



*Office of Chief Public Defender*  

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*State of Connecticut*

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**TESTIMONY OF  
BRIAN CARLOW, PUBLIC DEFENDER  
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OFFICE OF CHIEF PUBLIC DEFENDER**

**Committee on Judiciary  
February 24, 2006 - Public Hearing**

**Raised Bill No. 156  
*An Act Concerning Court Operations***

While the Office of the Chief Public Defender does not oppose S.B. 156 (Raised), **An Act Concerning Court Operations** in its entirety, the Office does oppose Section 2, Subsection (c) (4) of the proposed legislation. As drafted, the proposed legislation could result in the continued incarceration of innocent people, while allowing the true perpetrators of serious criminal offenses to remain at large at great risk to the community. This portion of the Bill would permit the destruction of all exhibits entered in evidence in cases where a person pled guilty or nolo contendere. The result is that exhibits in a capital felony or serious felony matter, such as murder or sexual assault, would be destroyed ten years after final disposition of a person's plea.

The destruction of these exhibits is problematic for the following reasons:

1. An individual who is **actually innocent** of a crime may, in some instances, nonetheless choose to plead guilty or nolo contendere. Such a plea may be entered for a variety of reasons, and may occur during the course of trial or at a hearing after which evidence is entered into court. The same reasons that justify the preservation for twenty years of evidence admitted at trial, apply in the context of a guilty or nolo plea after evidence has been received by the court.
2. In light of the substantial **advances in forensic sciences**, including DNA technology, a ten-year preservation period is insufficient to insure that factually innocent individuals who have been wrongfully convicted and imprisoned will have access to the crucial evidence necessary to establish their innocence.

3. Evidence which is submitted in **habeas corpus trials** is destroyed after 120 days of final disposition. While much of this evidence may be the same as that which was introduced at the prior criminal trial, no provision exists in a habeas case to insure that such evidence is preserved beyond the 120 days.
4. Where an individual is convicted of a **capital offense**, the concern is heightened as the penalty may be death. An individual who is charged with a capital felony may chose to plead guilty to the charge. In some instances, the State may agree to a sentence of life imprisonment without the possibility of release. However, where there is no agreement with the State, the sentence would be determined by a court or jury after a trial on the sentencing phase. In such a situation, the ten year period of preservation of evidence may well be insufficient to insure retrial, if necessary, after appeal. The seventy-five year period applicable to capital convictions after trial should apply equally to plea cases.

The proposed legislation comes at a time when growing national attention has been given to persons who have been wrongfully convicted and incarcerated. The premature destruction of evidence may deny those people their last chance to establish their innocence. In 2003, this Legislature created the Advisory Commission on Wrongful Convictions to “review any criminal or juvenile case involving a wrongful conviction and recommend reforms to lessen the likelihood of a similar wrongful conviction in the future.” See P.A. 03-242, *An Act Concerning The Collection Of DNA Samples From Persons Convicted Of A Felony, The Preservation And Testing Of DNA Evidence And The Review Of Wrongful Convictions*.

In 2005, the Division of Public Defender Services established the Connecticut Innocence Project (CTIP) to identify, exonerate and free wrongfully convicted persons incarcerated in our state. CTIP is modeled after the Cardoza Innocence Project in New York City and the New England Innocence Project in Boston. CTIP is presently reviewing numerous requests for assistance from inmates. It is clear from our review that the ability to determine an individual’s actual innocence is almost entirely dependent upon the existence and availability of physical evidence from the criminal case.

In conclusion, the time limits as proposed in this **legislation create a substantial risk that necessary and crucial evidence will be prematurely destroyed prior to the identification, exoneration and release of innocent individuals.**