



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

OFFICE OF THE CHIEF STATE'S ATTORNEY
300 CORPORATE PLACE
ROCKY HILL, CONNECTICUT 06067
(860) 258-5800

Testimony of the Division of Criminal Justice

In Opposition to:

**H.B. No. 7365 (RAISED) AN ACT CONCERNING THE PROCEDURE IN A
CAPITAL FELONY TRIAL**

Joint Committee on Judiciary – March 12, 2007

The Division of Criminal Justice opposes H.B. No. 7365, An Act Concerning the Procedure in a Capital Felony Trial, and would respectfully recommend that the Committee reject this bill. We oppose this bill for one very fundamental reason: it does not serve the interests of justice. The proponents of this bill argue that it would bring Connecticut in line with the majority of states with capital punishment laws. We would respectfully submit that just because everyone else does something doesn't make it right. In fact, the current capital punishment law in Connecticut makes it much more difficult to (1) charge a capital felony and (2) seek the death penalty in Connecticut than in these other states that have provisions equivalent to that proposed in H.B. No. 7365.

This bill does a disservice to justice. The bill would strip the victims of crime and the people of Connecticut of the right to the verdict to which they are entitled in the most serious of criminal matters, cases where the State has exercised its constitutionally recognized authority and sought the penalty of death. H.B. No. 7365 declares that the inability of a jury to reach a unanimous decision is the same as the unanimous decision of a jury that the state did not prove its case beyond a reasonable doubt. Our Supreme Court has held that this is clearly not the case – that a verdict is the result of a unanimous jury – not the result of the failure of a jury to achieve unanimity. In *State v. Daniels*, 207 Conn. at 394, 542 A.2d 306, the Supreme Court concluded that under our death penalty statute, a deadlocked jury in the penalty phase of a capital trial “neither authorizes imposition of the death penalty nor the imposition of a life sentence.” As such, H.B. No. 7365 is an attempt to obtain from the legislature a conclusion that the courts will not reach – and a conclusion that is contrary to the interests of justice.

This bill also violates the long established principle that the authority to decide the charge, including the decision to seek the death penalty, rests solely with the prosecutor

and not with the judicial or legislative branches. The decision to retry the penalty phase where the jury does not return a unanimous verdict is quintessentially a prosecutorial decision, just as the decision to charge capital felony and seek the death penalty is a prosecutorial function. Yes, the General Assembly establishes the penalties that apply to specific crimes, but the decision to charge and seek a specific penalty in each individual case must rest with the prosecutor based on the specific facts and circumstances of the particular case. Under present law when a jury is unable to reach a verdict after the penalty phase hearing the state has discretion to decide whether to proceed again and there have been cases in which the state, because of the circumstances of the case, properly elected not to proceed further. In other cases, such as where it could be determined the great majority of jurors were convinced that the death penalty should be imposed the state may seek to proceed. The court also has the discretion to impose a life sentence rather than permit retrial. This proposal would take that discretion away from the state and the court and create a situation in which one, possibly irrational or biased juror could hold out and prevent a verdict from ever being reached.

The disservice to justice that is represented by H.B. No. 7365 is clearly demonstrated by one case, *State v. Russell Peeler*, which involves the murders of Karen Clarke and her third-grade son, Leroy Brown, Jr., in Bridgeport. As the Committee is aware, these brutal homicides were the impetus for the enactment of Public Act 99-240, which established the Leroy Brown, Jr. and Karen Clarke Witness Protection Program. A retrial in the penalty phase of the *Peeler* case is scheduled to begin May 1. The facts of this case underscore how H.B. No. 7365 would be a disservice to the victims of these most serious crimes and to the interests of justice. The jury in the *Peeler* penalty phase was split 11-1 in favor of the death penalty. The sole holdout among the jurors was an individual who had been seated by the court over the state's challenge for cause and, then, the state's peremptory challenge. This juror knew both the defendant and his accomplice brother. In a case of overwhelming evidence in the guilt phase, this juror held out for three days. In the penalty phase, she would not budge resulting in the trial court treating the hung jury as a verdict and sentencing Mr. Peeler to life in prison without the possibility of release. But since Mr. Peeler was already serving 100 years for his conviction on federal drug charges, the automatic life sentence essentially meant that he would go unpunished for the murders of Karen Clarke and Leroy Brown, Jr. It was the life sentence imposed due to the hung jury that was ultimately reversed by the Supreme Court, which agreed that the victims and the State were entitled to a verdict on the only meaningful punishment available.

Had there been an honest split in the jury, the prosecution in this case – or for that matter, the prosecution in any capital case – may well have concluded that convincing twelve jurors to decide for death was unlikely and the defendant would now be serving a sentence of life in prison without the possibility of release. The change proposed in H.B. No. 7365 fails to take an unreasonable stance by a small minority of jurors into account. The state's decision to retry the *Peeler* penalty matter was arrived at no differently than in any other case of a deadlocked jury. For the sake of justice, the **Division of Criminal Justice respectfully recommends the Committee reject this bill**. We stand ready to provide any additional information or to answer any questions the Committee might have. Thank you.