



Public Comment
765 Asylum Avenue, First Floor
Hartford, CT 06105
860-523-9146
www.acluct.org

**Public Comment Regarding the Criminal Justice Commission
Search for a Connecticut Chief State's Attorney**

Justice McDonald and Distinguished Members of the Criminal Justice Commission:

My name is Anderson Curtis, and I am a field organizer for the Smart Justice campaign with the American Civil Liberties Union of Connecticut (ACLU-CT). I am joined by my colleague, Claudine Fox, campaign manager for the ACLU of Connecticut.

The ACLU of Connecticut's Smart Justice campaign is made up of leaders and advocates who have ourselves been directly impacted by the criminal legal system.¹ Together, we are grounded in the knowledge that our experiences within the criminal legal system – as formerly incarcerated people and people living with a criminal record – are powerful, and that decisionmakers must heed and value these experiences if Connecticut is to chart a new course for its criminal legal system. Our campaign goal is to end mass incarceration and eliminate the racial disparities that exist in the criminal legal system.² We believe Connecticut will be safer and stronger when our state reduces the number of people held in the state's prisons and jails and reunites them with their families, in their communities, so they can be successful members of our state.

Today, we call on this Commission to enact wholesale change by appointing a Chief State's Attorney who is demonstrably committed, in word and in action, to ending mass incarceration and eliminating racial disparities in the criminal legal system.

Smart Justice has been at the forefront of pushing for Connecticut to transform its legal system into one that pursues justice, not just convictions. Last year, we sat in the audience as this

¹ To learn more about the ACLU's Smart Justice Campaign visit: <https://www.aclu.org/issues/mass-incarceration/smart-justice/campaign-smart-justice>

² Connecticut has the sixth highest racial disparity in incarceration rates for black residents and seventh highest racial disparity in incarceration rates for Hispanic residents. The Sentencing Project. "The Facts: State-by-State Data." Sentencingproject.org. <https://www.sentencingproject.org/the-facts/#rankings?dataset-option=SIR> (accessed October 11, 2019)

Commission interviewed candidates for the position of Deputy Chief State’s Attorney for Operations.³ We asked the Commission to ask candidates for the position about whether they would commit to policies designed to decrease incarceration, eliminate racial disparities in prosecutors’ decisions, and increase prosecutorial transparency and accountability. Today, we are able to testify before you because Smart Justice leaders successfully lobbied Governor Lamont and the Connecticut General Assembly to pass [Public Act 19-59](#), requiring this Commission to meet in public session, at the Legislative Office Building and take public comments on all appointments, reappointments, and discipline of key leadership positions within the Division of Criminal Justice. That same law also established Connecticut as one of the first states with a wide-ranging law requiring transparency about trends in prosecutors’ decisions.⁴

These, however, are just first steps. Whether Connecticut takes the next, necessary steps to create prosecutorial transparency and accountability, and whether prosecutors become active partners in the effort to decarcerate and pursue racial justice, will depend largely on who our state, through the power vested in this Commission, chooses as its next Chief State’s Attorney. Everyone has a role in ending mass incarceration, including prosecutors and the members of the Commission that appoints them.⁵

The selection of Connecticut’s Chief State’s Attorney is the most important appointment this Commission makes. The Chief State’s Attorney is ultimately responsible for setting the tone and standards of the Division of Criminal Justice, which is responsible for the investigation and prosecution of all criminal matters in our state. The Chief State’s Attorney weighs in on matters of public policy before the Connecticut General Assembly, oversees the Division of Criminal

³ Sandy Lomonico, “Smart Justice Leaders Had Five Questions For People Applying to Become the Second Most Powerful Prosecutor in Connecticut.” ACLU of Connecticut, July 19, 2018. <https://www.acluct.org/en/news/smart-justice-leaders-had-five-questions-people-applying-become-second-most-powerful-prosecutor>

⁴ Lori Mack, “New Connecticut Law Leads on Criminal Justice Transparency” *WNPR*, August 7, 2019 <https://www.wnpr.org/post/new-connecticut-law-leads-criminal-justice-transparency>

⁵ For more background on the need for prosecutors to take a lead on prison reform see Lucy Lang, “Prosecutors Need to Take the Lead in Reforming Prisons.” *The Atlantic*, August 27, 2019.

<https://www.theatlantic.com/ideas/archive/2019/08/urgency-prison-reform-and-what-prosecutors-can-do-about-it/596884/>. For more background on the need for prosecutors to take a lead on holding police accountable see Justine George and Eli Hager, “One Way to Deal with Cops Who Lie? Blacklist Them, Some Das Say.” *The Marshall Project*, January 17, 2019 <https://www.themarshallproject.org/2019/01/17/one-way-to-deal-with-cops-who-lie-blacklist-them-some-das-say>. For more information on the roles prosecutors play in either championing reform or blocking reform please see *The Appeal*’s interactive webpage “The Politics of Prosecutors”, <https://theappeal.org/political-report/the-politics-of-prosecutors/>

Justice's budget, and is directly responsible for our state's appellate litigation; habeas corpus actions; government corruption prosecutions; criminal housing issues; and prosecutions related to Medicaid, including abuse or neglect of patients in medical facilities that receive Medicaid funding. They have the power to create a Division of Criminal Justice with a budget, policies, and lobbying that align to prioritize strong communities and racial justice instead of incarceration and the status quo.

We therefore urge this Commission, as it begins the search for a new Chief State's Attorney, to prioritize the following:

Connecticut's next Chief State's Attorney should establish and enforce uniform prosecution policies, guidelines, and procedures, for all Judicial Districts and prosecutors in the state, that prioritize decarceration and alternatives to incarceration. Candidates seeking to become Connecticut's next Chief State's Attorney should commit, on the record, to doing this.

In the past three months, Smart Justice has met with ten of the state's current twelve State's Attorneys to better understand the structure, philosophy, values, and guidelines of the full Division of Criminal Justice.⁶ Through those meetings, we have learned the Division does not operate as a cohesive agency with uniform policies, procedures, or values throughout the state's 13 judicial districts. Instead, the Division is decentralized, a uniform standard of justice is an afterthought, and there are no meaningful measures of accountability for line level prosecutors, supervisors, or State's Attorneys.

A combination of Division folklore and tradition has resulted in an Office of the Chief State's Attorney that has abdicated its responsibility to create uniform standards and accountability measures for prosecution. In effect, there is a lack of leadership, resulting in at least 13 different standards of justice in Connecticut. For example, according to state statute, an advisory board of all 13 State's Attorneys is required to meet at least once per month "to advise on state-wide prosecutorial standards and guidelines and other policy matters."⁷ In Smart Justice's meetings with

⁶ Gus Marks-Hamilton and AnnMarie Stockmeyer, "Connecticut's New Transparency Law is One Chance for Prosecutors to Embrace their Role in Ending Mass Incarceration and Racism in the Justice System." ACLU of Connecticut, July 11, 2019 <https://www.acluct.org/en/news/connecticuts-new-transparency-law-one-chance-prosecutors-embrace-their-role-ending-mass>. See also, Office of the Chief State's Attorney, *Chief States Attorney Meeting Minutes of July 15, 2019*. Retrieved from <https://portal.ct.gov/DCJ/Latest-News/Minutes---2019/Chief-States-Attorneys-Meeting-July-15-2019>. For a direct link to our open letters requesting meetings with each State's Attorney see https://www.acluct.org/sites/default/files/acluct_states_attorney_invitations.pdf

⁷ Conn. Gen. Stat. § 51-279a (1989)

State's Attorneys, we have asked them directly whether the Division has clear prosecutorial standards and guidelines. Our understanding based on our conversations is that formal standards and guidelines for the Division do not exist. If such standards and guidelines do exist, the fact that State's Attorneys appear unaware of them or unwilling to follow them would itself reflect a lack of leadership from the Division. A lack of standards and guidelines are just one example among many; Smart Justice has also found that the values, prosecutorial philosophies, and uses of prosecutorial discretion and diversion vary greatly by judicial district.

This lack of uniform standards and policies has an immensely unjust effect on people on our state. Fair treatment under the law should not depend on someone's zip code, yet currently, two people accused of the same crime, even with identical background and legal representation, could face wildly different charges, plea offers, and diversionary program prospects based solely on the personal preferences of the State's Attorney in their Judicial District. In its most extreme form, for example, the practices of the Waterbury Judicial District almost single-handedly drove death penalty prosecutions in Connecticut for years.⁸ Similarly, while Connecticut law requires prosecutors to investigate certain cases of police violence, the lack of uniform standards regarding prosecutions of police misconduct has led to wildly different approaches to investigative reports, investigation timelines, and disclosure of information to the public.

Connecticut's next Chief State's Attorney should be an active, vocal advocate for statewide laws and policies to decrease incarceration and eliminate racial disparities in the criminal legal system, including laws to create prosecutorial accountability and transparency. Candidates seeking to become the next Chief State's Attorney should commit to doing this, on the record.

The Office of the Chief State's Attorney is responsible for representing the Division at the Connecticut General Assembly. In this capacity, the Office of the Chief State's Attorney plays a central role in the political process of passing or preventing the passage of bills that either expand or constrict the coercive power of prosecutors. As the chief administrator of the Division of Criminal Justice's budget, set at \$50.2 million for 2019, the Office of the Chief State's Attorney

⁸ John J. Donohue III, "An Empirical Evaluation of the Connecticut Death Penalty System Since 1973: Are There Unlawful Racial, Gender, and Geographic Disparities?" *Journal of Empirical Legal Studies*, Volume 11, Issue 4, 637-696, December 2014. Page 673-676 <https://fbaum.unc.edu/teaching/articles/JLES-2014-Donohue.pdf>

also plays an active role in the political process of determining Connecticut's fiscal priorities.⁹ This includes whether the state invests in alternatives to incarceration and supervision; data collection about prosecutors' decisions; or training regarding racial, economic, and gender justice in prosecutorial decision-making. The Office of the Chief State's Attorney typically carries a level of respect and deference by many lawmakers, which gives the Chief State's Attorney a great deal of political capital needed to help pass or prevent the passage of any legislative proposal related to criminal justice or holding police accountable.

Connecticut's legislature and the general public have demonstrated wide, bipartisan support for public policies focused on rehabilitation and justice instead of incarceration and harsh sentencing.¹⁰ Our state's two most recent governors have done the same. Polling commissioned by Smart Justice has shown the majority of Connecticut voters, across political parties, support changing state law to prioritize smarter justice policies. Yet in recent years, the Office of the Chief State's Attorney has actively testified, in person, in support of proposals that would be extreme in any state, including a bill that would have allowed prosecutors to divert children who were victims of crime into adult jails and prisons.¹¹

The next Chief State's Attorney should instead support policies to increase prosecutorial transparency and accountability, including legislation to: require state's attorneys performance evaluations that include specific metrics and demographic breakdowns for prosecutorial outcomes; restore the Criminal Justice Commission to an independent body within the executive branch, rather than a body housed within the Division of Criminal Justice itself; reduce the term of appointments of state's attorneys from eight years to four; require the adoption of uniform prosecutorial policies and procedures that are available to the public on the Division's website. Furthermore, the next Chief State's Attorney should also be an ally in the broader effort for wholesale change to the criminal legal system by advocating for legislation to: prevent

⁹ The Office of Governor Dannel P. Malloy. *Connecticut FY 2018 - FY2019 Biennium Governor's Budget*. Accessed on October 11, 2018. <https://portal.ct.gov/OPM/Bud-Budgets/2018-2019-Biennial-Budget/Budget-Summary-FY-2018--FY-2019>

¹⁰ Meghan Holden. "New Statewide Poll Shows Majority of Connecticut Voters Support Criminal Justice Reform" ACLU of Connecticut, September 25, 2018. <https://www.aclu.org/en/press-releases/new-statewide-poll-shows-majority-connecticut-voters-support-criminal-justice-reform>

¹¹ State of Connecticut Division of Criminal Justice. *Testimony of the Division of Criminal Justice*. Joint Committee on Judiciary March 16, 2018 and March 21, 2018, page 2. Accessed on October 11, 2018 <https://www.cga.ct.gov/2018/JUDdata/Tmy/2018HB-05040-R000316-Criminal%20justice,%20Division%20of%20Criminal%20Justice-State%20of%20Connecticut-TMY.PDF>

discrimination on the basis of a criminal history; eliminate the revocation of people on parole for technical violations; cap the total number of years a person can be sentenced to supervision; and modernize our criminal code and sentencing.

Every Smart Justice leader knows firsthand that prosecutors hold people's lives and fates in their hands. Not despite our experiences, but because of them, we also know that everyone, including prosecutors, has a role to play in ending mass incarceration. Connecticut's next Chief State's Attorney can and should be someone who actively, vocally, and publicly embraces this role and who sets the expectation for all other prosecutors in the state to do the same.