

Testimony of Professor Kiel-Brennan Marquez, Associate Professor and Faculty Director of the Center on Community Safety, Policing and Inequality, University of Connecticut School of Law; and Riley Breakell, student and research assistant, University of Connecticut School of Law

We write in support of HB 5390, a bill to repeal the provisions that allow the state to impose and enforce a lien against formerly incarcerated individuals.

State actions to collect on civil rights judgments in accordance with pay-to-stay conflict with federal civil rights law. In *Williams v. Marinelli*, 987 F.3d 188 (2d Cir. 2021), a jury found that former corrections officer, Marinelli, violated Williams’s constitutional rights. The state of Connecticut voluntarily undertook to satisfy judgment on Marinelli’s behalf, but paid nearly half of the \$300,000 judgment directly to the Department of Administrative Services, pursuant pay-to-stay. According to the Second Circuit, this “irreconcilably” conflicted with the purpose underlying 42 USC § 1983, because the “deterrent effect of Williams’s § 1983 award is eviscerated if both the constitutional tortfeasor [the prison official] and his employer, the State, are relieved of the bulk of the financial consequences of the violation” (pg. 201).

Williams’s case is not unique. The worry about “evisceration” would apply to virtually all § 1983 suits against state officials, given Connecticut’s exorbitant incarceration cost calculation, totaling more than \$90,000 per year, per individual. At this cost point, most individuals serving prison sentences would have to secure damage awards of more than a quarter million dollars just to cover the full costs of their confinement in one suit. Further, many incarcerated individuals will, like Williams himself, also be subject to collection on other debts that cut deeper into their award, including CGS 51-298(b) debts for public defender services.

In aggregate, the chilling effect on § 1983 actions—a core mechanism of federal constitutional accountability—is likely severe. The Second Circuit was explicit about this risk, writing that it allowed “corrections officers from the day of [Williams’] imprisonment [to discount] the risk of suit against them,” given the “diminished . . . likelihood that any recovery achieved by the prisoner” will actually be collected (pg. 201). The Court further acknowledged that the cost-of-incarceration debt applies to *all* incarcerated persons, “making it easier for officials to know *ex ante* that prisoners’ civil recoveries will likely be reduced by operation of the Connecticut cost-recovery statutes” (pg. 201). For example—and not surprisingly—a [recent lawsuit](#) brought by an incarcerated woman who gave birth to her baby in a toilet ended in a relatively small settlement because the Attorney General’s office reminded her that a jury trial would subject her damages award to an incarceration lien.

In addition to colliding with federal civil rights law, pay-to-stay statutes also run afoul of the U.S. Constitution. A lawsuit recently filed in the District of Connecticut, *Beatty v. Lamont*, CV-00280-JAM (Mar. 14, 2022), argues that liens generated by the pay-to-stay statute are, in effect, excessive criminal fines—a category of punishment explicitly forbidden under the Eighth Amendment. Indeed, it is difficult to conceptualize pay-to-stay debts as anything other than excessive fines. The assessed cost of incarceration is over \$90,000 per year, nearly *five times* the

maximum enumerated fine that felonies can trigger in Connecticut (\$20,000). This disparity may be excessive per se—but especially when the magnitude of the fine bears no relationship to the nature or culpability of the underlying crime.

Pay-to-stay also offends “fair notice” principles enshrined in the Fifth and Fourteenth Amendments. Incarcerated people are not informed of their assessed cost of incarceration is prior to or after their sentence. “Notice,” such as it is, only occurs when the State decides—sometimes many years after release—to bring an action to collect. When the State imposes an assessed debt on an individual for the cost of their incarceration as a component of punishment, the individual should be notified with an explanation of the cost calculation and have an opportunity to challenge the imposition of the debt through normal judicial channels.

In sum, that pay-to-stay exists in tension with civil rights and Constitutional law draws out its inherent incompatibility with core tenants of criminal law. The state enjoys prosecutorial discretion in selecting who to bring charges against and which charges to bring. This is a position of sovereign privilege, not monetary benefaction; there is no unjust enrichment when someone is put behind bars. We determine through the democratic process which activities are criminal and how the state should seek to confer and administer punishment. Democratic principles demand that we all share in those determinations’ costs.

**Testimony of Mumina Egal, Law Student and Fellow at the Center on
Community Safety, Policing, and Inequality, University of Connecticut School
of Law; and Anna VanCleave, Associate Professor and Director of the
Criminal Defense Clinic, University of Connecticut School of Law**

Dear Chairs Winfield and Stafstrom, Vice Chairs Flexer and Blumenthal, Ranking Members Kissel and Fishbein, and members of the Judiciary Committee,

We write in support of HB 5390, a bill to repeal the provisions that allow the state to impose and enforce a lien against formerly incarcerated individuals.

Recent years have seen an overwhelming trend toward ending the harmful impacts of criminal justice debt [across the country](#). Since the 1980s, state and local government budget dips and rising incarceration rates have led [governments to rely increasingly on “fees” associated with the criminal justice system](#). These fees take many forms, sometimes called fines, fees, surcharges, costs, taxes, or other labels. But regardless of the name put on these criminal system charges, the cumulative effect has been to increasingly put the burden of funding governments on the shoulders of those least likely to be able to pay. In the 1990s, many states, like Connecticut, joined this trend with [“pay-to-stay” laws](#) like the incarceration lien.

In the last decade, research and experience have led governments to reverse course. [Policymakers at all levels of government](#) have realized that putting significant costs on poor defendants and their families is harmful and makes bad economic policy. The [overwhelming trend](#) has been toward abolition of criminal justice fees across the country, including pay-to-stay laws like Connecticut’s. In the last year alone, fee reforms passed in [diverse jurisdictions](#) like Arkansas, Arizona, Colorado, Illinois, Indiana, Louisiana, Michigan, Minnesota, Nevada, New Mexico, Oregon, Texas, Utah, Virginia, and Washington.

These efforts have been bipartisan. A national group called the Fines and Fees Justice Center has been partnering on both sides of the aisle with state and local governments looking for ways to abolish criminal justice fees. Groups like [Right on Crime](#), the [Texas Policy Foundation](#), and the [Cato Institute](#), have joined calls to end governments’ reliance on criminal system fees; Right on Crime has pressed for reforms in [Texas](#), [Oklahoma](#), and [Louisiana](#). In 2020, Cato and the R Street Institute joined with criminal justice advocates in an [amicus brief](#) to argue before the United States Supreme Court that “[t]he United States has experienced an unprecedented rise in fines and fees used to generate state and local government revenue, leaving millions buried under accumulating debt.”

Connecticut is an outlier when it comes to pay-to-stay laws, not only compared to other blue states, but also compared to the entire [national landscape](#). Connecticut has, by far, the highest pay-to-stay daily rate in the country, charging \$249/day, compared to states like South Carolina (charges capped at 25% of prison wages, no charge post-incarceration), Alabama (no state charge, county jail charges capped at \$20/day), and Texas (no charge). Other states have been steadily repealing their pay-to-stay laws, including [California](#), [Illinois](#), and [New Hampshire](#).

In addition to the national trend to end criminal justice fees, there are many other reasons to end the practice of making Connecticut prisoners pay for their incarceration:

Connecticut's Pay-to-Stay Law Targets the Most Economically Vulnerable

Under [CGS 18-85a and 18-85b](#), the state can act as debt collector against the most economically vulnerable during a time in which they are working to return to their communities and build stability. Under current law, Connecticut can seek to recover any assets of individuals just released for up to two years after their release and return to their communities. This two-year period strikes at the most economically vulnerable time for people, when [mortality rates are high](#) and [more than half](#) of people released from prison cannot find stable employment.

Beyond this two-year period, the state can seize proceeds of lawsuits, inheritances, and estates for up to twenty years after incarceration. Bearing significant criminal justice debt [impairs the ability](#) of formerly incarcerated individuals to become economically stable.

To be clear, the incarceration lien impacts not only those who actually have assets seized by the state government. Individuals leaving prison likely do not know how much they owe the state but can well imagine that the figure might be five or six figures. Carrying a debt of unknown proportions has a [psychological impact](#) as individuals attempt to do any financial planning for their families. Even if the government never takes action to enforce the debt, [formerly incarcerated people are aware of the possibility and must make critical decisions](#) for their families and do all their planning around life insurance policies, inheritances, home purchases, and other major financial decisions, with the knowledge that this large debt exists.

Connecticut's Pay-to-Stay Law Undermines Effective Criminal Justice Policies

Researchers have confirmed time and again that criminal justice debt [exacerbates socioeconomic and racial inequality](#), [undermines reentry](#), and often provides [little financial benefit](#) to governments, given the costs of implementing such systems.

Connecticut's Pay-to-Stay Law Is Bad Economic Policy

States and local governments have recognized in recent years that funding government services by imposing criminal justice fees is [bad economic policy](#). Criminal justice fees offer an unsteady income source, carry unknown costs of implementation and enforcement, and impose unknown external costs caused by recidivism and impacts of significant debt burdens on families. In 2019, collections on liens from the Department of Correction represented just .03% of the state budget. This marginal impact on Connecticut's budget does not accord with the tremendous impact on individuals burdened with DOC liens.

Connecticut's Pay-to-Stay Law's Targeting of Inheritances and Lawsuit Awards Is Irrational

Targeting the inheritances of formerly incarcerated individuals makes little sense. Such inheritances are often small and may represent the sole source of intergenerational passage of wealth for low-income communities.

Targeting lawsuit settlements makes even less sense, given that: (1) lawsuit settlements are designed to compensate individuals for actual losses, not to confer a windfall; and (2) some of these lawsuit settlements are against the state for recovery of damages resulting from mistreatment and medical neglect while incarcerated. Allowing the state to claw back awards based on DOC liability gives the state perverse incentives to target particular individuals for enforcement of the lien, thus chilling the filing of meritorious lawsuits, and significantly reducing the incentive of the state to avoid DOC liability in the first place.

There is Little Transparency and Accountability Around the Implementation of Connecticut's Pay-to-Stay Law

The state provides no notice to individuals about either the potential enforcement of a lien or the actual amount of the lien until the time that the state chooses to enforce it. At the time they make decisions about pleading guilty or electing trial, therefore, individuals often have no idea that their decision could result in a six- or seven-figure debt. At the time that people are released from prison, they are provided no information about the amount calculated. Even at the time the state enforces the lien, it provides little documentation of the calculation of costs.

Connecticut's Pay-to-Stay Law Stands on Precarious Legal Grounds

In 2021, the Second Circuit Court of Appeals [found](#) that Connecticut's pay-to-stay law was preempted by federal civil rights law under certain circumstances, finding that "[t]he deterrent effect of Williams's § 1983 award is eviscerated if both the constitutional tortfeasor [the prison official] and his employer, the State, are relieved of the bulk of the financial consequences of the violation." Moreover, last week, the ACLU of Connecticut [filed suit](#) against the state, alleging that the pay-to-stay regime violated the Eighth Amendment's prohibition against excessive fines. The implementation of the statute also raises constitutional concerns about the lack of notice and insufficient procedural regularity around its enforcement.

Research and History Do Not Support the Original Rationales Behind Pay-to-Stay Laws

Pay-to-stay laws became more popular in the 1990s under the logic that such laws teach financial accountability to people in prison. Additionally, states passing pay-to-stay laws imagined the unlikely millionaire prisoner with the means to compensate the state and argued that such fees could be used to fill budget gaps as the costs of incarceration skyrocketed with larger prison populations.

Everything we now know about this logic is wrong. Far from teaching "financial responsibility," criminal justice debt inhibits rather than facilitates successful reentry. Those targeted are hardly millionaires, and the proceeds do little to fill budget gaps, given (1) the challenges of collecting from poor defendants, and (2) the significant costs of implementing such an enforcement system with state personnel costs, administrative overhead, and the use of judicial resources.

In 2004, one representative explained that the incarceration lien’s original intent was to establish a process for collecting costs of incarceration from already wealthy people coming into prison, or from people “who get a windfall of some type,” like winning the lottery or receiving an inheritance (An Act Concerning Prison Overcrowding 2004: Session Transcript on H.B. 5211 before the House of Representatives, Conn. Apr. 30, 2004). Unfortunately, the dramatic rise in the cost of incarceration, combined with the lien’s twenty-year post-incarceration lifespan has meant that the law’s modest intentions ultimately have spiraled into an overly-punitive state practice disproportionately harming already marginalized communities.

Sincerely,

Mumina Egal
Law Student and Fellow, Center on Community Safety, Policing, and Inequality,
University of Connecticut School of Law

Anna VanCleave
Associate Professor and Director of the Criminal Defense Clinic,
University of Connecticut School of Law