ACLU Connecticut

Legislative Testimony
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Written Testimony Supporting Sections 9, 13-21, and 23-27 and Opposing Sections 2, 3, 11, 12, and 28 of House Bill 6594, An Act Concerning the Criminal Justice Process

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein, and distinguished members of the Judiciary Committee:

My name is Kelly McConney Moore, and I am the interim senior policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony in partial support of House Bill 6594, An Act Concerning the Criminal Justice Process as to Sections 9, 13-21, and 23-27, and in partial opposition to House Bill 6594, as to Sections 2, 3, 11, 12, and 28.

We strongly encourage the committee to support those provisions of House Bill 6594 which seek to decrease unnecessary criminalization, overpenalization, and punishment of poverty, as well as those directed at misconduct by governmental employees. Generally, we oppose those that create new or greater criminal penalties or perpetuate criminalization of behaviors that should be decriminalized.

ACLU-CT Supports Sections 9, 13-21, and 23-27

Section 13 is a strong step towards reducing the harm of Connecticut's persistent offender categorization, which is a sentencing enhancement that multiplies the harms of the criminal legal system. This bill provides that when a court is considering whether a person a "persistent offender," it can only consider those offenses committed within a ten-year lookback period. This is important: it stops people for being doubly punished for mistakes of their pasts. We believe that the persistent offender enhancement should be eliminated altogether, but support Section 13 as a step forward.

We also support the provisions of Sections 14-21 which ensure that people will not be denied full access to pretrial diversion or treatment programs because of their inability to pay. Currently, courts can impose application fees on even people who the courts have already determined have limited financial means and need a court-appointed attorney. If people cannot pay those fees, courts can order that people perform community service in lieu of paying application fees. This is yet another way of punishing people for their economic conditions and we support the efforts in this bill to end the practice.

We also support the efforts to limit the effect of school zones on the punishment for various drug offenses. By making school zones smaller and by requiring specific intent as to location, Sections 25-27 mean that fewer people will be subjected to harsher sentences because of the accidental or coincidental proximity of a school. This kind of enhancement is exactly the kind of sentence multiplier that is a driver of mass incarceration. It should not only be reduced, as proposed in House Bill 6594, but ended in almost every situation.

Section 9, which requires state prosecutors to notify the office of the attorney general when prosecuting a crime related to a governmental employee's governmental office, is a good one. We support efforts to reduce bad acts by governmental employees by seeking novel forms of discouragement, like pension clawbacks for people found guilty of wrongdoing in their official capacities. This is especially important for police who misuse their office, because they are otherwise often insulated from liability based on the interplay of governmental immunity and police union contracts. Notifying the attorney general's office of opportunities to clawback their pensions if they are found guilty of wrongdoing is an important stick to curb police misconduct and violence.

We also support Section 23 as a first step towards reducing criminalization of failure to pay infraction fines, but strongly encourage this Committee to go further. We believe that failure to pay fees and fines is most often the result of people's economic conditions and that criminalizing those economic conditions and subjecting people to jail time for them – for any length – is fundamentally unjust. We encourage the

Committee to wholly eliminate criminal penalties and jail sentences for failure to pay infraction fines.

Finally, Section 24, which provides a 1:1 sentence reduction for presentence confinement days, is an important recognition that presentence confinement is incarceration and should be treated and counted as such. We recommend this Committee not only extend this credit to the categories of people confined presentence identified in Section 24, but to anyone confined presentence.

ACLU-CT Opposes Sections 2, 3, 11, 12, and 28

While we do not, per se, oppose the language change in Sections 2 and 3, we oppose the efforts in this bill to shore up criminalization of sex work. Decriminalizing sex work makes both sex workers and communities safer.[1] Continuing in the outdated, disproven model of criminalizing sex work, even by just criminalizing demand for sex work, perpetuates the harm perpetrated on sex workers by the mass incarceration system.[2] Sections 2 and 3 buy fully into the system of criminalizing sex work – which is legitimate work – and we thus oppose these changes.

Sections 11 and 12 address the very real problems of electronic stalking and disseminating intimate images by increasing criminal penalties for those offenses. Mass incarceration over the past four decades has been driven in large part by increasing the lengths of prison sentences.[3] Longer prison sentences have persisted, despite strong evidence that "lengthy prison terms are counterproductive for public safety as they result in incarceration of individuals long past the time that they have 'aged out' of the high crime years, thereby diverting resources from more promising crime reduction initiatives."[4] Moreover, longer sentences do not appear to have any

[1] *See* It's Time to Decriminalize Sex Work, ACLU, Nov. 20, 2020, *available at* https://www.aclu.org/news/topic/its-time-to-decriminalize-sex-work/.
[2] *Id.*
[3] Jeremy Travis, Bruce Western & Steve Redburn, The Growth of Incarceration in the United States at 70. National Academies Press (2014), *available at* https://www.nap.edu/read/18613/chapter/5.
[4] Marc Mauer, "Long-term sentences: time to reconsider the scale of punishment." Sentencing Project, Nov. 5, 2018, *available at* https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/.

significant deterrent effect.[5] Systems that have reduced sentences – notably, the federal criminal system – have not noticed any effect on public safety.[6] In short, there is no empirical evidence to suggest that increasing the penalty for either electronic stalking or disseminating intimate images will curb these harmful behaviors or make people safer online. Accordingly, since they would increase mass incarceration without any demonstrable benefit, we oppose Sections 11 and 12.

Finally, we oppose Section 28. While one change the section makes – narrowing the offenses where a state's attorney can block sentence modifications – is a positive one, the downsides of the section are too great to garner our support. By requiring a waiting period of five years between sentence modification requests, this Section unnecessarily cuts off one of the few avenues of sentence relief for people who have been unjustly sentenced in Connecticut courts. The waiting period is far, far too long and outweighs any benefit from changing the standard for when prosecutors can block sentence modifications. We encourage the Committee to retain the change that only allows prosecutors to block sentence modifications in sentences over 7 years that resulted from plea bargains, but to remove the five-year waiting period after an unsuccessful sentence modification attempt. With that change, we would no longer oppose this section.

Conclusion

We encourage this Committee to favorably report on Sections 9, 13-21, and 23-27 and, where appropriate, strengthen the bill by expanding or broadening the protections set forth in those sections. We encourage the Committee to oppose Sections 2, 3, 11, 12, and 28 of House Bill 6594.

[5] *See id.*
[6] *See id.*