



Good afternoon and thank you Rep Lawlor, Sen. McDonald and members of the Judiciary Committee. My name is John Watson and I am testifying today on behalf of the American Civil Liberties Union of Connecticut. I have been a criminal defense attorney for more than 25 years and I currently serve as Chair of the ACLU of Connecticut's legal committee. We mourn with our community the recent tragic events in Cheshire. The ACLU certainly joins the Judiciary Committee in hoping that today's hearing will help us move toward a more effective justice system – protecting public safety without sacrificing fairness or sound fiscal and social policy.

The ACLU recognizes the need for effective criminal sanctions that punish offenders, reduce recidivism and encourage rehabilitation. Many examples of innovative justice policies enacted in other states can serve as a model for us to follow in Connecticut. More details are available in a report produced by The Sentencing Project, *Changing Direction? State Sentencing Reforms 2004-2006*, which I have provided the Committee along with my testimony.

The ACLU has concerns, however, with many of the proposals currently before the Committee, particularly those that seek to limit judicial discretion and extend mandatory sentencing terms. Most scientific studies have shown that states that increase incarceration rates the least are just as likely to experience decreases in crime as those that increased them the most.* US Supreme Court Justice Anthony Kennedy said it well at the Annual Meeting of the American Bar Association in August, 2003, "Our resources are misspent, our punishments too severe, our sentences too long....I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases, mandatory minimum sentences are unwise and unjust."

The legislature can respond to criminal offenses and authorize appropriate sentences while also preserving the independence of the judiciary and the fairness of the criminal justice process. Legislatively mandated sentences undermine the independence of the judiciary and shift the authority of crafting appropriate sentences from judges to legislators. An experienced judge considers all the facts and circumstances of a criminal offense along with the characteristics of the defendant to craft a suitable sentence. The tragic events that led to today's hearing were not the result of inappropriate action by any sentencing judge. Efforts to reduce judges to automata, reciting sentencing formulas, are unwise and unnecessary and would result in over-incarceration, dangerous overcrowding and litigation. Humane conditions in our jails and prisons, including real treatment and rehabilitation programs, are not only required by law, they are essential to the fairness on which the United States was founded.

Mandatory minimum sentences have been demonstrated to have little impact on rates of crime, while compromising the operation and fairness of the criminal justice system. Connecticut has one of the worst racial and ethnic disparities in rates of incarceration in the country. For every 100,000 residents Connecticut incarcerates 211 whites; 2,532 blacks and 1,401 Hispanics.* * Any true reform coming from this committee would have to include serious efforts to address that disparity.

Indeed, Senator McDonald and Rep. Lawlor, recognizing the likelihood of increased rates of incarceration if Connecticut goes down this path, have proposed building over 2,000 new prison beds to accommodate the influx. If adopted, their proposal will cost taxpayers over \$260 million and require an already burdened Department of Corrections to recruit hundreds more medical professionals, correctional officers and other staff to oversee the growing population. Worse, this costly investment doesn't guarantee significant payoff in crime reduction.

The need to reserve finite (and expensive) prison space for those offenders who represent a real threat to public safety is clear. Senator McDonald and Rep. Lawlor have also proposed expediting release to parole for some non-violent offenders. This proposal is a good step but more comprehensive alternatives to incarceration for low-level offenders are also warranted. For example, mental illness is disproportionately reflected among inmates. While well-intended, the proposal to build a prison facility devoted to housing the substantial fraction of our prison population with serious mental illness is misdirected. It is quite clear that most such inmates should be placed in treatment programs and/or hospitals rather than incarcerated in the first instance.

Connecticut would be wise to expand access to community-based mental health services for the homeless and other vulnerable populations and fund more pre-arrest and post-arrest diversion programs for people with mental illness so that they are not inappropriately incarcerated at great expense and with little or no benefit to them or our society.

Enacting diversion programs for drug users is also a sound justice policy. By offering drug offenders treatment instead of time in prison, defendants can get the help they need and avoid a criminal record.

We believe suggestions to create on-line offender registries raise serious privacy concerns and will harm the re-entry process for men and women trying to get back on their feet after incarceration. We also urge the Legislature not to adopt the proposal to impose unrealistic timetables on capital appeals and habeas petitions and to limit the ability of inmates to bring habeas challenges to capital sentences. Such rules would seriously erode the right to due process and curtail the ability of the courts to review these sentences for constitutional error. Cutting off such avenues of review increases the risk of convicting and executing the innocent. The ACLU endorses proposals to aid prisoner re-entry and rehabilitation, increase health services in prison and guarantee parole board access to pre-sentencing reports and sentencing transcripts.

The ACLU membership and leadership shares in the grief and rage at the tragic and brutal events in Cheshire. We hope to partner with our legislature in insuring, however, that unconsidered responses to such emotions do not compromise our justice system.

*Unlocking America, The JFA Institute, Washington, DC, November 2007.

** State By State Statistics, The Sentencing Project, Washington, DC, 2004.