



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary – March 2, 2009

In opposition to:

- **S.B. No. 1027 An Act Concerning Legal Standards in Capital Cases**
- **H.B. No. 6578 An Act Concerning the Penalty for a Capital Felony**

The Division of Criminal Justice strongly opposes both H.B. No. 6578, An Act Concerning the Penalty for a Capital Felony, and S.B. No. 1027, An Act Concerning Legal Standards in Capital Cases, and would respectfully request the Committee reject both of these bills.

S.B. No. 1027 would make the entire capital felony statute unenforceable. This bill would create a standard of proof that would be subjective and arbitrary if not impossible to meet. The bill would require the standard of absolute certainty rather than the standard of beyond a reasonable doubt for the guilt phase, but not the penalty phase, of a capital felony trial. Proof beyond a reasonable doubt, in the United States, is the standard of proof that must be met before a defendant may be found guilty of committing a crime. "Proof beyond a reasonable doubt is proof that precludes every reasonable hypothesis except guilt and is inconsistent with any other rational conclusion." The only difference between proof beyond a reasonable doubt and absolute certainty is an unreasonable doubt. Under our law defendants are presumed innocent and the burden rests entirely upon the state to prove beyond a reasonable doubt each and every element of the crime charged. Further, the jury must be unanimous in its verdict. Raising the standard of proof to the impossible and arbitrary standard of absolute certainty would make the capital felony statute useless thereby depriving the state of the ability to obtain sentences of either natural life or death.

H.B. No. 6578 purports to abolish the death penalty only for capital felonies committed after its effective date. That is a fiction. In reality it would effectively abolish the death penalty for anyone who has not yet been executed because it would be untenable as a matter of constitutional law or public policy for the state to execute someone today who could not be executed for committing the same conduct after a date in the future. The state could not seek the death penalty in any pending case that is presently eligible for the death penalty and any death penalty that has been imposed and not carried out would effectively be nullified.

If the proponents of these bills intend to abolish the death penalty and, in the case of S.B. No. 1027, effectively repeal the capital felony statute as well, they should be forthright and offer bills expressly doing that, so that the real issue can be debated and effectively considered. Whether the death penalty should be repealed is a moral and ethical issue that depends on the evolving standards of the people of the State of Connecticut. It is the elected members of the General Assembly who must determine these standards.

There are those who claim it is not a deterrent, but there are numerous studies published in peer-reviewed journals establishing that executions do deter the crime of murder and

therefore save lives. There are those who argue that its cost makes it prohibitive, but the great bulk of the costs come as a result of the long, drawn-out post-conviction litigation. Furthermore, those who argue that the death penalty is too expensive ignore not only the studies that conclude that the executions do prevent additional murders, thus saving the expense and prosecution of those crimes, but they ignore other studies that show that the possibility that the death penalty may be imposed has a positive effect on the willingness of defendants to plead guilty and accept a life sentence or other substantial sentence that protects the public and saves the cost of trials and post-conviction proceedings as well as the anguish to the families and friends of victims caused by the nature and duration of those proceedings.

Consider the fact that the death penalty is not sought in all capital felony cases and imposed in even fewer. Most cases where capital felony is charged do not end with the imposition of a sentence of death, but rather with a sentence of life in prison without the possibility of release. This fact alone shows how carefully each case is examined by prosecutors who carefully decide when to seek the death penalty and by the sentencing jury or judges in those cases where the prosecutor does seek a death sentence. Further, because of the very strict conditions established in our law, it is also apparent that the sentence more often than not will be life without the possibility of release and not death.

This is also evidence of that the current death penalty law and its implementation reflect the public will. Polls find that when given the choice, the public supports the sentence of life without the possibility of parole over the sentence of death. This is exactly what the prosecutors, jurors and judges in capital cases do – they make that choice based upon the unique details of the crime, the defendant and the victims in that case and that case alone. By law and by practice, the death penalty in Connecticut is clearly reserved for the worst of the worst crimes and offenders.

It also must be stressed that the State of Connecticut differs from other jurisdictions in one more very important way. The debate over the death penalty in Connecticut is not about the actual guilt or innocence of the individuals sentenced to death. It is an unchallenged fact that there is no claim of actual innocence by any of the individuals currently under sentence of death in the State of Connecticut. To reiterate: there are no innocent people on death row in Connecticut. The only issue is when the rightfully ordered sentence of the court is carried out and the law as enacted by this General Assembly is enforced with regard to these individuals. Ours is a very limited, very restricted death penalty law that is applied only in a minute percentage of cases. There is no need to set a higher standard for the determination of guilt in a state where there is no question of the guilt of those now under the sentence of death and there is no evidence that the law is being misused. Those who are under sentence of death are there through no fault of anyone but themselves and despite the tremendous obstacles that rightfully must be surmounted in order to secure a death sentence.

The trial process and the direct appeal process in death penalty cases are rigorous and thorough and they should be. The post-conviction process after the final appeal has become a wasteland into which excessive amounts of money are dumped and through which the families and friends of victims are forced to wander as the cases go on for years without apparent end. Death sentences take too long to impose and result in unnecessary costs resulting from unnecessary and unwarranted delay. It is inhumane that the innocent families of innocent victims of violent and unspeakable crimes should be subject to the terror of decades of legal maneuvering before the punishment lawfully ordered by our judicial system can be carried out. Rather than encouraging all parties to work for the

lawful and efficient resolution of claims, our lack of legal and procedural boundaries on post-conviction proceedings permits and even encourages the defense bar to prolong these cases for as long as possible and to spend as much as possible to prevent a final resolution. The sole reason for the reported high cost of capital litigation is delay for the sake of delay and not incompetent counsel or overzealous prosecutors. In effect, the argument becomes that it costs too much to execute a guilty person, but that it can never cost too much to save that same guilty person from execution. Despite years of litigation by the ten individuals now on death row none of the post-conviction proceedings has resulted in a reversal of a death sentence. If the Committee wants to reduce the costs of capital litigation, it should do so by reducing the excruciating delays in post-conviction proceedings that only serve to deny the finality the victims of these horrendous crimes and their families so rightfully deserve.

