connecticut General Statutes § 54-53 provided that a "person detained pursuant to the issuance of a bench warrant or for trial of an offense not punishable by death shall be entitled to bail shall be released . . . upon entering into a recognizance, with sufficient surety . . . for his appearance before the court having cognizance of the offense."[397] Because the U.S. Supreme Court in *Furman v. Georgia*[398] had recently held that the death penalty unconstitutional under the Eighth Amendment, the Supreme Court in *Aillon* reasoned that "although the accused is held on three charges of murder he is, nevertheless . . . not being detained for an offense which is now punishable by death. He is, therefore . . . entitled to bail and to release . . . ."[399] Therefore, the *Aillon* Court granted the defendant's motions for review of the Superior Court's categorical denial of bail and remanded for a hearing on bail on the three murder charges.[400]

A capital felony, committed prior to April 25, 2012, required a mandatory sentence of either the death penalty or life imprisonment without the possibility of release.[401] After April 25, 2012, by statute a violation of section 53a-54b of the Connecticut General Statutes is no longer a "capital felony" but instead is "murder with special circumstances," for which the punishment is life imprisonment without the possibility of release.[402] As a result of the statutory repeal of capital punishment and the recent court decisions finding the death penalty unconstitutional even for capital crimes committed before the effective date of the statutory repeal,[403] there are no capital offenses under Connecticut law. Because there are no capital offenses under law and in light of the *Aillon* decision, the capital exception to bail is no longer applicable to any defendant facing prosecution in a Connecticut state court.

The Primary Purpose of Reasonable Bail for Bailable Offenses

In addition to protecting a defendant's right to be released on bail, Article I, § 8 also states that "[n]o person shall be compelled to give evidence against himself, nor be deprived of life, liberty, or property without due process of law, nor shall excessive bail be required nor excessive fines be imposed."[404] If bail is set unreasonably high, it will "accomplish indirectly what it could not accomplish directly, that is, denying the right to bail . . . ."[405] But there is no straightforward answer to the question of what bail is reasonable and not excessive.

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[393] *Menillo*, 159 Conn. at 277.
[394] *Id.* at 277–78.
[395] 164 Conn. 661 (1972).
[396] *Id.*
[397] CONN. GEN. STAT. § 54-53 (2015).
[398] 408 U.S. 238 (1972).
[399] *Aillon*, 164 Conn. at 662.
[400] *Id.*
[401] CONN. GEN. STAT. § 53a-54b (2015).
[402] *Id.*; CONN. GEN. STAT. § 53a-35a (1) (B) (2015).
[403] State v. Santiago, 318 Conn. 1 (2015); State v. Peeler, 321 Conn. 375 (2016).
[404] CONN. CONST. art. 1, § 8 (1965) (emphasis added).
[405] *Menillo*, 159 Conn. at 269.

Courts have found that "a reasonable amount is not necessarily an amount within the power of an accused to raise. It is an amount which is reasonable under all the circumstances relevant to the likelihood that the accused will flee the jurisdiction or otherwise avoid being present for trial. [406] Zephaniah Swift wrote that bail should be provided to those with sufficient surety for the purpose of appearing before the "next court," and that the amount which the judge sets for bail should be "in proportion to the nature and aggravation of the offense charged."[407]

As long ago as 1792,[408] more than two decades before Connecticut adopted its first Constitution, Connecticut courts recognized that the purpose of bail was to ensure the appearance of a defendant at his next court proceeding.[409] Indeed, at this time, Connecticut's right to bail was still governed by the Declaration of Rights of 1750, which stated that bail must be provided to ensure the defendant's appearance and "good behavior."[410] However, courts focused on appearance as the sole purpose of bail, and when the Constitution of 1818 declared the right to bail, it did not include a "good behavior" provision. [411] "The reference to good behavior suggests that at one time there may have been an additional purpose for bail, which may have been to assure that there would be no further breaches of the peace while the defendant was awaiting trial."[412]

Connecticut law long remained unchanged in its recognition that ensuring the defendant's appearance in court is the purpose of bail in non-capital cases.[413] With the removal of "good behavior" from the Constitution of 1818 and the Court's focus on appearance as the purpose of bail, it was not even considered that there could be other purposes for bail or that the reasonableness of bail should be measured aside from its effectiveness in ensuring the defendant's appearance. Historically Connecticut bail statutes focused the process of bail, not its denial: "[b]etween 1821 and 1965, changes in the bail statutes clarified that release was conditioned on the defendant s appearance before the court and expanded the classification of people authorized to take bail. [414]

In 1951, the U.S. Supreme Court in *Stack v. Boyle* declared that "[b]ail set at a figure higher than an amount reasonably calculated [to ensure appearance] is 'excessive' under the Eighth Amendment."[415] The *Stack* court wrote that since 1789 "federal law has unequivocally provided that a person arrested for a noncapital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."[416] *Stack* did not, however, hold that there is right to have bail determined in all cases.

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[406] *Id.* (citing SWIFT, *supra* note 368, at 395).

[407] Mann, *supra* note 363, at 937; SWIFT, *supra* note 368, at 390–91.

[408] *See* Cnty. Treasurer v. Burr, 1 Root 392 (Conn. 1792) ("A bond taken by a justice in a criminal prosecution, conditioned that the defendant shall appear, answer, and abide judgment, is a good bond."). In a Connecticut Supreme Court decision after the 1818 Constitution was ratified, the Court stated that the law requires bond to be taken "for the prisone 's appearance only; but it has been a very common practice, for many years, to superadd that *he shall abide judgment*." Waldo v. Spencer, 4 Conn. 71, 78 (1821). Despite this common addition, however, the Court concluded that "[t]he agreement to abide judgment, after it shall have been rendered, can never affect the prisoner, except by his own consent . . . ." *Id.* at 79

[409] *See Hubbard*, 2 Day at 196 ("The object of bail is, to enforce an *appearance*: and imprisonment on attachment is for the same purpose. Whenever an appearance is allowed, the object of both is accomplished."); *see also supra* for discussion on *Beach and Dickinson*.

[410] *See supra* note 365 and accompanying text.

[411] Mann, *supra* note 2, at 938.

[412] *Id.*

[413] *See, e.g.*, State v. Bates, 140 Conn. 326, 330 (1953) ("The object of requiring bail is to compel the presence of defendant in court . . . .") (internal quotations omitted) (quoting 8 C.J.S., Bail, § 4, at 6). The Court went on to state that bail secures appearance of the defendant so that the court may "force him to submit to the jurisdiction and the punishment imposed by the court." *Id.* (internal quotations omitted) (quoting 8 C.J.S., Bail, § 30, at 49).

[414] Mann, *supra* note 2, at 933, 933 n.95.

[415] Stack v. Boyle, 342 U.S. 1, 5 (1951).

[416] *Id.* at 4; Mann, *supra* note 2, at 942.

Salerno and the U.S. Supreme Court's Adoption of Public Safety as a Purpose for Bail

In 1987, in *Salerno v. United States*, the U.S. Supreme Court sustained the constitutionality of the Bail Reform Act of 1984 which "requires [federal] courts to detain pretrial arrestees charged with certain serious felonies if the Government can demonstrate by clear and convincing evidence after an adversary hearing that no release conditions will reasonably assure . . . the safety of any other person and the community."[417] The act was passed in response to the "'alarming problem of crimes committed by persons of release.'"[418] The decision to detain a defendant requires an evidentiary hearing, at which the defendant is provided "procedural safeguards" including the presence of counsel, the right to testify and present witnesses,[419] the right to proffer evidence, and the right to cross-examine any other witnesses. If the court "finds that no conditions of pretrial release can reasonably assure the safety of other persons and the community," it must set forth its findings of fact in writing and "support [its] conclusion with 'clear and convincing evidence'."[420] A court is "not given unbridled discretion in making the detention determination" as it must consider factors such as "the nature and seriousness of the charges, the substantiality of the Government's evidence against the arrestee, the arrestee's background and characteristics, and the nature and seriousness of the danger posed by the suspect's release."[421] If a court orders detention, the detained arrestee "is entitled to expedited appellate review of the detention order."[422]

The Supreme Court considered and rejected two challenges to the Bail Reform Act: (1) that it "violates substantive due process because the pretrial detention it authorizes constitutes impermissible punishment before trial"[423] and (2) "that the Act contravenes the Eighth Amendment's proscription against excessive bail."[424] Respondents in *Salerno* were leaders of organized crime families who were denied bail based on the fact that the trial court concluded they would likely commit future crimes while out on bail. The Second Circuit had held that this was a violation of personal liberty, impinging on the defendants' right to substantive due process.[425] The Supreme Court found that the restriction on personal liberty authorized by the act constitutes "permissible regulation" because "Congress did not formulate the pretrial detention provisions as punishment for dangerous individuals," but that Congress "instead perceived pretrial detention as a potential solution to a pressing societal problem."[426] The Court declared that "[t]here is no doubt that preventing danger to the community is a legitimate regulatory goal."[427] Thus, the Court concluded "that the pretrial detention contemplated by the Bail Reform Act is regulatory in nature, and does not constitute punishment before trial in violation of the Due Process Clause."[428]

The Supreme Court in *Salerno* also examined and rejected the respondents' claim that "the Bail Reform Act violates the Excessive Bail Clause of the Eighth Amendment."[429] Relying on *Stack v. Boyle*, the respondents argued that bail should be "calculated solely upon the considerations of flight. [430] The Court disagreed:

> While we agree that a primary function of bail is to safeguard the courts' role in adjudicating

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[417] *United States v. Salerno*, 481 U.S. 739, 741 (1987) (internal quotations omitted) (quoting 18 U.S.C. § 3142(e) (1982)).
[418] *Id.* at 742.
[419] *Id.*
[420] *Id.*
[421] *Id.* at 742-43.
[422] *Id.* at 743.
[423] *Id.* at 746.
[424] *Id.*
[425] *Id.* at 744.
[426] *Id.* at 747.
[427] *Id.*
[428] *Id.* at 748.
[429] *Id.* at 752.
[430] *Id.* at 752 (citing Stack, 342 U.S. at 5).

> the guilt or innocence of defendants, we reject the proposition that the Eighth Amendment categorically prohibits the government from pursuing other admittedly compelling interests through regulation of pretrial release. . . . dictum in *Stack v. Boyle* is far too slender a reed on which to rest this argument. The Court in *Stack* had no occasion to consider whether the *Excessive Bail Clause* requires courts to admit all defendants to bail, because the statute before the Court in that case in fact allowed the defendants to be bailed. Thus, the Court had to determine only whether bail, admittedly available in that case, was excessive if set at a sum greater than that necessary to ensure the arrestees' presence at trial.[431]

The *Salerno* Court relied on *Carlson v. Landon*,[432] in which the Court had stated:

> The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept. The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus, in criminal cases bail is not compulsory where the punishment may be death. Indeed, the very language of the Amendment fails to say all arrests must be bailable.[433]

The *Salerno* Court declared that "[n]othing in the text of the Bail Clause limits permissible Government considerations solely to questions of flight. [434] The Court commented on the limits that the Eighth Amendment does place on detention for arrests for offenses that are bailable:

> The only arguable substantive limitation of the Bail Clause is that the Government's proposed conditions of release or detention not be "excessive" in light of the perceived evil. Of course, to determine whether the Government's response is excessive, we must compare that response against the interest the Government seeks to protect by means of that response. Thus, when the Government has admitted that its only interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more. Stack v. Boyle, supra. We believe that when Congress has mandated detention on the basis of a compelling interest other than prevention of flight, as it has here, the Eighth Amendment does not require release on bail.[435]

A dissent by Justice Thurgood Marshall, joined by Justice Brennan, declared that the Bail Reform Act was "consistent with the usages of tyranny and the excesses of what bitter experience teaches us to call the police state . . . ."

Connecticut's Recognition of a Purpose for Bail other than to assure the Defendant's Appearance

Following *Salerno*, the Connecticut legislature in 1990 made statutory changes to the state bail system in order to authorize revocation of bail and consequent detention without bail in specific circumstances in non-capital cases. In *State v. Ayala*,[436] the state Supreme Court rejected a defendant's claim that the trial court had unconstitutionally revoked his bail based on a statute that, *inter alia*, authorizes revocation where a defendant on bail release endangers another person or there is probable cause to believe that he has committed a federal, state or local crime while released.[437] During his release on a surety bond, the defendant was arrested for severely beating the deputy mayor of Hartford. After the defendant was released on another surety bond, he was arrested yet

[431] *Id.* at 753.
[432] 342 U.S. 524 (1952).
[433] *Id.* at 545–46.
[434] *Id.* at 754.
[435] *Id.* at 754-55.
[436] 222 Conn. 331 (1992).
[437] *Id.* at 334, 336 n.8 (citing General Statutes § 54-64f).

again and charged with threatening and was released on still another surety bond.[438] Pursuant to Connecticut General Statutes § 54-64f, the state moved to revoke the defendant's release. The trial court held a hearing and granted the state's motion, ordering revocation of the defendant's release on bond in his original case.[439]

The Supreme Court in *Ayala* acknowledged that Article I, § 8 of the Connecticut Constitution "guarantees bail in a reasonable amount 'in all cases, even capital cases not falling within the exception [where the proof is evident or the presumption great].'"[440] The Court recognized that the state constitutional bail guarantee is "more detailed in scope and broader than that contained in the Eighth Amendment" which does "not confer or recognize a right of bail, but only guarantees that if bail is imposed it must not be excessive."[441]

The *Ayala* Court rejected the defendant's two challenges to the trial court's application of the statute: first, that the statute is constitutional only if read to require a trial court to set a new bond when a defendant has violated the conditions of his release; and, alternatively, that it was "constitutionally impermissible" for the trial court "to revoke his bond in its entirety."[442] Finding that the revocation of defendant's bail release was constitutional, the court held that: "First, the statute, properly viewed, *implements the inherent judicial authority of trial courts to compel compliance with conditions of release*. Second, revocation of release is consistent with ensuring a defendant's appearance in court. Third, *good behavior* while on pretrial release has been recognized historically as a legitimate purpose for bail in the state."[443] Essentially, the court concluded that the revocation had not violated the defendant's constitutional right to bail because he initially had been released on bail and that his "failure to abide by the conditions of his release resulted in a *forfeiture* of his right to release."[444]

Most recently, in *State v. Anderson*,[445] the Connecticut Supreme Court considered a claim by an insanity acquittee who had been confined in the state mental hospital until he was transferred to the Department of Correction when he was unable to post a $100,000 surety bond set by a trial judge in new criminal cases against him.[446] The defendant argued that his incarceration was in violation of the bail clause in Article I, § 8, of the Connecticut Constitution and that it violated procedural due process.[447] The defendant argued that setting a monetary bond "amounted to impermissible preventive detention" because "the fundamental purpose of bail is to ensure the subsequent appearance of the accused and not to protect the public from a dangerous accused."[448] The defendant claimed that since his appearance in court was assured by his status as an insanity acquittee already in state custody, the court's setting of a monetary bond was not constitutionally permissible.

The Supreme Court rejected the defendant's argument that the purpose of bail was already accomplished by dint of his involuntary confinement in the state hospital. The Court held that another fundamental purpose of bail is to protect the public from a dangerous accused defendant.[449] Relying on the history of bail in Connecticut, as previously laid out in *State v. Ayala*,[450] the court found

[438] *Id.* at 335.
[439] *Id.* at 335-37.
[440] *Id.* at 342-43.
[441] *Id.* at 342 n.11.
[442] *Id.* at 344-45.
[443] *Id.* at 346-47 (emphasis added).
[444] *Id.* at 348-49 (emphasis added).
[445] 319 Conn. 288 (2015).
[446] *Id.* at 295-97.
[447] *Id.* at 299.
[448] *Id.*
[449] *Id.* at 299.
[450] 222 Conn. 331 (1992).

that there was no indication that the Connecticut Constitution excludes "good behavior" as a valid purpose of bail simply because it is not included in the constitutional text.[451] The Court noted that Connecticut statutes enacted in 1981 had validated nonfinancial conditions of release and thereby already "broadened the focus of the purposes of bail to recognize, once again, that bail is a method for ensuring a defendant's good behavior while on release,' as well as a method of securing his appearance in court."[452] The court concluded that:

> The presence of statutes authorizing sureties of the peace and good behavior both prior to, and since, the adoption of the 1818 constitution, along with statutes authorizing bail to ensure a defendant's appearance, clearly establishes that both purposes are constitutionally acceptable reasons for a court to require financial security from an accused individual.[453]

The *Anderson* decision is the most recent major case with respect to bail in Connecticut. The decision answered in the affirmative whether other purposes may be considered when determining bail under the state Constitution.[454] Despite the strong differences voiced by dissenting justices in *Anderson* and previously by commentators,[455] the decision represents the current state of constitutional bail law in Connecticut: judges have the discretion to set monetary bail for the purpose of protecting the safety of the general public and not solely for the purpose of assuring the defendant's appearance in court.

[451]See *id.* at 302 ("As we observed in *Ayala*, however, there is 'no evidence . . . that the framers of the 1818 constitution intended to abandon the customary purposes of bail that were in effect at the time of the adoption of the constitution and had been for at least 145 years' . . . particularly because the 1818 constitution was intended to enshrine rights already in existence by virtue of statute and the common law.") (quoting *State v. Ayala*, 222 Conn. 331, 351 (1992)).

[452]*Id.* at 303.

[453]*Id.* at 304. The Court also addressed the 1990 bail reform efforts, which altered Connecticut statutes and allowed for determining "what conditions of release will reasonably assure the appearance of the arrested person in court *and* that the safety of any other person will not be endangered." *Id.* at 305–06 (citing CONN. GEN. STAT. § 54-64a(b)(2) (1990)).

[454]The 4-3 decision prompted a dissent in which Justice Palmer, joined by Chief Justice Rogers and Justice McDonald, vehemently argued that "the imposition of a monetary bond for the purpose of ensuring that [defendant] would be detained pending trial based solely on the belief that he posed a threat to public safety violates his right to bail under article first, § 8, of the Connecticut constitution." *Id.* at 329 (Palmer, J., dissenting).

[455]*See supra* note 363 (arguing that Connecticut's 1990 bail reform laws are patently unconstitutional for allowing the consideration of factors other than solely the appearance at trial when setting bail).

APPENDIX H

Connecticut Jurisprudence

The right to bail has been constitutionally recognized in one form or another since adoption of Connecticut's first state constitution in 1818. The current Connecticut Constitution, adopted in 1965, recognizes a defendant's right to bail in all proceedings, except for a subset of capital cases: "[i]n all Criminal prosecutions, the accused shall have a right . . . to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great[362]. . . ." The provision on bail is only slightly altered from its original form in Article I, § 14 of the 1818 Constitution. Moreover, the fundamental right to bail in Connecticut predates 1818, as there is statutory evidence of the right dating to the colonial era.[363] Indeed, a 1673 Connecticut statute provided:

> That no mans person shall be Restrained or Imprisoned by any authority whatsoever, before the Law hath sentenced him thereunto if he can put in sufficient securit , bayl or mainprize for his appearance and good behavior in the meantime, unless it be in Crimes Capital, and Contempt in open Court, or in such cases where some express Law doth allow it.[364]

A right to bail was included in Connecticut's Declaration of Rights in 1750, in language nearly identical to the 1673 statute. This Declaration of Rights, in the time before the Connecticut Constitution, "[was] treated by both the legislature and the people as standing above ordinary statutes."[365] The rights included in the Declaration were rooted in Connecticut common law and were deemed "inviolate."[366]

At common law, Connecticut courts understood the right to bail under the Declaration of Rights and by statute to favor the "personal liberty of the subject" facing prosecution and also to ensure "his appearance at the court."[367] Prior to the Constitution's ratification jurists believed that the right to bail was assured based on the 1673 statute.[368] Whether the purpose of bail was solely to ensure the defendant's appearance in court or for additional reasons was not addressed by courts prior to the Constitution's adoption.[369] None of the iterations of Connecticut's Constitution[370] expressly states that ensuring appearance is a purpose of bail, so articulation of that purpose has been left to the courts and the legislature.

Early Connecticut Case Law on the Right to Bail

The earliest Connecticut case regarding bail came in 1786 in *State v. Beach*.[371] In *Beach*, the state Supreme Court, in a one sentence decision, held that "[t]here had been some doubts with the

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[362]CONN. CONST. art. I, § 8 (1965).

[363]See Maureen J. Mann, Comment, *Overlooking the Constitution: The Problem with Connecticut's Bail Reform*, 24 CONN. L. REV. 915, 933 (1992) (arguing that the inclusion of the right to bail in the 1750 Declaration of Rights indicates that bail was a natural, fundamental right that was guaranteed to all citizens of Connecticut).

[364]THE GENERAL LAWS AND LIBERTIES OF THE CONNECTICUT COLONIE, Revision of 1673, at 32; *see also* Mann, *supra* note 363, at 929–930 (stating that this law remained unchanged throughout multiple revisions of the General Laws in the early 1700s). This law mirrors the Massachusetts Body of Liberties (1641) and both were drafted by Robert Ludlow. Id. at 929 n.67.

[365]Christopher Collier, *The Connecticut Declaration of Rights Before the Constitution of 1818: A Victim of Revolutionary Redefinition*, 15 CONN. L. REV. 87, 94 (1982).

[366]*See id.* ("[These Rights] were treated by both the legislature and the people as standing above ordinary statutes.").

[367]Dickinson v. Kingsbury, 2 Day 1, 11 (Conn. 1805); see *also* Hubbard v. Shaler, 2 Day 195, 196 (Conn. 1805) (ruling that the object of bail was to enforce the defendant's appearance at court).

[368]2 ZEPHANIAH SWIFT, A SYSTEM OF LAWS OF THE STATE OF CONNECTICUT 391 (1796).

[369]*See* Mann, *supra* note 363, at 933 (arguing that the primary purpose of requiring bail in pre-Constitution Connecticut was to "assure the defendant's appearance before the court").

[370]Given that appearance as a purpose of bail was assumed under English common law, it actually was not mentioned in many other colonial constitutions.

[371]2 Kirby 20 (Conn. 1786).

Court formerly whether the Court had right to bail after conviction and before judgement—but it was not settled—and the Court admitted bail to be taken." While there is no indication of any prior rulings by Connecticut courts, the wording of this holding suggests that there was already an established right to bail, which the Court extended to defendants awaiting judgment.[372]

Nineteen years later, in *Dickinson v. Kingsbury*,[373] the Connecticut Supreme Court declared: "The personal liberty of the subject is to be favored, as far as is practicable and safe, until conviction. Bail for his appearance at the Court, in which his guilt or innocence is to be tried, is, at once, the mode of favoring that liberty, and securing the appearance for trial."

In *Dickinson*, the state treasurer filed an action against a sheri f who had taken a $200 bond in surety for the release of a defendant who had unable to post the bond at his arraignment when the court had set the surety amount.[374] The Court ruled the actions by the sheriff were legal. The Court averred that "[t]he regular and only proper time for such bail to be given, is when the accused is brought before the justice for examination" but the Court also recognized "that this should be the time, or the only opportunity, is not, either expressly, or by implication, declared in any statute." Finding that the sheriff had acted "merely in a ministerial capacity" and that there was no regulation on the subject, the Court held that "it was deemed proper, by a majority of this Court, to allow the practice, until such regulation is adopted."[375]

In *Potter v. Kingsbury*,[376] the Connecticut Supreme Court held that a justice of the peace had the authority to adjourn court while determining whether there was probable cause to proceed to trial against a criminal defendant and that a defendant could be held in jail during the adjournment, but that it was the "the duty of the justice of the peace to take bail, if good and sufficient be o fered, for the appearance of the prisoner."[377] The Court added that "in the exercise of this power, [justices] should take bonds sufficient to enforce an appearance of the prisone , according to the nature and enormity of the offence."[378]

The Constitutional Right to Bail

Connecticut adopted the right to bail in its first Constitution in 1818, including it among "the great and essential principles of liberty and free government."[379] Section 14 of Article I provided that:

> [a]ll prisoners shall, before conviction, be bailable by sufficient sureties, except for capital offences, where the proof is evident or the presumption great; and the privileges of the writ of Habeas Corpus shall not be suspended, unless, when in case of rebellion or invasion, the public safety may require it; nor in any case, but by legislature.[380]

Zephaniah Swift wrote that "[t]he consequence of this law is, that all offences are bailable, which are not capital."[381] The text went unaltered until Connecticut amended its Constitution in 1965, at which time the right to bail was incorporated into Article I, § 8, so as to provide: "In all Criminal prosecutions, the accused shall have a right . . . to be released on bail upon sufficient securit , except in capital offenses, where the proof is evident or the presumption great . . . ."[382] In 1970 the Supreme Court of Connecticut declared: "for a century and a half, in all noncapital cases, an accused has been

[372] *Id.; see also* Peck v. State, 1 Root 331 (Conn. 1791) (admitting a defendant to bail when he petitioned for a new trial); Cnty. Treasurer v. Burr, 1 Root 392 (Conn. 1792) ("A bond taken by a justice in a criminal prosecution, conditioned that the defendant shall appear, answer, and abide judgment, is a good bond.").

[373] 2 Day 1 (Conn. 1805).

[374] *Id.*

[375] *Id.*

[376] 4 Day 98 (Conn. 1809).

[377] *Id.* at 99.

[378] *Id.* at 100.

[379] CONN. CONST., art. I (1818).

[380] CONN. CONST., art. I, § 14 (1818). This language mirrored the Pennsylvania Great Law of 1682.

[381] SWIFT, *supra* note 368, at 391.

[382] *See supra* note 362 and accompanying text.

entitled to pre-conviction release on bail in a reasonable amount."[383] That this entitlement extends only to pre-conviction release has been largely undisputed, given that once a defendant is convicted of the crimes alleged in the prosecution, the presumption of innocence is properly rebutted. [384] In *State v. Chisolm*, [385] for example, a trial court held that post-conviction bail was not protected by the Constitution, but rather is inherently a matter of judicial discretion.[386]

The fundamental right to bail under the Connecticut Constitution extends further than the right guaranteed to a criminal defendant under the United States Constitution. The Eighth Amendment protects defendants from excessive bail amounts, but "there has been no square holding by the United States Supreme Court on whether such a right [to bail] exists…."[387]

Throughout the history of Connecticut's right to bail, state courts have considered two critical questions: (1) when may a defendant be denied bail?; and (2) what is reasonable bail with respect to bond amount and purpose for a bailable offense?

Menillo and the "Capital Offense" Exception

Article I, § 8 of the Connecticut Constitution contains one express exception to the proposition that all offenses are bailable offenses: bail may be denied for "capital offenses, where the proof is evident or the presumption great."[388] Surprisingly though, the seminal case for the capital offense exception, *State v. Menillo*, did not come to the Supreme Court until 1970: "this is the first time that a claim for bail in a capital case has been made, to our knowledge, in a Connecticut court."[389] In *Menillo*, the trial court had rejected the defendant's claim that the state bore the burden of proving either that the proof was evident or the presumption great so as to put the defendant "within the exception disentitling him to bail"; instead the trial court ruled as a matter of law that "the defendant, having been indicted for first-degree murde , was not entitled to bail."[390]

In *Menillo* the Supreme Court considered Connecticut's grand jury procedure "prohibiting the trial of any person for 'any crime, punishable by death or life imprisonment, unless on a presentment of an indictment of a grand jury.'"[391] The issue before the Court was whether *after* indictment and before trial of a capital offense a defendant retains the right to a bail hearing or or whether the grand jury's indictment serves as "conclusive proof" that the "proof is evident or the presumption great," thereby disentitling the defendant to release on reasonable bail.[392] The *Menillo* Court rejected the state's argument that an indictment constitutes "conclusive proof" satisfying the capital exception, though it recognized "much force" in the state's alternative argument "as to the prima facie evidential

[383]State v. Menillo, 159 Conn. 264, 268 (1970).

[384]*See* A. PAUL SPINELLA, CONNECTICUT CRIMINAL PROCEDURE 351 (1996). The probability of an attempted escape by a defendant is much higher following conviction. *Id.* One exception to this denial of post-conviction right to bail has been recognized in cases in which denial of bail while a defendant awaits appellate review could cause incarceration to equal the initial sentence. *Id.* at 351 n.7.

[385]29 Conn. Supp. 339 (Conn. Super. Ct. 1971).

[386]*Id.* at 343–44. See also State v. McCahill, 261 Conn. 492, 510-12 (2002) ("We have never departed from the principles announced in [State v.] Vaughan[, 71 Conn. 457, 461 (1899)]" which presented "compelling evidence of the inherent, common-law powers possessed by the Superior Court to exercise its discretion to grant postconviction bail 'in all cases . . . .' Id.").

[387]SPINELLA, *supra* note 384, at 350, 350–51 n.5; U.S. CONST. amend. VIII. Spinella looks to the Court's language in *Carlson v. Landon*, in which it was suggested that Congress may properly pass laws defining classes of cases where bail may (or may not) be assigned. SPINELLA, *supra* note 384, at 350–51 n.5 (citing Carlson v. Landon, 342 U.S. 524, 545 (1952)).

[388]*Menillo*, 159 Conn. at 268–69.

[389]*Menillo*, 159 Conn. at 267.

[390]*Id.* at 268.

[391]*Id.* at 273 (citing CONN. CONST., art. 1, § 8 (1965) ("No person shall be held to answer for any crime, punishable by death or life imprisonment, unless upon probable cause shown at a hearing in accordance with procedures prescribed by law . . . ."). In 1982 Article XVII amended section 8 of the Article 1 of the constitution, removing the requirement of a grand jury indictment in capital cases and replacing it with a requirement of that probable cause be "shown at a hearing in accordance with procedures prescribed by law". See CONN. GEN. STAT. § 54-46 and § 54-46a.

[392]*Menillo*, 159 Conn. at 270–71.

force of the indictment where the usual Connecticut grand jury procedure is followed."[393] A grand jury indictment may serve as weighty evidence that the proof is evident or the presumption great, but it is not conclusive as a matter of law. A capital defendant does not have any burden of proof to negate a *prima facie* case presented to a grand jury.[394] Instead the *Menillo* Court placed the burden of proof on the prosecution to establish the constitutional exception. Thus a capital defendant would be constitutionally entitled to bail unless the prosecution has met the burden of proof necessary to disentitle the defendant to bail release.

The Capital Offense Exception in the absence of Capital punishment in Connecticut

In 1972, the Connecticut Supreme Court addressed the prohibition of the death penalty and its impact on the constitutional right to bail in *State v. Aillon*. [395] In *Aillon*, the defendant was detained after being arrested on three bench warrants, each for murder.[396] Connecticut General Statutes § 54-53 provided that a "person detained pursuant to the issuance of a bench warrant or for trial of an offense not punishable by death shall be entitled to bail shall be released . . . upon entering into a recognizance, with sufficient surety . . . for his appearance before the court having cognizance of the offense."[397] Because the U.S. Supreme Court in *Furman v. Georgia*[398] had recently held that the death penalty unconstitutional under the Eighth Amendment, the Supreme Court in *Aillon* reasoned that "although the accused is held on three charges of murder he is, nevertheless . . . not being detained for an offense which is now punishable by death. He is, therefore . . . entitled to bail and to release . . . ."[399] Therefore, the *Aillon* Court granted the defendant's motions for review of the Superior Court's categorical denial of bail and remanded for a hearing on bail on the three murder charges.[400]

A capital felony, committed prior to April 25, 2012, required a mandatory sentence of either the death penalty or life imprisonment without the possibility of release.[401] After April 25, 2012, by statute a violation of section 53a-54b of the Connecticut General Statutes is no longer a "capital felony" but instead is "murder with special circumstances," for which the punishment is life imprisonment without the possibility of release.[402] As a result of the statutory repeal of capital punishment and the recent court decisions finding the death penalty unconstitutional even for capital crimes committed before the effective date of the statutory repeal,[403] there are no capital offenses under Connecticut law. Because there are no capital offenses under law and in light of the *Aillon* decision, the capital exception to bail is no longer applicable to any defendant facing prosecution in a Connecticut state court.

The Primary Purpose of Reasonable Bail for Bailable Offenses

In addition to protecting a defendant's right to be released on bail, Article I, § 8 also states that "[n]o person shall be compelled to give evidence against himself, nor be deprived of life, liberty, or property without due process of law, nor shall excessive bail be required nor excessive fines be imposed."[404] If bail is set unreasonably high, it will "accomplish indirectly what it could not accomplish directly, that is, denying the right to bail . . . ."[405] But there is no straightforward answer to the question of what bail is reasonable and not excessive.

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[393] *Menillo*, 159 Conn. at 277.
[394] *Id.* at 277–78.
[395] 164 Conn. 661 (1972).
[396] *Id.*
[397] CONN. GEN. STAT. § 54-53 (2015).
[398] 408 U.S. 238 (1972).
[399] *Aillon*, 164 Conn. at 662.
[400] *Id.*
[401] CONN. GEN. STAT. § 53a-54b (2015).
[402] *Id.*; CONN. GEN. STAT. § 53a-35a (1) (B) (2015).
[403] State v. Santiago, 318 Conn. 1 (2015); State v. Peeler, 321 Conn. 375 (2016).
[404] CONN. CONST. art. 1, § 8 (1965) (emphasis added).
[405] *Menillo*, 159 Conn. at 269.

Courts have found that "a reasonable amount is not necessarily an amount within the power of an accused to raise. It is an amount which is reasonable under all the circumstances relevant to the likelihood that the accused will flee the jurisdiction or otherwise avoid being present for trial. [406] Zephaniah Swift wrote that bail should be provided to those with sufficient surety for the purpose of appearing before the "next court," and that the amount which the judge sets for bail should be "in proportion to the nature and aggravation of the offense charged."[407]

As long ago as 1792,[408] more than two decades before Connecticut adopted its first Constitution, Connecticut courts recognized that the purpose of bail was to ensure the appearance of a defendant at his next court proceeding.[409] Indeed, at this time, Connecticut's right to bail was still governed by the Declaration of Rights of 1750, which stated that bail must be provided to ensure the defendant's appearance and "good behavior."[410] However, courts focused on appearance as the sole purpose of bail, and when the Constitution of 1818 declared the right to bail, it did not include a "good behavior" provision. [411] "The reference to good behavior suggests that at one time there may have been an additional purpose for bail, which may have been to assure that there would be no further breaches of the peace while the defendant was awaiting trial."[412]

Connecticut law long remained unchanged in its recognition that ensuring the defendant's appearance in court is the purpose of bail in non-capital cases.[413] With the removal of "good behavior" from the Constitution of 1818 and the Court's focus on appearance as the purpose of bail, it was not even considered that there could be other purposes for bail or that the reasonableness of bail should be measured aside from its effectiveness in ensuring the defendant's appearance. Historically Connecticut bail statutes focused the process of bail, not its denial: "[b]etween 1821 and 1965, changes in the bail statutes clarified that release was conditioned on the defendant s appearance before the court and expanded the classification of people authorized to take bail. [414]

In 1951, the U.S. Supreme Court in *Stack v. Boyle* declared that "[b]ail set at a figure higher than an amount reasonably calculated [to ensure appearance] is 'excessive' under the Eighth Amendment."[415] The *Stack* court wrote that since 1789 "federal law has unequivocally provided that a person arrested for a noncapital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."[416] *Stack* did not, however, hold that there is right to have bail determined in all cases.

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[406] *Id.* (citing SWIFT, *supra* note 368, at 395).

[407] Mann, *supra* note 363, at 937; SWIFT, *supra* note 368, at 390–91.

[408] *See* Cnty. Treasurer v. Burr, 1 Root 392 (Conn. 1792) ("A bond taken by a justice in a criminal prosecution, conditioned that the defendant shall appear, answer, and abide judgment, is a good bond."). In a Connecticut Supreme Court decision after the 1818 Constitution was ratified, the Court stated that the law requires bond to be taken "for the prisone 's appearance only; but it has been a very common practice, for many years, to superadd that *he shall abide judgment*." Waldo v. Spencer, 4 Conn. 71, 78 (1821). Despite this common addition, however, the Court concluded that "[t]he agreement to abide judgment, after it shall have been rendered, can never affect the prisoner, except by his own consent . . . ." *Id.* at 79

[409] *See Hubbard*, 2 Day at 196 ("The object of bail is, to enforce an *appearance*: and imprisonment on attachment is for the same purpose. Whenever an appearance is allowed, the object of both is accomplished."); *see also supra* for discussion on *Beach and Dickinson*.

[410] *See supra* note 365 and accompanying text.

[411] Mann, *supra* note 363, at 938.

[412] *Id.*

[413] *See, e.g.*, State v. Bates, 140 Conn. 326, 330 (1953) ("The object of requiring bail is to compel the presence of defendant in court . . . .") (internal quotations omitted) (quoting 8 C.J.S., Bail, § 4, at 6). The Court went on to state that bail secures appearance of the defendant so that the court may "force him to submit to the jurisdiction and the punishment imposed by the court." *Id.* (internal quotations omitted) (quoting 8 C.J.S., Bail, § 30, at 49).

[414] Mann, *supra* note 363, at 933, 933 n.95.

[415] Stack v. Boyle, 342 U.S. 1, 5 (1951).

[416] *Id.* at 4; Mann, *supra* note 363, at 942.

Salerno and the U.S. Supreme Court's Adoption of Public Safety as a Purpose for Bail

In 1987, in *Salerno v. United States*, the U.S. Supreme Court sustained the constitutionality of the Bail Reform Act of 1984 which "requires [federal] courts to detain pretrial arrestees charged with certain serious felonies if the Government can demonstrate by clear and convincing evidence after an adversary hearing that no release conditions will reasonably assure . . . the safety of any other person and the community."[417] The act was passed in response to the "'alarming problem of crimes committed by persons of release.'"[418] The decision to detain a defendant requires an evidentiary hearing, at which the defendant is provided "procedural safeguards" including the presence of counsel, the right to testify and present witnesses,[419] the right to proffer evidence, and the right to cross-examine any other witnesses. If the court "finds that no conditions of pretrial release can reasonably assure the safety of other persons and the community," it must set forth its findings of fact in writing and "support [its] conclusion with 'clear and convincing evidence'."[420] A court is "not given unbridled discretion in making the detention determination" as it must consider factors such as "the nature and seriousness of the charges, the substantiality of the Government's evidence against the arrestee, the arrestee's background and characteristics, and the nature and seriousness of the danger posed by the suspect's release."[421] If a court orders detention, the detained arrestee "is entitled to expedited appellate review of the detention order."[422]

The Supreme Court considered and rejected two challenges to the Bail Reform Act: (1) that it "violates substantive due process because the pretrial detention it authorizes constitutes impermissible punishment before trial"[423] and (2) "that the Act contravenes the Eighth Amendment's proscription against excessive bail."[424] Respondents in *Salerno* were leaders of organized crime families who were denied bail based on the fact that the trial court concluded they would likely commit future crimes while out on bail. The Second Circuit had held that this was a violation of personal liberty, impinging on the defendants' right to substantive due process.[425] The Supreme Court found that the restriction on personal liberty authorized by the act constitutes "permissible regulation" because "Congress did not formulate the pretrial detention provisions as punishment for dangerous individuals," but that Congress "instead perceived pretrial detention as a potential solution to a pressing societal problem."[426] The Court declared that "[t]here is no doubt that preventing danger to the community is a legitimate regulatory goal."[427] Thus, the Court concluded "that the pretrial detention contemplated by the Bail Reform Act is regulatory in nature, and does not constitute punishment before trial in violation of the Due Process Clause."[428]

The Supreme Court in *Salerno* also examined and rejected the respondents' claim that "the Bail Reform Act violates the Excessive Bail Clause of the Eighth Amendment."[429] Relying on *Stack v. Boyle*, the respondents argued that bail should be "calculated solely upon the considerations of flight. [430] The Court disagreed:

> While we agree that a primary function of bail is to safeguard the courts' role in adjudicating

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[417] *United States v. Salerno*, 481 U.S. 739, 741 (1987) (internal quotations omitted) (quoting 18 U.S.C. § 3142(e) (1982)).
[418] *Id.* at 742.
[419] *Id.*
[420] *Id.*
[421] *Id.* at 742-43.
[422] *Id.* at 743.
[423] *Id.* at 746.
[424] *Id.*
[425] *Id.* at 744.
[426] *Id.* at 747.
[427] *Id.*
[428] *Id.* at 748.
[429] *Id.* at 752.
[430] *Id.* at 752 (citing Stack, 342 U.S. at 5).

> the guilt or innocence of defendants, we reject the proposition that the Eighth Amendment categorically prohibits the government from pursuing other admittedly compelling interests through regulation of pretrial release. . . . dictum in *Stack v. Boyle* is far too slender a reed on which to rest this argument. The Court in *Stack* had no occasion to consider whether the *Excessive Bail Clause* requires courts to admit all defendants to bail, because the statute before the Court in that case in fact allowed the defendants to be bailed. Thus, the Court had to determine only whether bail, admittedly available in that case, was excessive if set at a sum greater than that necessary to ensure the arrestees' presence at trial.[431]

The *Salerno* Court relied on *Carlson v. Landon*,[432] in which the Court had stated:

> The bail clause was lifted with slight changes from the English Bill of Rights Act. In England that clause has never been thought to accord a right to bail in all cases, but merely to provide that bail shall not be excessive in those cases where it is proper to grant bail. When this clause was carried over into our Bill of Rights, nothing was said that indicated any different concept. The Eighth Amendment has not prevented Congress from defining the classes of cases in which bail shall be allowed in this country. Thus, in criminal cases bail is not compulsory where the punishment may be death. Indeed, the very language of the Amendment fails to say all arrests must be bailable.[433]

The *Salerno* Court declared that "[n]othing in the text of the Bail Clause limits permissible Government considerations solely to questions of flight. [434] The Court commented on the limits that the Eighth Amendment does place on detention for arrests for offenses that are bailable:

> The only arguable substantive limitation of the Bail Clause is that the Government's proposed conditions of release or detention not be "excessive" in light of the perceived evil. Of course, to determine whether the Government's response is excessive, we must compare that response against the interest the Government seeks to protect by means of that response. Thus, when the Government has admitted that its only interest is in preventing flight, bail must be set by a court at a sum designed to ensure that goal, and no more. Stack v. Boyle, supra. We believe that when Congress has mandated detention on the basis of a compelling interest other than prevention of flight, as it has here, the Eighth Amendment does not require release on bail.[435]

A dissent by Justice Thurgood Marshall, joined by Justice Brennan, declared that the Bail Reform Act was "consistent with the usages of tyranny and the excesses of what bitter experience teaches us to call the police state . . . ."

Connecticut's Recognition of a Purpose for Bail other than to assure the Defendant's Appearance

Following *Salerno*, the Connecticut legislature in 1990 made statutory changes to the state bail system in order to authorize revocation of bail and consequent detention without bail in specific circumstances in non-capital cases. In *State v. Ayala*,[436] the state Supreme Court rejected a defendant's claim that the trial court had unconstitutionally revoked his bail based on a statute that, *inter alia*, authorizes revocation where a defendant on bail release endangers another person or there is probable cause to believe that he has committed a federal, state or local crime while released.[437] During his release on a surety bond, the defendant was arrested for severely beating the deputy mayor of Hartford. After the defendant was released on another surety bond, he was arrested yet

[431] *Id.* at 753.
[432] 342 U.S. 524 (1952).
[433] *Id.* at 545–46.
[434] *Id.* at 754.
[435] *Id.* at 754-55.
[436] 222 Conn. 331 (1992).
[437] *Id.* at 334, 336 n.8 (citing General Statutes § 54-64f).

again and charged with threatening and was released on still another surety bond.[438] Pursuant to Connecticut General Statutes § 54-64f, the state moved to revoke the defendant's release. The trial court held a hearing and granted the state's motion, ordering revocation of the defendant's release on bond in his original case.[439]

The Supreme Court in *Ayala* acknowledged that Article I, § 8 of the Connecticut Constitution "guarantees bail in a reasonable amount 'in all cases, even capital cases not falling within the exception [where the proof is evident or the presumption great].'"[440] The Court recognized that the state constitutional bail guarantee is "more detailed in scope and broader than that contained in the Eighth Amendment" which does "not confer or recognize a right of bail, but only guarantees that if bail is imposed it must not be excessive."[441]

The *Ayala* Court rejected the defendant's two challenges to the trial court's application of the statute: first, that the statute is constitutional only if read to require a trial court to set a new bond when a defendant has violated the conditions of his release; and, alternatively, that it was "constitutionally impermissible" for the trial court "to revoke his bond in its entirety."[442] Finding that the revocation of defendant's bail release was constitutional, the court held that: "First, the statute, properly viewed, *implements the inherent judicial authority of trial courts to compel compliance with conditions of release*. Second, revocation of release is consistent with ensuring a defendant's appearance in court. Third, *good behavior* while on pretrial release has been recognized historically as a legitimate purpose for bail in the state."[443] Essentially, the court concluded that the revocation had not violated the defendant's constitutional right to bail because he initially had been released on bail and that his "failure to abide by the conditions of his release resulted in a *forfeiture* of his right to release."[444]

Most recently, in *State v. Anderson*,[445] the Connecticut Supreme Court considered a claim by an insanity acquittee who had been confined in the state mental hospital until he was transferred to the Department of Correction when he was unable to post a $100,000 surety bond set by a trial judge in new criminal cases against him.[446] The defendant argued that his incarceration was in violation of the bail clause in Article I, § 8, of the Connecticut Constitution and that it violated procedural due process.[447] The defendant argued that setting a monetary bond "amounted to impermissible preventive detention" because "the fundamental purpose of bail is to ensure the subsequent appearance of the accused and not to protect the public from a dangerous accused."[448] The defendant claimed that since his appearance in court was assured by his status as an insanity acquittee already in state custody, the court's setting of a monetary bond was not constitutionally permissible.

The Supreme Court rejected the defendant's argument that the purpose of bail was already accomplished by dint of his involuntary confinement in the state hospital. The Court held that another fundamental purpose of bail is to protect the public from a dangerous accused defendant.[449] Relying on the history of bail in Connecticut, as previously laid out in *State v. Ayala*,[450] the court found

[438] *Id.* at 335.
[439] *Id.* at 335-37.
[440] *Id.* at 342-43.
[441] *Id.* at 342 n.11.
[442] *Id.* at 344-45.
[443] *Id.* at 346-47 (emphasis added).
[444] *Id.* at 348-49 (emphasis added).
[445] 319 Conn. 288 (2015).
[446] *Id.* at 295-97.
[447] *Id.* at 299.
[448] *Id.*
[449] *Id.* at 299.
[450] 222 Conn. 331 (1992).

that there was no indication that the Connecticut Constitution excludes "good behavior" as a valid purpose of bail simply because it is not included in the constitutional text.[451] The Court noted that Connecticut statutes enacted in 1981 had validated nonfinancial conditions of release and thereby already "broadened the focus of the purposes of bail to recognize, once again, that bail is a method for ensuring a defendant's good behavior while on release,' as well as a method of securing his appearance in court."[452] The court concluded that:

> The presence of statutes authorizing sureties of the peace and good behavior both prior to, and since, the adoption of the 1818 constitution, along with statutes authorizing bail to ensure a defendant's appearance, clearly establishes that both purposes are constitutionally acceptable reasons for a court to require financial security from an accused individual.[453]

The *Anderson* decision is the most recent major case with respect to bail in Connecticut. The decision answered in the affirmative whether other purposes may be considered when determining bail under the state Constitution.[454] Despite the strong differences voiced by dissenting justices in *Anderson* and previously by commentators,[455] the decision represents the current state of constitutional bail law in Connecticut: judges have the discretion to set monetary bail for the purpose of protecting the safety of the general public and not solely for the purpose of assuring the defendant's appearance in court.

[451]See *id.* at 302 ("As we observed in *Ayala*, however, there is 'no evidence . . . that the framers of the 1818 constitution intended to abandon the customary purposes of bail that were in effect at the time of the adoption of the constitution and had been for at least 145 years' . . . particularly because the 1818 constitution was intended to enshrine rights already in existence by virtue of statute and the common law.") (quoting *State v. Ayala*, 222 Conn. 331, 351 (1992)).

[452]*Id.* at 303.

[453]*Id.* at 304. The Court also addressed the 1990 bail reform efforts, which altered Connecticut statutes and allowed for determining "what conditions of release will reasonably assure the appearance of the arrested person in court *and* that the safety of any other person will not be endangered." *Id.* at 305–06 (citing CONN. GEN. STAT. § 54-64a(b)(2) (1990)).

[454]The 4-3 decision prompted a dissent in which Justice Palmer, joined by Chief Justice Rogers and Justice McDonald, vehemently argued that "the imposition of a monetary bond for the purpose of ensuring that [defendant] would be detained pending trial based solely on the belief that he posed a threat to public safety violates his right to bail under article first, § 8, of the Connecticut constitution." *Id.* at 329 (Palmer, J., dissenting).

[455]*See supra* note 363 (arguing that Connecticut's 1990 bail reform laws are patently unconstitutional for allowing the consideration of factors other than solely the appearance at trial when setting bail).