

The Jerome N. Frank Legal Services Organization

YALE LAW SCHOOL

April 27, 2023

Governor Ned Lamont

By email: governor.lamont@ct.gov

State Capitol
210 Capitol Avenue
Hartford, CT 06106

RE: LETTERS IN SUPPORT OF COMMUTATION AND THE BOARD OF PARDONS AND PAROLES

Dear Governor Lamont,

Enclosed please find a packet of letters from a diverse group of national criminal justice organizations expressing concern about the recent commutation suspension. As you will see, many of our nation's leading thinkers on criminal justice issues support commutation and appreciate the Board's work to extend second chances to deserving applicants. Our team would be grateful to meet with you to discuss the recent commutation suspension.

Respectfully,
s/ Miriam Gohara
Miriam Gohara, *Supervising Attorney*
Counsel of Record, Juris No.: 437966
Daniel Loehr
Supervising Attorney
Robin Walker Sterling,
Supervising Attorney
Justice Joette Katz, *Consulting Attorney*
Shipman & Goodwin LLP
Alyssa Chan, *Law Student Intern*
Chisato Kimura, *Law Student Intern*
Elsa Lora, *Law Student Intern*
Jacob Gonzalez, *Law Student Intern*
Katherine Salinas, *Law Student Intern*
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April 18, 2023

Re: Resume Connecticut Board of Pardons and Paroles Commutation Process

Dear Governor Lamont, Chairperson Zaccagnini, Senator Winfield, Representative Stafstrom, and Speaker Ritter,

My name is Miriam Krinsky, and I am the Executive Director of [Fair and Just Prosecution](#). By way of background, Fair and Just Prosecution (FJP) is a national organization that brings together elected prosecutors from around the nation as part of a bipartisan network of leaders committed to change and innovation. We write to express our disappointment in the recent decision to suspend commutations in Connecticut.

FJP seeks to enable a new generation of prosecutors to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. The leaders we work with hail from urban, suburban, and rural areas alike, and they collectively represent nearly 20% of our nation's population. I also spent a decade and a half as a federal prosecutor and saw firsthand the harms of disparate and extreme sentencing practices on communities. FJP encourages state and local leaders to examine their criminal legal system's practices and consider policies that create a fairer and more equitable approach. We stand in support of measures that provide opportunities for sentencing review, second chances, and mechanisms for revisiting and ameliorating extreme sentences in cases where returning the individual to the community is consistent with public safety and the interests of justice.

We are deeply concerned by the suspension of commutations in Connecticut. We support the recent work of the Board of Pardons and Paroles ("the Board") to establish a transparent, robust and thorough commutation process that thoughtfully balanced the importance of second chances for incarcerated people in Connecticut, the perspectives of victims, and public safety considerations. We urge the Board to resume the commutation process, which served as a critical safety valve in Connecticut's criminal justice system.

Commutation serves as a critical safety net

Commutation is a vital safeguard in the criminal legal system. Judges cannot always anticipate whether the sentence meted out on sentencing day will continue to serve the purposes of punishment years later. Nor can judges anticipate developments in social science that mitigate culpability, such as the recent scientific consensus that human brains continue developing until the age of 25. For these reasons, it should come as no surprise that the United States Supreme Court has affirmed that clemency serves as a crucial "fail safe" in our criminal justice system.¹

¹ *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

Commutation is especially necessary to review mandatory sentences. In states that carry mandatory minimum sentences, like Connecticut, neither the judge nor the jury has the discretion to impose a less severe sentence than what is prescribed by statute once guilt is found, even when compelling mitigating circumstances are present. This means that the prosecutor effectively determines the punishment when making the charging decision, with no check on severity from a judge or a jury. As esteemed Professor Rachel Barkow has explained, commutation allows for “individualization” in sentencing, “which becomes increasingly important as judges lose authority to tailor sentences.”²

Commutation is fundamentally different from other forms of post-conviction relief

Unlike other avenues for relief like writs of habeas corpus, commutation decisions are not based on any alleged fault or error in someone’s conviction. Commutations rely on fundamentally different evidence—a person’s growth and rehabilitation over time, and looks at whether a person’s progress and dedication to rehabilitation has made their ongoing incarceration and prior sentence unnecessary. The Board is the only entity with the ability to consider rehabilitation, making it a vital avenue for sentencing relief with no other equally effective alternative.

Moreover, many incarcerated people in Connecticut are statutorily ineligible for sentence modification and parole, which makes commutation their only possible avenue for post-appellate sentence review. Sentence modification excludes people whose sentences were mandatory, and parole excludes a whole category of offenses, including murder, capital felony murder, and felony murder. For these people, commutation is their only remaining avenue for sentencing reconsideration; without it, they are left without any opportunity for relief. And often that relief is not simply in the best interest of the individual and their community, but also fully aligns with fiscal and (as noted below) public safety considerations.

Commutation does not pose a threat to public safety

Policies that prevent parole and commutation do not advance public safety. This is especially true for older people serving long sentences for crimes they committed when they were young. Evidence suggests that most people who commit crimes—even very serious crimes—age out of criminal behavior as they mature.³ The Board’s policy and past decisions regarding commutations was consistent with this research and with criminal justice policies across the

² Rachel E. Barkow, *The Ascent of the Administrative State and the Demise of Mercy*, 121 HARV. L. REV. 1332, 1360 (2008); see also George Lardner, Jr. & Margaret Colgate Love, *Mandatory Sentences and Presidential Mercy: The Role of Judges in Pardon Cases, 1790-1850*, 16 FED. SENT’G REP. 212, 212 (2004) (noting the “importance of having a safety valve in any system of mandatory punishments, one that is both readily accessible and politically accountable”). Barkow observes that grants of clemency “can prompt attention to systemic failures in the criminal justice process” and have brought about reforms in the law of self defense and insanity, and in the death penalty. Barkow, *supra*. She cites a 1939 survey of the Attorney General concluding that clemency has “historically always been used . . . to take care of cases where the legal rules have produced a harsh, unjust, or popularly unacceptable result” and that “[s]uch cases will continue to arise under any legal system.” See U.S. Dep’t of Just., *The Attorney General’s Survey of Release Procedures* 298 (1939).

³ See, e.g., *The Older You Get: Why Incarcerating the Elderly Makes us Less Safe*, FAMILIES AGAINST MANDATORY MINIMUMS, <https://famm.org/wp-content/uploads/Aging-out-of-crime-FINAL.pdf>.

country that ensure access to a second chance. Many incarcerated people rely on commutation as their sole opportunity to demonstrate their rehabilitation, to show that they are not threats to public safety, and to rejoin the community.

For all these reasons, we urge the Board to resume its work around commutations. Thank you for your consideration, and please feel free to reach out with any questions.

Sincerely,

A handwritten signature in black ink that reads "Miriam Krinsky". The signature is written in a cursive, flowing style.

Miriam Krinsky
Executive Director
Fair and Just Prosecution
mkrinsky@fairandjustprosecution.org



Connecticut Board of Pardons and Paroles
55 W Main St #520
Waterbury, CT 06702

April 26, 2023

Dear Connecticut Board of Pardons and Paroles:

We write to express our concern about the recent decision to suspend commutations for all incarcerated people in Connecticut.

As the U.S. Supreme Court has stated, clemency is the “fail safe” of the criminal legal system – empowering the executive branch to correct injustice on an individualized basis.¹ Far from a guarantee of relief, clemency in Connecticut is rarely granted, but for many incarcerated people, it is their final source of hope. Given the protection, although limited, clemency provides, The Sentencing Project urges the Board of Pardons and Paroles (“the Board”) to reinstate commutations, thereby preserving individualized commutation review in Connecticut.

The Sentencing Project is a national organization that advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. As such, we advocate for an evidence-based approach to sentencing and resentencing. We supported the Board’s recent efforts to use the clemency process to ensure that sentences in Connecticut were just and proportionate, and we are disappointed by the recent decision to suspend commutations altogether. We urge the Board to reinstate the commutation process.

Commutation does not pose a threat to public safety. Policies that prevent parole and commutation do not advance public safety. Evidence suggests that most people who commit crimes—even very serious crimes—age out of criminal behavior as they mature.² This is especially true for individuals serving the most extreme sentences, who are uniquely unlikely to recidivate when released. Many people serving long sentences, including for a violent crime, no longer pose a public safety risk because they have aged out of crime.³ The Board’s policy regarding commutations was consistent with this research and with criminal justice policies across the country that ensure access to a second chance. Many incarcerated people rely on

¹ *Herrera v. Collins*, 506 U.S. 390 (1993).

² See, e.g., *The Older You Get: Why Incarcerating the Elderly Makes us Less Safe*, FAMILIES AGAINST MANDATORY MINIMUMS, <https://famm.org/wp-content/uploads/Aging-out-of-crime-FINAL.pdf>.

³ The “age-crime curve,” a longstanding and well-tested concept in criminology, reveals that the life cycle of criminal activity is limited. For a range of offenses, crime rates peak near the late teenage years and gradually decline in the early 20s— with peak arrest levels for young people dramatically falling in recent years. The rise and decline in criminal activity based on age is a reflection of the changing lives and minds of youth and young adults. The Sentencing Project, *A Second Look at Injustice*, at p. 4.

commutation as their sole opportunity to demonstrate their rehabilitation, to show that they are not threats to public safety, and to rejoin our community.

Research shows that certainty of punishment matters far more than severity.⁴ Contrary to popular belief, long sentences do not deter crime and do very little to impact public safety. As Daniel Nagin, professor at Carnegie Mellon University and a leading national expert on deterrence has written: “Increases in already long prison sentences, say from 20 years to life, do not have material deterrent effects on crime.” Therefore, reinstating commutations is unlikely to undermine any deterrent effects of criminal sentences in Connecticut.

The Connecticut Board of Pardons and Paroles has demonstrated that it narrowly exercises its discretion. Allowing all individuals to seek a commutation does not mean that all people receive a commutation. Indeed, commutation is very rare and mere eligibility to apply offers no guarantee that any individual will be granted release. Although the Board recently implemented a more robust and thorough commutation process, relief has remained highly selective, consistent with the Board’s rigorous process and eligibility criteria. Commutation applications are screened at two stages: first at the pre-screen stage, and again at a hearing (should the applicant receive one). In deciding whether to grant a commutation, the Board considered a number of factors, including: the seriousness and recentness of the conviction; the impact on the victim(s); the institutional record of the applicant; the extent to which the applicant has been rehabilitated; the length of the applicant’s sentences; whether the length and form of the applicant’s sentence is consistent with contemporary sentencing practices; and whether the continued service of the applicant’s sentence are in the interests of justice.⁵

In the nearly two years that the Board actively considered commutation applications using these criteria, the Board rejected far more commutations than it granted. From 2021 to 2022, the Board received 328 applications for commutation.⁶ Of that group, the Board granted hearings to 99 applicants, and granted commutations to only 89.⁷ In other words, only 27% of the cases the Board reviewed resulted in successful commutations. Allowing all individuals to apply for a commutation clearly does not result in universal relief, it does however offer hope to those behind bars and the incentive for all to comply with correctional regulations and pursue rehabilitative programming.

Commutations can serve as a critical means to correct injustice, including through offering second chances to individuals who committed their crimes as young adults. Brain development continues until the age of 25, and youth and young adults who commit crimes should be treated differently, regardless of their offense.⁸ Reconsidering sentences of people who were “late adolescents,” as neuroscientists now refer to them, is consistent with contemporary sentencing practices. We commend the Board for its recent efforts to impose more proportionate and evidence-based sentences on individuals who committed their offense as youth.⁹ The Board’s

⁴ The Sentencing Project, No End In Sight America's Enduring Reliance on Life Imprisonment, at p. 8.

⁵ *Commutations, Policy III.02*, ST. OF CONN. BD. OF PARDONS AND PAROLES (June 1, 2021), <https://s3.documentcloud.org/documents/20795653/getfileattachment.pdf>.

⁶ *Commutation Statistics, 2021-2022 Commutation Summary*, ST. OF CONN. BD. OF PARDONS AND PAROLES, <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Commutation-Statistics>.

⁷ *Id.*

⁸ M. Arain, et al (2013), Maturation of the adolescent brain, *Neuropsychiatric Disease and Treatment*, at p. 451.

⁹ K. Lyons (2021), Parole Board Votes to Give 11 Prisoners Commutation Hearings, *CT Mirror*.

commutation process was an important component of this initiative. Of the commutations the Board granted from 2021-2022, the average age at the time of the offense was 22.6 years old.¹⁰

The Board's emphasis on reviewing sentences for crimes committed in late adolescence was also consistent with efforts in and beyond Connecticut to raise the age of parole eligibility from 18 to 25.¹¹

Finally, improving transparency and public communication, rather than suspending the commutation process, would address concerns while preserving this important failsafe. We recognize the sensitivity of the commutation applications and their potential to raise alarm amongst crime survivors, victims, and their loved ones. We urge the Board to improve transparency and address the concerns of survivors through other means, such as publishing the Board's criteria for granting relief and regular public communication regarding the Board's decisions, goals, and priorities.

We urge the Board to resume accepting and considering commutation applications. While not all individuals will merit relief in the eyes of the Board, all deserve access to this final protection against injustice.

Thank you for your time and consideration.

Sincerely,



Amy Fettig
Executive Director
The Sentencing Project

¹⁰ *Id.*

¹¹ In 2019, Illinois passed House Bill 531, which raised the age of parole eligibility to 21. In 2022, Colorado passed HB21-1209, which raised the age of parole eligibility to 21. In Connecticut, Senate Bill 952, which would raise the age of parole eligibility from 18 to 25, is currently pending.

April 14, 2023

Dear Governor Lamont, Chairperson Zaccagnini, Senator Winfield, Representative Stafstrom, and Speaker Ritter,

My name is Clinique Chapman, LICSW, and I am an associate director of the Restoring Promise initiative at the Vera Institute of Justice. Restoring Promise creates housing units rooted in dignity for young adults in prison in collaboration with those who are incarcerated and correctional staff and leadership. One prison at a time, we help to create a restorative culture in prisons by focusing on accountability, trust, and respect. Restoring Promise is a collaboration between Vera and MILPA, a nonprofit led by formerly incarcerated Chicano-Indigenous leaders uplifting race equity in prison systems nationwide. The Vera Institute of Justice works to end mass incarceration, protect immigrants' rights, ensure dignity for people behind bars, and build safe, thriving communities.

We recently learned that the Connecticut Board of Pardons and Paroles has suspended commutations. As an organization that has extensively studied the role of rehabilitation in safe, cost-efficient criminal legal reform, and in particular, the accessibility of post-conviction relief across the country, we commend the Board's second chances work and urge the Board to resume commutations immediately.

The Board's work plays a key role in Connecticut's leading national efforts towards sensible, data-backed justice reform with people-centered solutions.¹ The commutation process the Board oversees is life-changing for rehabilitated persons who deserve a chance to demonstrate their growth. For the state, commutation saves wasteful spending on incarcerating individuals who no longer pose a public safety risk.

Restoring Promise has seen Connecticut's commitment to rehabilitative programming firsthand. In January 2017, we partnered with the people who are incarcerated and work in the Connecticut Department of Corrections to create a housing unit at the Cheshire Correctional Institution called the TRUE unit (for "Truthfulness, Respectfulness, Understanding, and Elevating"). The young adults residing in this unit are coached by mentors (incarcerated people over the age of 25) who help them realize their potential and purpose. Over the last six years, we have seen great success improving the prison environment in both TRUE and Cheshire as a whole. Much of this success can be and has been attributed to the mentors, who have demonstrated their own rehabilitation by helping to create an environment conducive to healing and finding purpose.

With the support of the mentors, the young adults who live on the TRUE unit work toward meaningful goals, reconnect with their families and loved ones, and begin to imagine a future free from the criminal legal system. The impact of this program extends beyond the unit itself. Most notably, within the first year of the TRUE unit opening at Cheshire Correctional Institution, the warden reported not a single violent incident on the unit, as well as lower rates of violence throughout the entire facility.² In a prison culture survey taken approximately one year after the unit was created, 90 percent of people living on the TRUE unit reported feeling safe (compared

to 60 percent before the unit was opened). A correctional officer shared: “This is the safest place I’ve ever worked. Everyone feels safe.” Further, 87 percent of the young people reported that time on the TRUE unit was preparing them for success (compared to the 21 percent of all young adults surveyed prior to the unit opening).³ These exceptionally positive results are indicative of Connecticut’s successful rehabilitation efforts and will translate into how these young people return to their communities, ultimately leading to a positive impact on public safety for all residents of Connecticut.

Resuming commutation allows the state to capitalize on its investment in successful rehabilitative programming.

By taking its smart, data-driven public safety solutions to the next level, Connecticut can continue to be a national leader, expanding the pathway to release for those who have demonstrated their amenability for rehabilitation and in the case of the TRUE mentors, contributing to the rehabilitation of others. Resuming commutations would demonstrate that Connecticut cares about rehabilitating people not just for sake of doing so, but because true rehabilitation means safe, successful reintegration into society.

To advance justice, to realize the benefit of Connecticut’s investment in rehabilitation, and to maintain Connecticut’s leadership in criminal legal reform, Connecticut must resume commutations as soon as possible. Commutations allow for an opportunity at a second chance that some may otherwise never receive. Second chances restore hope, dignity, and the basic humanity that all citizens in the state of Connecticut deserve.

Thank you for your time and consideration.

Sincerely,
Clinique Chapman, LICSW
Associate Director
Vera Institute of Justice

¹ Erik Ofgang, “How Scott Semple Helped Turn Connecticut’s Prisons Into a Nationally Recognized Laboratory of Reform,” Connecticut Magazine, May 21, 2019, perma.cc/6UQA-YWRE.

² Data provided by Warden Scot Erfe, Cheshire Correctional Institution, 2019.

³ Survey conducted by Restoring Promise in 2018. For questions, contact Clinique Chapman, associate director.



April 10, 2023

Dear Governor Lamont, Chairperson Zaccagnini, Senator Winfield, Representative Stafstrom, and Speaker Ritter,

My name is Ebony Underwood and I am the Founder and CEO of WE GOT US NOW.

WE GOT US NOW is the nation's leading organization advocating for the well-being of children and young adults with incarcerated parents. We recently learned that the Connecticut Board of Pardons and Paroles ("the Board") has decided to suspend the commutation process for *every* incarcerated Connecticut resident—no matter their age or record of rehabilitation. As a national organization with a vested interest in the reunification of families through criminal justice reform, and in particular, the accessibility of post-conviction relief across the country, we were deeply concerned to hear this news. We encourage the Board to reconsider its decision, thus restoring a commutation process that thoughtfully balanced the interests of rehabilitated Connecticut prisoners, victims, and public safety.

Commutation is a vital safeguard in the criminal justice system, and one that is especially necessary to review mandatory sentences. In Connecticut, several offenses carry mandatory minimum sentences, which means that neither the judge nor the jury has the discretion to impose a less severe sentence once guilt is found, even when compelling mitigating circumstances are present. This means that the prosecutor effectively determines the punishment when making the charging decision, with no check on severity from a judge or a jury. As Professor Rachel Barkow has explained, commutation allows for "individualization" in sentencing, "which becomes increasingly important as judges lose authority to tailor sentences."¹

Policies that prevent parole and commutation do not advance public safety. In fact, they undermine confidence in the criminal legal system by preventing any meaningful review of sentences that separate children from parents for decades, even when incarcerated parents have demonstrated clear track records of rehabilitation and already served long sentences. This is especially true for older people serving long sentences for crimes they committed when they were young. Evidence suggests that most people who commit crimes—even very serious crimes—age out of criminal behavior as

¹ Rachel E. Barkow, *The Ascent of the Administrative State and the Demise of Mercy*, 121 HARV. L. REV. 1332, 1360 (2008); see also George Lardner, Jr. & Margaret Colgate Love, *Mandatory Sentences and Presidential Mercy: The Role of Judges in Pardon Cases, 1790-1850*, 16 FED. SENT'G REP. 212, 212 (2004) (noting the "importance of having a safety valve in any system of mandatory punishments, one that is both readily accessible and politically accountable"). Barkow observes that grants of clemency "can prompt attention to systemic failures in the criminal justice process" and have brought about reforms in the law of self defense and insanity, and in the death penalty. Barkow, *supra*. She cites a 1939 survey of the Attorney General concluding that that clemency has "historically always been used . . . to take care of cases where the legal rules have produced a harsh, unjust, or popularly unacceptable result" and that "[s]uch cases will continue to arise under any legal system." See U.S. Dep't of Just., *The Attorney General's Survey of Release Procedures* 298 (1939).

they mature.² The Board's grant of commutations in appropriate cases was consistent with this research and with criminal justice policies across the country that ensure access to a second chance. Many incarcerated people rely on commutation as their sole opportunity to demonstrate their rehabilitation, to show that they are not threats to public safety, and to rejoin the community, their children, and their families.

We hope the Board will reconsider its position, thus restoring Connecticut's commitment to second chances. Commutation is often our only hope in reuniting with our parents.

Thanking you in advance for your time and consideration.

Sincerely,
Ebony Underwood
WE GOT US NOW

² <https://www.sentencingproject.org/app/uploads/2022/10/Nothing-But-Time-Elderly-Americans-Serving-Life-Without-Parole.pdf>

April 20, 2023

Dear Governor Lamont, Chairperson Zaccagnini, Senator Winfield, Representative Stafstrom, and Speaker Ritter,

My name is Tara Stutsman, and I am the campaign strategist for the American Civil Liberties Union's Redemption Campaign. The Redemption Campaign is a nationwide effort to encourage states and the President to use the power of clemency as a tool to fight mass incarceration and correct injustices in our criminal legal system. The ACLU joins other organizations in expressing our disappointment in the recent decision to suspend commutations for people incarcerated in Connecticut. By returning people to their communities in a thoughtful way that aligns with changing sentencing practices, acknowledges the well-documented failures of mass incarceration, and with an understanding of the importance of second chances, we can build safer and stronger communities. When people have second chances to rebuild their lives, we know this leads to better family outcomes, better community outcomes, and better workforce outcomes. Further, a majority of law enforcement and law enforcement families support this type of clemency.¹

The ACLU supports the use of pardons, commutations, and expungements as a good governance practice and as a critically important tool to correct for failed policies and injustices. Our Annual Report of Trends in Clemency found important strides in executive clemency in states across the country led by both Republican and Democratic governors, and the same power and positive impact is true of commutations provided by the Board of Pardons and Paroles ("the Board") in Connecticut.² Additionally, clemency is an issue widely supported by voters. According to polling released May 18, 2022, voters "support clemency for three clear categories of people in prison: those serving time in cases where the laws or sentencing guidelines have changed; those serving excessively long sentences that are seen as unjust, and those who are still serving time despite no longer posing a threat to the community."³ This support for categories of clemency aligns with many of the cases considered by the Board. In numeric terms, the same polling found that 68% of voters support clemency, and majority support exists across party lines.⁴ To suspend the commutations process in Connecticut disregards public sentiment and discounts the importance of routine and responsible use of clemency. We find this to be deeply concerning.

We support the recent work of the Board to establish a robust and thorough commutation process that thoughtfully balanced the importance of second chances for people incarcerated in Connecticut, the perspectives of victims, and other public policy considerations. We urge the Board to resume the commutation process, which served as a critical safety valve in Connecticut's criminal legal system.

Commutation serves as a critical safety net in the criminal legal system.

¹ Danny Franklin & Jessica Reis, *Majority of Voters in the United States Support Clemency*, Bully Pulpit Interactive (August 2020), <https://www.aclu.org/report/bpi-memo-majority-voters-united-states-support-clemency>.

² Tara Stutsman, *The Redemption Campaign: Annual Report of Trends in Clemency*, ACLU (April 2023), <https://www.aclu.org/report/annual-report-trends-clemency-2022>.

³ Danny Franklin & Jessica Reis, *Majority Supports Clemency to Address Unfair Sentencing*, Bully Pulpit Interactive (May 2022), https://www.aclu.org/sites/default/files/field_document/aclu_bpi_clemency_release.pdf.

⁴ *Id.*

Commutation is a vital safeguard in the criminal legal system. Judges cannot always anticipate whether the sentence meted out on sentencing day will continue to serve the purposes of punishment years later. In particular, Connecticut judges rely on the Board to reassess sentences in light of an individual's record of growth or ability to successfully rejoin their families and communities. Nor can judges anticipate developments in social science that mitigate culpability, such as the recent scientific consensus that human brains continue developing until the age of 25. For these reasons, it should come as no surprise that the United States Supreme Court has affirmed that clemency serves as a crucial "fail safe" in our criminal legal system.⁵

Commutation is especially necessary to review mandatory sentences. In Connecticut, several offenses carry mandatory minimum sentences, which means that neither the judge nor the jury has the discretion to impose a less severe sentence once guilt is found, even when compelling mitigating circumstances are present. This means that the prosecutor effectively determines the punishment when making the charging decision, with no check on severity from a judge or a jury.

Commutation is fundamentally different from other forms of post-conviction relief.

Unlike other avenues for relief like writs of habeas corpus, commutation decisions are not based on any alleged fault or error in someone's conviction. Commutations rely on fundamentally different evidence such as a person's growth, changed sentencing laws that would have afforded a person a shorter sentence, new research and contextualization of trauma or psychological development, or increased public support for policies that prioritize returning people to their families and communities instead of mass incarceration practices. Habeas asks whether an error makes a person's sentence invalid; commutation asks whether a person is needlessly incarcerated. Other forms of post-conviction relief simply are not designed to allow people to present evidence of how they have changed since the time of their sentencing and are not able to provide relief. In other words, the Board is the only entity with the ability to consider changing sentencing laws, and whether someone is needlessly incarcerated, making it a vital avenue for sentencing relief with no clear, equal alternative.

Moreover, many incarcerated people in Connecticut are statutorily ineligible for sentence modification and parole, which makes commutation their *only* possible avenue for post-appellate sentence review. Sentence modification excludes people whose sentences were mandatory, and parole excludes a whole category of offenses, including murder, capital felony murder, and felony murder. For these people, commutation is their only remaining avenue for sentencing reconsideration; without it, they are left without any opportunity for relief.

The Connecticut Board of Pardons and Paroles has demonstrated that it can use its discretion responsibly and with great care.

Though the Board has utilized its commutation power to varying degrees over the years, between 2021 and early 2023, the Board implemented a more robust and thorough commutation process. During this period, the Board developed thoughtful eligibility criteria and created two separate opportunities to screen commutation applications: first at the pre-screen stage, and again at a hearing (should the applicant receive one). In deciding whether to grant a commutation, the Board considered

⁵ *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

a number of factors.⁶ In the nearly two years that the Board actively considered commutation applications, it demonstrated that it is able to balance these factors effectively, granting commutations with appropriate consideration.

The Board's record also demonstrates its important role in reviewing the sentences of people who committed crimes before their brains were fully developed. Of the commutations the Board granted from 2021-2022, the average age at the time of the offense was 22.6 years old.⁷ Reconsidering sentences of people who were "late adolescents," as neuroscientists now refer to them, is consistent with contemporary sentencing practices. Commutation thus, in some ways, served as a state corollary to the First Step Act, federal legislation signed into law by then-President Donald Trump which authorized federal judges to reduce an incarcerated person's term of imprisonment.⁸ The Second Circuit has held that a person's youth at the time of their offense may serve as one such reason warranting a reduction in sentence.⁹ In keeping with that decision, judges in the District of Connecticut have granted sentence reductions on age-based grounds in several recent cases involving defendants who were late adolescents (between 18 and 25 years old) at the time of their crimes, including *United States v. Cruz* and *United States v. Morris*.¹⁰ The Board's emphasis on reviewing sentences for crimes committed in late adolescence was also consistent with efforts in and beyond Connecticut to raise the age of parole eligibility from 18 to 25.

Commutation does not pose a threat to public safety.

Policies that prevent parole and commutation do not advance public safety. This is especially true for older people serving long sentences for crimes they committed when they were young. Evidence suggests that most people who commit crimes—even very serious crimes—age out of criminal behavior as they mature.¹¹ The Board's policy regarding commutations was consistent with this research and with criminal legal policies across the country that ensure access to a second chance.

Restoring Connecticut's commutation process will help the State maintain its place as a leader on criminal legal issues.

Over the past decade, Connecticut has established a number of sensible criminal legal reform priorities.¹² Connecticut has abolished the death penalty and solitary confinement; refined the bail system; decriminalized possession of small amounts of marijuana; extended parole to people who committed their crime before the age of 18 consistent with Supreme Court precedent and neuroscience; streamlined the parole and sentencing modification processes; and restored voting rights to formerly incarcerated people.

⁶ *Commutations, Policy III.02*, ST. OF CONN. BD. OF PARDONS AND PAROLES (June 1, 2021), <https://s3.documentcloud.org/documents/20795653/getfileattachment.pdf>.

⁷ *Id.*

⁸ 18 U.S.C. § 3582(c)(1)(A)(i); *see also* USSG § 1B1.13.

⁹ *United States v. Brooker*, 976 F.3d 228, 238 (2d Cir. 2020).

¹⁰ *United States v. Cruz*, No. 3:94-CR-112, 2021 WL 1326851 (D. Conn. Apr. 9, 2021); *United States v. Morris*, No. 3:00-CR-264-17, 2022 WL 3703201 (D. Conn. Aug. 26, 2022).

¹¹ *See, e.g., The Older You Get: Why Incarcerating the Elderly Makes us Less Safe*, FAMILIES AGAINST MANDATORY MINIMUMS, <https://famm.org/wp-content/uploads/Aging-out-of-crime-FINAL.pdf>.

¹² Governor Daniel P. Malloy, "Second Chance Society" (Feb. 3, 2015), http://www.governor.ct.gov/malloy/lib/malloy/2015.02.03_gov_malloy_second_chance_society.pdf.

The ACLU is encouraged by this progress towards a more just society. To reverse this progress by suspending the commutations process in Connecticut is a grave mistake. We hope the Board will resume its careful and exemplary work around commutation, thus renewing Connecticut's commitment to reconsidering lengthy sentences for people incarcerated in Connecticut.

Sincerely,

A handwritten signature in black ink, appearing to read "Tara S", with a long horizontal flourish extending to the right.

Tara Stutsman, Campaign Strategist
The Redemption Campaign
American Civil Liberties Union



NATIONAL LAWYERS GUILD

"An organization of lawyers, law students, legal workers, and jailhouse lawyers... in the service of the people, to the end that human rights and the rights of ecosystems shall be regarded as more sacred than property interests."
- Preamble to the NLG Constitution

National Lawyers Guild Mass Incarceration Committee

April 21, 2023

Dear Governor Lamont, Chairperson Zaccagnini, Senator Winfield, Representative Stafstrom, and Speaker Ritter,

My name is Audrey Bomse and I am writing on behalf of the National Lawyers Guild's Mass Incarceration Committee, of which I am co-chair. The NLG was formed over 80 years ago as the first interracial national bar association. Our work is guided by our mission statement: "To use the law for the people, uniting lawyers, law students, legal workers and jailhouse lawyers to function as an effective force in the service of the people." Throughout its existence, the NLG has acted as the legal arm of social movements and the conscience of the legal profession. We write to join with the many other organizations expressing their disappointment in the recent decision to suspend commutations for Connecticut prisoners.

The Mass Incarceration Committee came into existence in recognition that the use of incarceration in the United States has reached epic proportions and has become a major civil rights, racial justice and human rights concern. Our membership includes both current and former jailhouse lawyers whom the rest of us have come to respect and who have taught us that people in prison are better than the crimes they may have committed and can become valuable members of the communities to which they return, if given the chance. Thus, the issue of commutation is one we are passionate about.

We are deeply concerned by the suspension of commutations in Connecticut. We support the recent work of the Board of Pardons and Paroles ("the Board") to establish a robust and thorough commutation process that thoughtfully balanced the importance of second chances for Connecticut prisoners, the perspectives of victims, and public safety considerations. We urge the Board to resume the commutation process, which served as a critical safety valve in Connecticut's criminal justice system.

We hope the Board will resume its careful and exemplary work around commutation, thus renewing Connecticut's commitment to reconsidering lengthy sentences for a carefully considered group of deserving prisoners.

Best Regards,
Audrey Bomse
Co-Chair, Mass Incarceration Committee
National Lawyers Guild

April 20, 2023

Dear Governor Lamont, Chairperson *Zaccagnini*, Senator Winfield, Representative Stafstrom, and Speaker Ritter,

My name is Claudine Constant, and I am the public policy and advocacy director of the American Civil Liberties Union (ACLU) of Connecticut a statewide organization within the nationwide ACLU network that defends, promotes, and expands the civil rights and civil liberties of all people in Connecticut through litigation, community organizing and legislative advocacy, and civic education and engagement. One of the most forward-facing programs within the ACLU of Connecticut is the Campaign for Smart Justice.



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The ACLU of Connecticut's Campaign for Smart Justice is grounded in the knowledge that the people closest to the problem are closest to the solution. We are an unprecedented cohort of advocates who have been directly impacted by Connecticut's justice system.¹ We are working to usher in a new era of justice, and we are not alone. We are part of the nationwide Campaign for Smart Justice, a multiyear effort in all 50 states. Imprisonment is a brutal and costly response to crime that traumatizes incarcerated people and hurts families, communities, and economies. Yet the U.S. incarcerates more people, in absolute number and per capita, than any other nation. Connecticut has made progress toward ending mass incarceration, but we have much more work to do.

Since 2018, the ACLU of Connecticut's Smart Justice Campaign has worked tirelessly to drive progressive policy change that:

- 1) Reduces Connecticut's prison population,
- 2) Ensures that people exiting Connecticut's prisons and jails have meaningful opportunities to thrive and support their families, and
- 3) Addresses the systemic drivers of mass incarceration in the first place, like the over-policing of predominantly Black and Latinx communities in our state

We write to express our disappointment in the recent decision to suspend commutations for Connecticut prisoners.

We are deeply concerned by the suspension of commutations in Connecticut. We support the recent work of the Board of Pardons and Paroles ("the Board") to establish a robust and thorough commutation process that thoughtfully balanced the importance of second chances for Connecticut prisoners, the perspectives of victims, and public safety considerations. We urge the Board to resume the commutation process, which served as a critical safety valve in Connecticut's criminal justice system.

Commutation serves as a critical safety net in the criminal justice system.

Commutation is a vital safeguard in the criminal justice system. Judges are not clairvoyant and cannot always anticipate whether the sentence meted out on sentencing day will continue to serve the purposes of punishment years later. In particular, Connecticut judges rely on the Board to reassess sentences in light of an

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

individual's record of rehabilitation and growth, which judges have no way of evaluating at the time of sentencing. Nor can judges anticipate developments in social science that mitigate culpability, such as the recent scientific consensus that human brains continue developing until the age of 25. For these reasons, it should come as no surprise that the United States Supreme Court has affirmed that clemency serves as a crucial "fail safe" in our criminal justice system.²

Commutation is especially necessary to review mandatory sentences. In Connecticut, several offenses carry mandatory minimum sentences, which means that neither the judge nor the jury has the discretion to impose a less severe sentence once guilt is found, even when compelling mitigating circumstances are present. This means that the prosecutor effectively determines the punishment when making the charging decision, with no check on severity from a judge or a jury. As Professor Rachel Barkow has explained, commutation allows for "individualization" in sentencing, "which becomes increasingly important as judges lose authority to tailor sentences."³



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Commutation is fundamentally different from other forms of post-conviction relief.

Unlike other avenues for relief like writs of habeas corpus, commutation decisions are not based on any alleged fault or error in someone's conviction. Commutations rely on fundamentally different evidence—a person's growth and rehabilitation over time. Habeas asks whether an error makes a person's sentence invalid; commutation asks whether a person's dedication to rehabilitation has made their sentence unnecessary. Other forms of post-conviction relief simply are not designed to allow people to present evidence of how they have changed since the time of their sentencing and are not able to provide relief as and when rehabilitation occurs. In other words, the Board is the only entity with the ability to consider rehabilitation, making it a vital avenue for sentencing relief with no clear, equal alternative.

Moreover, many incarcerated people in Connecticut are statutorily ineligible for sentence modification and parole, which makes commutation their *only* possible avenue for post-appellate sentence review. Sentence modification excludes people whose sentences were mandatory, and parole excludes a whole category of offenses, including murder, capital felony murder, and felony murder. For these people, commutation is their only remaining avenue for sentencing reconsideration; without it, they are left without any opportunity for relief.

² *Herrera v. Collins*, 506 U.S. 390, 415 (1993).

³ Rachel E. Barkow, *The Ascent of the Administrative State and the Demise of Mercy*, 121 HARV. L. REV. 1332, 1360 (2008); see also George Lardner, Jr. & Margaret Colgate Love, *Mandatory Sentences and Presidential Mercy: The Role of Judges in Pardon Cases, 1790-1850*, 16 FED. SENT'G REP. 212, 212 (2004) (noting the "importance of having a safety valve in any system of mandatory punishments, one that is both readily accessible and politically accountable"). Barkow observes that grants of clemency "can prompt attention to systemic failures in the criminal justice process" and have brought about reforms in the law of self defense and insanity, and in the death penalty. Barkow, *supra*. She cites a 1939 survey of the Attorney General concluding that that clemency has "historically always been used . . . to take care of cases where the legal rules have produced a harsh, unjust, or popularly unacceptable result" and that "[s]uch cases will continue to arise under any legal system." See U.S. Dep't of Just., *The Attorney General's Survey of Release Procedures* 298 (1939).

The Connecticut Board of Pardons and Paroles has demonstrated that it can use its discretion responsibly and with great care.

Though the Board has utilized its commutation power to varying degrees over the years, between 2021 and early 2023, the Board implemented a more robust and thorough commutation process. During this period, the Board developed thoughtful eligibility criteria and created two separate opportunities to screen commutation applications: first at the pre-screen stage, and again at a hearing (should the applicant receive one). In deciding whether to grant a commutation, the Board considered a number of factors, including: the seriousness and recentness of the conviction; the impact on the victim(s); the institutional record of the applicant; the extent to which the applicant has been rehabilitated; the length of the applicant's sentences; whether the length and form of the applicant's sentence is consistent with contemporary sentencing practices; and whether the continued service of the applicant's sentence are in the interests of justice.⁴



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In the nearly two years that the Board actively considered commutation applications, it demonstrated that it is able to balance these factors effectively, granting commutation only in cases where a petitioner's individual circumstances warrant it. The Board rejected far more commutations than it granted, which is a testament to how carefully the Board wielded its power and discretion. From 2021 to 2022, the Board received 328 applications for commutation.⁵ Of that group, the Board granted hearings to 99 applicants, and granted commutations to only 89.⁶ In other words, only 27% of the cases the Board reviewed resulted in successful commutations.

The Board's record also demonstrates its important role in reviewing the sentences of people who committed crimes before their brains were fully developed. Of the commutations the Board granted from 2021-2022, the average age at the time of the offense was 22.6 years old.⁷ Reconsidering sentences of people who were "late adolescents," as neuroscientists now refer to them, is consistent with contemporary sentencing practices. Commutation thus, in some ways, served as a state corollary to the First Step Act, federal legislation signed into law by then-President Donald Trump which authorized federal judges to reduce an incarcerated person's term of imprisonment if warranted by "extraordinary and compelling reasons."⁸ The Second Circuit has held that a prisoner's youth at the time of their offense may serve as one such "extraordinary and compelling reason" warranting a reduction in sentence.⁹ In keeping with that decision, judges in the District of Connecticut have granted sentence reductions on age-based grounds in several recent cases involving defendants who were late adolescents (between 18 and 25 years old) at the time of their crimes, including *United States v. Cruz* and *United States v. Morris*.¹⁰ The

⁴ *Commutations, Policy III.02*, ST. OF CONN. BD. OF PARDONS AND PAROLES (June 1, 2021), <https://s3.documentcloud.org/documents/20795653/getfileattachment.pdf>.

⁵ *Commutation Statistics, 2021-2022 Commutation Summary*, ST. OF CONN. BD. OF PARDONS AND PAROLES, <https://portal.ct.gov/BOPP/Research-and-Development-Division/Statistics/Commutation-Statistics>.

⁶ *Id.*

⁷ *Id.*

⁸ 18 U.S.C. § 3582(c)(1)(A)(i); *see also* USSG § 1B1.13.

⁹ *United States v. Brooker*, 976 F.3d 228, 238 (2d Cir. 2020).

¹⁰ *United States v. Cruz*, No. 3:94-CR-112, 2021 WL 1326851 (D. Conn. Apr. 9, 2021); *United States v. Morris*, No. 3:00-CR-264-17, 2022 WL 3703201 (D. Conn. Aug. 26, 2022).

Board's emphasis on reviewing sentences for crimes committed in late adolescence was also consistent with efforts in and beyond Connecticut to raise the age of parole eligibility from 18 to 25.

Commutation does not pose a threat to public safety.

Policies that prevent parole and commutation do not advance public safety. This is especially true for older people serving long sentences for crimes they committed when they were young. Evidence suggests that most people who commit crimes—even very serious crimes—age out of criminal behavior as they mature.¹¹ The Board's policy regarding commutations was consistent with this research and with criminal justice policies across the country that ensure access to a second chance. Many incarcerated people rely on commutation as their sole opportunity to demonstrate their rehabilitation, to show that they are not threats to public safety, and to rejoin the community.

Restoring Connecticut's commutation process will help the State maintain its place as a leader on criminal justice issues.

Over the past decade, Connecticut has established an impressive track record on criminal justice issues, emerging as a national leader on sensible criminal legal reform.¹² Connecticut has abolished the death penalty and solitary confinement; refined the bail system; decriminalized possession of small amounts of marijuana; extended parole to people who committed their crime before the age of 18 consistent with Supreme Court precedent and neuroscience; streamlined the parole and sentencing modification processes; and restored voting rights to formerly incarcerated people.

Connecticut has also solidified its place as a criminal justice leader through its rehabilitative prison programming. In partnership with the Vera Institute of Justice, the Connecticut Department of Correction developed the T.R.U.E. program at Cheshire Correctional Institution and the W.O.R.T.H. program at York Correctional Institution. These programs select incarcerated people serving lengthy sentences to mentor cohorts of young men and women ages 18-25 as they work to rehabilitate. The T.R.U.E. and W.O.R.T.H. programs are evidence of Connecticut's commitment to rehabilitation: the Department of Correction recognizes that people of all ages, whether serving sentences long or short, are capable of rehabilitating, and of helping others do the same. Several states, including Colorado, Idaho, Massachusetts, South Carolina, and North Dakota, have since followed Connecticut's lead.

We hope the Board will resume its careful and exemplary work around commutation, thus renewing Connecticut's commitment to reconsidering lengthy sentences for a carefully considered group of deserving prisoners.

Sincerely,

¹¹ See, e.g., *The Older You Get: Why Incarcerating the Elderly Makes us Less Safe*, FAMILIES AGAINST MANDATORY MINIMUMS, <https://fammm.org/wp-content/uploads/Aging-out-of-crime-FINAL.pdf>.

¹² Governor Daniel P. Malloy, "Second Chance Society" (Feb. 3, 2015), http://www.governor.ct.gov/malloy/lib/malloy/2015.02.03_gov_malloy_second_chance_society.pdf.



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The American Civil Liberties Union of Connecticut is a nonpartisan, non-profit membership organization that defends, promotes, and expands the civil rights and civil liberties of all people in Connecticut through litigation, community organizing and legislative advocacy, and civic education and engagement.



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