



Legislative Testimony
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Written Testimony Opposing House Bill 5125, An Act Concerning the Provision of Immunity from Civil Liability for Entities that Have Operated Pursuant to Health and Safety Guidelines during the COVID-19 Pandemic

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 testifying in opposition to House Bill 5125, An Act Concerning the Provision of Immunity from Civil Liability for Entities that Have Operated Pursuant to Health and Safety Guidelines during the COVID-19 Pandemic.

From the earliest days of the COVID-19 pandemic, the ACLU-CT has fought to get vulnerable people released from incarceration with Connecticut Department of Correction (DOC) jails and prisons.¹ Those efforts, though, went unheeded, and both DOC and the Governor failed to take steps that were within their existing powers² to preserve the lives of people with dangerous co-morbidities, pre-existing conditions, and vulnerabilities.³ As a direct result of their inaction,³ over 4,200 incarcerated people have tested positive for COVID-19 during the pandemic, and nineteen have died who probably did not have to.⁴ Because the guidance, or lack thereof, for the care of people in DOC custody came directly from the Governor, the DOC was at all times in compliance with the “applicable health and safe operation guidelines issued by the Governor” for which House Bill 5125 aims to create a safe harbor.

¹ See, e.g., “ACLU of Connecticut urges state officials to use existing powers to release people awaiting trial, certain other incarcerated people during COVID-19 pandemic” ACLU of Connecticut, Mar. 12, 2020, *available at* <https://www.acluct.org/en/press-releases/aclu-connecticut-urges-state-officials-use-existing-powers-release-people-awaiting>.

² *Id.*

³ See, e.g., Kelan Lyons, “CT hasn’t commuted a single prisoner’s sentence since before the pandemic. Advocates say it’s time to change.” CT Mirror, Nov. 30, 2020, *available at* <https://ctmirror.org/2020/11/30/ct-hasnt-commuted-a-single-prisoners-sentence-since-before-the-pandemic-advocates-say-its-time-to-change/>.

⁴ “Coronavirus Inform,” Connecticut State Department of Correction, Mar. 22, 2021, *available at* <https://portal.ct.gov/DOC/Common-Elements/Common-Elements/Health-Information-and-Advisories>.

We acknowledge that the COVID-19 pandemic created an unprecedented calamity to which the government had to respond quickly. That reality, though, does not mean that the decisions made during that time cannot be questioned or that the people responsible for negligent decision-making should escape accountability. This bill, though, does just that. Because House Bill 5125 exempts public agencies from liability, the bill creates a scenario where the very people who were in charge of making health and safe operation guidelines escape any responsibility because they were following health and safe operation guidelines. This is true even if the guidelines were negligently made or following them was itself negligent.

In the example of DOC, the agency's "health and safe operations guidelines" were probably both negligently made and inherently negligent. For example, the DOC limited access to soap and showers for incarcerated people for months.⁵ Since there were contemporaneous guidelines from the Centers for Disease Control and Prevention (CDC), the DOC was likely negligent when it ignored the CDC guidance to create internal policies that limited soap and showers. Even if the DOC's "health and safe operations guidelines" were created carefully, the contents of those guidelines were probably inherently negligent, since they made it difficult or impossible for incarcerated people to properly distance, sanitize, handwash, or take other commonsense, reasonable steps to stay safe from COVID-19. To give the DOC a free pass for these decisions, just because they were following the rules they themselves made, encourages negligent rulemaking.

It is entirely possible that people were harmed by other agencies' negligent decisions. The DOC example is just one well-documented one. But the gravity of this example is strong evidence that exempting government agencies from liability for their own decisions during the COVID-19 pandemic is likely to shield them from well-earned accountability. For that reason, we oppose House Bill 5215 and encourage this Committee to oppose its absolution of many types of negligent behavior.

⁵ See *McPherson v. Lamont*, No. 3:20-cv-00534, Modified Settlement Agreement and General Release (D. Conn. Jun. 26, 2020), available at https://www.acluct.org/sites/default/files/119-1_2020-06-27_ex_a_1.pdf.