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Reforming the Constitution State's Pre-Trial System

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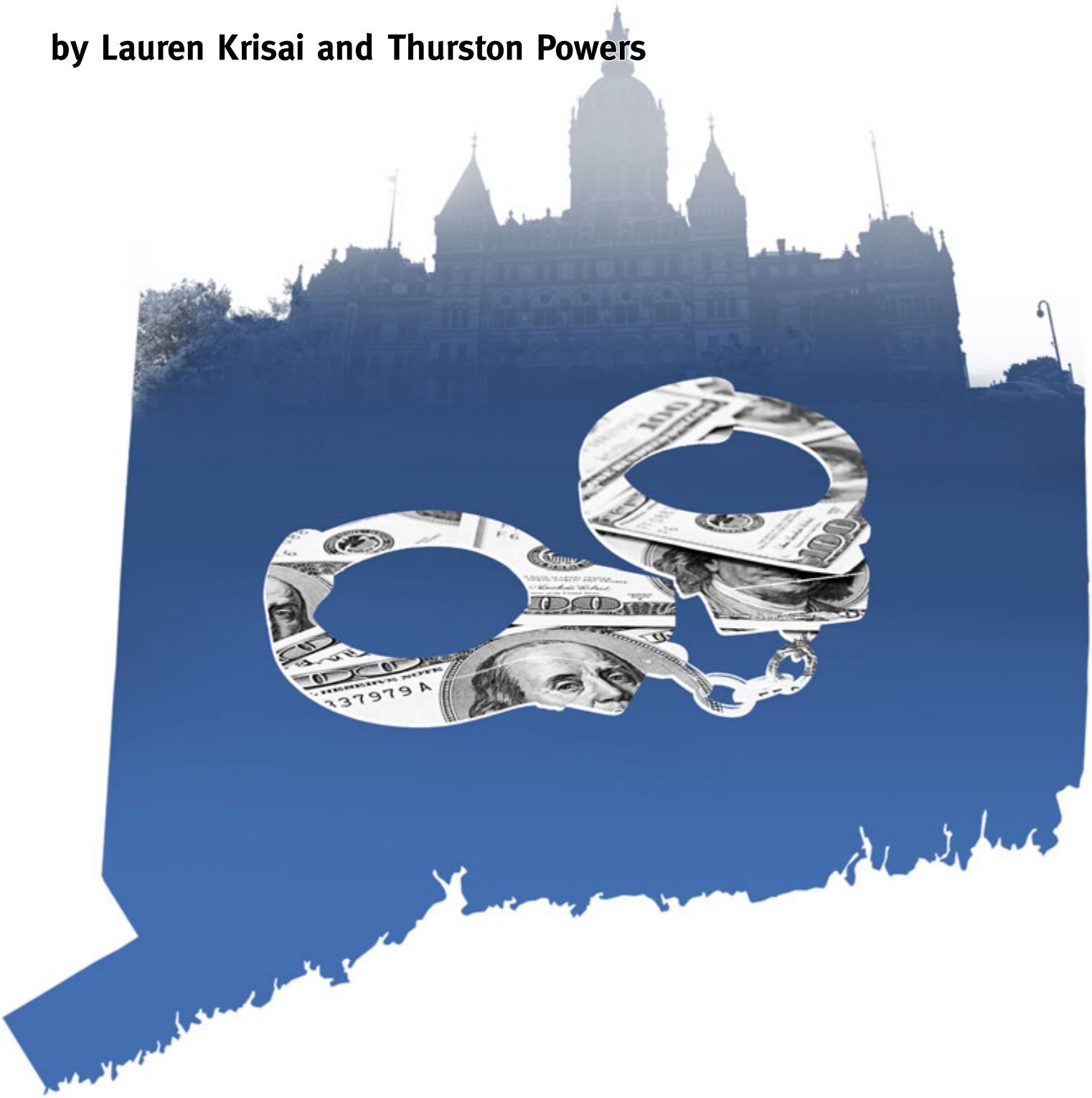

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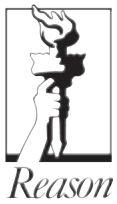

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Part 1

Introduction

In Connecticut, individuals charged with crimes face very different outcomes before trial—outcomes tied more to how much money they have than the risk they pose to society. For example, those who are charged with a crime and can afford to post bail remain free until their trial date, with little accountability. But poor defendants—even those charged with low-level, nonviolent crimes—often sit in jail until their trial dates, costing taxpayers thousands of dollars without preserving public safety, or else they just plead guilty, regardless of their actual complicity. This has led to a pre-trial system that is neither just nor cost-effective. Furthermore, it fails to prioritize public safety.

States like New Jersey are leading the way on reform. Last year, the state replaced the pre-trial system with one that incorporates a data-driven, risk-based assessment tool and alternatives to monetary bail. In Connecticut, little data drive decisions for bail determinations, and often the poorest offenders—even those whose charges pose little threat to society—just languish in jail until their trial dates because they are unable to afford their bail.

It's time for Connecticut to re-think its pretrial system. In this brief, Reason Foundation and Connecticut's Yankee Institute for Public Policy make the case for systemic reform, by replacing monetary bail with a system that uses effective alternatives based upon risk assessment.

Part 2

How Pre-Trial Works in Connecticut: Overview

An individual arrested on a criminal charge in Connecticut faces three potential outcomes at arraignment: either a judge sets a financial bond, denies bail, or issues a nonfinancial bond (such as a written promise to appear on all subsequent court dates).

Three types of financial bonds are issued in Connecticut: surety bonds, cash-only bonds, and non-surety bonds. The most common financial bonds are surety bonds, which allow defendants to post the entire bond with their own personal funds, or purchase a commercial bond from a bondsman. The theory behind surety bonds is that they induce individuals to appear in court at a future date by creating an economic incentive to do so. Bail bondsmen are supposed to require that their customers, pretrial detainees, pay 10% of the total bond up front. To strengthen this requirement, in 2011 the legislature passed a bill that required a $5,000 dollar fine and or the revocation of a bondsman's license for failing to record, report, and comply with the 10% percent price floor.[1]

Cash-only bonds require defendants to pay the full bond amount to be released before their trial dates, and therefore eliminate the ability to use the services of a bondsman. A non-surety bond is a defendant's written promise to appear for his or her court date. However, if defendants fail to appear at their court date, they must pay a set cash amount, determined at their first bond hearing. If an individual assigned a financial bond is unable to pay it in full, or the 10% bond charge bail bondsmen require, he will remain in jail until his trial date.[2]

Judges may also assign written promises to appear, which allow defendants to be released on their own recognizance, without having to pay any bond, after signing a document that states they will be present at their trial date. This is the only nonfinancial condition that judges may assign.[3]

1 "Bail Services in Connecticut," Legislative Program Review & Investigations Committee, Connecticut General Assembly, December 2003. https://www.cga.ct.gov/2003/pridata/Studies/Bail_Final_Report.htm

2 Ibid.

3 Ibid.

Limited data are available detailing how bail works in Connecticut, even regarding how many defendants are assigned financial and nonfinancial bonds. The most recent report by the Legislative Program Review and Investigation Committee of the Connecticut General Assembly, which was published in 2003, found that between 1998 and 2003, the majority of defendants who were permitted bail—66%—were assigned written promises to appear by judges at their arraignment, while the other one-third of defendants were assigned a financial bond. Of these defendants assigned a financial bond, 16% received surety bonds, 13% received non-surety bonds, and 6% received cash-only bonds.[4]

[4] Ibid.

Part 3

Problems with Pre-Trial/Bail in Connecticut

A. No Connection to Risk

Ideally, bonds set for defendants correlate with the risk of flight and threat to public safety associated with the charged individual. However, that is not the case in Connecticut. According to a 2003 evaluation of bail services in Connecticut by the Legislative Program Review and Investigations Committee of the Connecticut General Assembly, the state's laws on bail are "vague and confusing, and in some procedural areas there are no statutory guidelines."[5]

Indeed, there is no standardized process in Connecticut for assessing an individual's risk to public safety before trial; the process is functionally arbitrary. Judges are often left to determine the appropriate pre-trial assessment for individuals with no data driving their decisions. As a result, many defendants often face pretrial detention just because they cannot afford to post bond. This means they end up spending time in jail pre-trial, even if they are charged with offenses that would not merit incarceration post-conviction.

One report by Connecticut's Office of Policy and Management Criminal Justice Policy and Planning Division found that of the pre-trial defendants admitted to a Connecticut DOC facility in January 2011, less than half bonded out of prison or obtained a court release after one month. After three months, 38% of pre-trial defendants remained in jail unable to post bail. Worse, after 12 months, 15% of unsentenced pre-trial defendants remained in prison because they were unable to post bail. There was no information about what crimes these individuals were charged with, however.[6]

The inverse is also true: Connecticut's cash bail system allows individuals who do pose a threat of committing violent acts to be released pre-trial if they can post bond. One infamous example is Connecticut resident Selami Ozdemir, who was arrested on domestic violence charges, posted bail and promptly committed a murder-suicide just 10 hours later.[7] The Ozdemir case offers a dramatic example of the limitations of a cash-based bail system without a data-driven risk assessment tool at its center.

5 Ibid.

6 "Releases of the May 2011 pre-trial admit cohort of 1,439 offenders" Chart. Connecticut's Office of Policy and Management Criminal Justice Policy and Planning Division.

7 Russell Nichols, "States Struggle to Regulate the Bond Industry," *Governing*, April 2011. http://www.governing.com/topics/public-justice-safety/States-Struggle-to-Regulate-the-Bond-Industry.html

B. Poor, Low-Level Defendants Unable to Post Bail

As of September 2015, Connecticut had roughly 3,400 pre-trial inmates housed in a DOC facility. They accounted for roughly 21% of the Connecticut prison and jail population, meaning roughly one in five individuals housed in a DOC facility had not been convicted of a crime. Of those who were being held on bail, 690, or 19%, had a bond that was set at less than $20,000, the lowest financial bonds threshold in Connecticut.[8] With the 10% price floor set by bail bond companies, this means that these defendants could not afford to pay a $2,000 bond or less to secure their release before trial.

Many poor defendants who can neither afford to post bond nor languish in jail while awaiting trial are incentivized to plead guilty to charges even if they're innocent. The resulting criminal conviction poses a slew of barriers for individuals attempting to re-enter society, especially for plea-bargained felony convictions.

Because there is no standardized risk assessment judges use to make bond decisions, individuals charged with a wide variety of offenses often receive the same bond. Indeed, as of September 2015, individuals housed in jail on a $20,000 bond or less were charged with offenses ranging from very low-level, nonviolent offenses that would not necessarily warrant a period of incarceration upon conviction, to misdemeanor violent offenses, to even some felony crimes. Some common low-level offenses defendants were charged with include: sixth-degree larceny (theft of property valued at $500 or less—the lowest petty theft offense in Connecticut), possession of a controlled substance, misdemeanor prostitution, possession of marijuana, and disorderly conduct. However, defendants facing more serious charges were also held on a $20,000 bond or less, such as: felony assault in the first degree, sexual assault in the second degree, and third-degree robbery.[9]

C. Cost of Pre-Trial for Taxpayers

The practice of incarcerating pre-trial defendants—especially those who remain in DOC custody until trial because they are unable to post bail—is expensive for taxpayers. Connecticut Governor Malloy's office estimates that the per-day cost of pretrial detention to the taxpayer is $120.[10] Taxpayers therefore pay roughly $408,000 each day to house Connecticut's pre-trial population of roughly 3,400 inmates, for a total of roughly $148.9 million per year. Faced with repeated deficits and new deficit projections, the state is considering a wide range of cuts to services. The cost of pretrial detention is, in many cases, exacerbating fiscal issues the state is currently experiencing.

8 "Pre-trial population CT 7/22/2015," handout at meeting, September 25, 2015, Connecticut's Office of Policy and Management Criminal Justice Policy and Planning Division. Available at: http://www.ct.gov/opm/lib/opm/cjppd/cjabout/20150923cjpac_handout.pdf

9 Ibid.

10 "Gov. Malloy's Prepared Remarks Today on Criminal Justice Reform," State of Connecticut, Governor Daniel P. Malloy, November 6, 2015. http://portal.ct.gov/Departments_and_Agencies/Office_of_the_Governor/Press_Room/Press_Releases/2015/11-2015/Gov__Malloy_s_Prepared_Remarks_Today_on_Criminal_Justice_Reform/

This estimate only represents the most observable and direct cost of pretrial detention to Connecticut's residents. Its true price also includes the opportunity cost for all parties involved. The revenue used to maintain the bail system is extracted from the private sector in the form of higher taxes, stunting economic growth. Additionally, holding residents on bail results in lowered productivity, as defendants often lose their jobs and sometimes even their children, as they spend months in pre-trial detention removed from their homes and work, a de facto jail sentence in itself.

Part 4

Recommended Reforms: Examples from Other States

There is a better way to manage the pre-trial system in Connecticut. This brief offers several tiered recommendations for reform to make Connecticut's pre-trial system more just and more cost-effective—all while maintaining public safety.

A. Replace Monetary Bail with More-Effective Alternatives Based on Risk Assessment:

First, Connecticut should consider eliminating its cash bail system, replacing it with a system that utilizes a pre-trial risk assessment tool that assigns individuals into low-, moderate-, and high-risk categories. Assessments would be based on objectively evaluated predictors of a defendant's risk of flight or re-offending, including criminal history, current charge, etc. Such a system would allow judges to assign low-risk but cost-effective alternatives to bail, such as home monitoring or check-ins with supervisors.

Low-risk offenders who are unlikely to commit additional crimes and are likely to return for their court dates could be released on their own recognizance. Adding such an assessment tool would provide data to inform a practice Connecticut already uses.

The state can manage defendants placed into a moderate-risk category, as an alternative to issuing a financial bond, with tools such as supervision, electronic monitoring, or other interventions. And of course, the relatively small group of individuals who are determined to present a high risk to public safety should remain in detention until trial.

As noted earlier, the cost of housing individuals in a Connecticut DOC facility is roughly $120 per day. Of course, allowing low-risk individuals to be released on their own recognizance will cost the state nothing, bringing about huge cost savings. Even in cases where required supervision is warranted, the cost is much less than that of housing an individual in a facility. According to estimates by the federal court system, it costs roughly $7 to supervise an individual pre-trial.[11]

[11] "Supervision Costs Significantly Less than Incarceration in Federal System," United States Courts. July 18, 2013. http://www.uscourts.gov/news/2013/07/18/supervision-costs-significantly-less-incarceration-federal-system

Replacing cash bail with a system that uses data-driven risk assessments would be much more cost-effective for Connecticut taxpayers, and would protect public safety by requiring individuals who pose a significant threat to remain detained until their trial. It would also ensure that poor, low-level defendants are no longer disproportionately affected by Connecticut's cash bail system.

Other states have already transformed their bail systems. In 2014, after finding that a high number of poor, low-level defendants were being held in jails, unable to post bail, New Jersey completely overhauled its bail system both by using assessment tools to examine the risk of arrested individuals and allowing non-monetary alternatives to bond.[12] When the law is implemented in 2017, judges will use a validated risk assessment tool before an individual's preliminary bail to determine what type of pre-trial release is appropriate, based upon an individual's risk of reoffending or flight before his or her trial. So far, the passage of the reform has been praised as a positive step forward. Indeed, the state's supreme court chief justice has touted it as one of the most significant pieces of criminal justice reform legislation.[13]

B. Risk Assessment/Non-Monetary Bond for Nonviolent Offenders:

Even if eliminating cash bail is deemed politically impossible, at a minimum Connecticut should consider creating a risk assessment tool for making bond determinations. Offenders who are assessed to pose a low risk of reoffending or flight would be released on their own recognizance, while those who pose a medium risk would be offered various levels of bond that are proportional to the crime they're accused of committing. Those posing a high risk could receive no bond whatsoever, a high bond or a high cash-only bond.

This is less ideal than replacing the system with risk assessments and no bail, since individuals can still be released back into society before their court date based upon whether they have the financial means to post bail instead of the risk they pose, but it will at least make the system more just and cost-effective than it is currently.

C. Non-Monetary Bond for Low-Level Offenders Only:

At the very least, Connecticut legislators should consider eliminating monetary bail for defendants charged with low-level, nonviolent crimes that pose a minimal threat to society, such as prostitution, sixth-degree

[12] New Jersey Senate Bill 946, 216th legislature, introduced January 27, 2014. http://www.njleg.state.nj.us/2014/Bills/S1000/946_R3.PDF

[13] Brent Johnson, "State Supreme Court chief touts N.J.'s 'significant' bail reform," NJ.com. May 15, 2015. http://www.nj.com/politics/index.ssf/2015/05/nj_supreme_court_chief_justice.html

larceny (which includes shoplifting a candy bar), or simple drug possession. Eliminating monetary bail for the lowest-risk defendants would greatly enhance both cost-efficiency and justice by ensuring that poor, low-level defendants no longer languish in jail before their trial on the taxpayers' dime. However, while this reform will have the least positive impact of the three recommended reforms primarily due to its lack of a risk assessment tool, it would represent a modest step forward toward making Connecticut's pre-trial system more cost-effective and just.

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Lauren Krisai is the director of criminal justice reform at Reason Foundation, where she focuses on a variety of criminal justice issues, including sentencing reform, prison reform, drug policy and police reform—particularly at the state level. Lauren graduated from The Ohio State University with a B.A. in Political Science and International Relations. She is the author of the 2015 Reason Foundation policy study, *The High Cost of Incarceration in Florida: Recommendations for Reform* and the 2013 Reason Foundation policy study, *Smart on Sentencing, Smart on Crime: An Argument for Reforming Louisiana's Determinate Sentencing Laws*.

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