



*Office of Chief Public Defender  
State of Connecticut*

30 TRINITY STREET, 4<sup>TH</sup> FLOOR  
HARTFORD, CONNECTICUT 06106  
TEL (860)509-6429  
FAX (860)509-6499  
susan.storey@jud.ct.gov

ATTORNEY SUSAN O. STOREY  
CHIEF PUBLIC DEFENDER

**TESTIMONY OF SUSAN O. STOREY, CHIEF PUBLIC DEFENDER**

**RAISED BILL NO. 6578, *AN ACT CONCERNING THE PENALTY FOR A  
CAPITAL FELONY***

**JUDICIARY COMMITTEE PUBLIC HEARING**

**MARCH 2, 2009**

The Office of Chief Public Defender strongly supports the abolition of the Death Penalty in Connecticut and therefore supports the passage of HB No. 6578. The abolition of the Death Penalty in favor of a sentence of life without the possibility of release is currently under consideration in several other states for a variety of reasons, including the national economic crisis. Whether or not Connecticut continues to pay the enormous financial costs of death penalty litigation is an important policy choice that must be made by the Legislature and the Governor.

Despite our support for this bill, it is important to stress our position that total abolition is a preferable goal from both a moral and economic perspective. While this bill would accomplish abolition in future capital cases, it would do nothing to commute the death sentences or eliminate the enormous costs of death penalty litigation in the 61 capital cases now pending at various stages of pretrial, trial, appeal or habeas corpus.

The Death Penalty's enormous drain on state resources is extreme and longstanding. The financial and personal impact of capital punishment was recognized and discussed at length in a 1993 Connecticut Law Tribune article entitled, "*Death Be Not Cheap.*" In that article, both the late Chief State's Attorney Jack Bailey and Attorney Gerard Smyth, then Deputy Chief Public Defender, expressed their mutual deep concern for the economic and personal toll that death penalty litigation caused on both sides of the criminal justice system. Jack Bailey prophetically stated, "The State will throw more and more criminal justice resources at capital cases. Every dollar we spend on a capital case is a dollar we can't spend anywhere else." Bailey also indicated that, primarily as a result of the Michael Ross case, the Division of Criminal Justice had started tracking costs of death penalty cases and was requesting a line item in the budget for capital prosecutions

so that the public and legislators could confront the costs head-on. He said, "We have to let the public know what it costs."

Currently Connecticut and New Hampshire are the only New England states that retain the death penalty as punishment in capital cases. New Hampshire is currently reviewing their statute and New Jersey abolished the death penalty in 2007. Several other states are also considering abolition: Maryland, Colorado, Kansas, Nebraska, New Mexico, Montana, and Washington. While economic concerns are major, other factors favoring abolition cited include:

- There is no compelling evidence that the death penalty is a deterrent.
- A sentence of life without the possibility of release adequately protects public safety.
- Abolition of the Death Penalty will eliminate the risk of executing the innocent.
- There is increasing evidence that the death penalty is inconsistent with evolving world and national standards of decency.
- The enormous and enduring costs of death penalty litigation could be better spent on other important criminal justice issues, such as establishing cold case units and ensuring adequate services for the families of murder victims and other victims of crime
- Individual state budgets cannot support the cost of the death penalty in the current budget crisis

The late State Representative Richard Tulisano was also quoted in the same Connecticut Law Tribune article. When questioned about his opinion of capital punishment he stated that "resources available to state agencies are finite. Life without possibility of release is better and cheaper." Realizing that the Death Penalty would be a considerable and continuing drain on our Agency's resources, the Division began to track results and expenses in capital cases. Annual costs for capital defense consistently average 5% to 6% of total Public Defender Budget for only .066% of total Public Defender caseload.

FY 05	\$1, 990, 224	5%
FY 06	\$ 2, 586, 177	6.1%
FY 07	\$ 2, 336, 315	5.4%
FY 08	\$ 2, 383, 334	5%

Costs for capital defense FY 09 are again projected to be 5% of our total appropriation i.e. approximately \$2, 511, 978.

While prosecutors may not necessarily have the same constitutionally required trial preparation and expert expenses as public defenders in litigating death penalty cases, the cost to Criminal Justice must also be considerable. In the same 1993 article, appellate prosecutor Harry Weller stated that he spent 9 months working 6 days a week, 10 to 12 hours a day to complete the State's 299 page appellate brief in the Michael Ross case. State's attorney Steven Sellers was quoted as having spent 7 months distilling the 10,000 page Ross transcript (which transcript itself cost the Division of Criminal Justice

\$19,000) into a 1,000 page outline. Three additional appellate staff were said to have assisted with the brief for a total staff expenditure of about 15 months. As an example of continuing costs, the nearly 20,000 page trial transcript in a recent Hartford death penalty case, State v. Lazale Ashby, which resulted in a death sentence, will alone cost the Division of Public Defender Services approximately \$40,000.

Many expenses in the defense of death penalty cases arise from the constitutional requirements that the defense prepare for and present mitigation evidence in the penalty phase of a capital trial. These costs would be eliminated if the Death Penalty were abolished in favor of life imprisonment without the possibility of release. American Bar Association Guidelines (4.1), Public Defender Services Commission policy, and the U.S. Supreme Court, (see Wiggins v. Smith, 539 U.S. 510, 524 (2003) ), also stress the importance of appointing two highly qualified defense attorneys to represent clients in capital cases where the state is seeking death. Recently, in order to attract qualified members of the private bar, Special Public Defender rates for capital cases were raised from \$85 to \$100 per hour. Despite this recent hourly rate increase, defense lawyers in federal capital cases are now paid \$170 per hour, and it has become increasingly difficult for our Agency to enlist sufficient numbers of competent counsel for state death penalty appeals.

All relevant data would seem to indicate that imposition of a sentence of life without possibility of release versus execution is more cost effective for the state and does not jeopardize public safety. Our records indicate that in the past two decades, approximately 61 defendants plead to or were sentenced after trial to life without the possibility of release. None of these inmates will ever be released from DOC custody to their communities. They will die in prison. Furthermore, a life sentence allows these prisoners to be housed in DOC facilities other than Death Row at Northern Correctional. A recent OLR report indicates that the cost of inmate incarceration at Northern exceeds \$100,000 a year compared to less than half that amount for most other DOC facilities other than Garner.

The ability for a defendant to plead to life without possibility of release, especially early on in a case not only saves incarceration costs, but all other expenses involved in preparation for trial, subsequent automatic appeal, and federal and state habeas corpus proceedings. Many clients currently serving life terms after trial or under sentences of death would have plead guilty to life without possibility of release if they had been given that option by the prosecution. For example, in 1993, Public Defender Ramon Canning stated that "the capital case of Terry Johnson could have been over in 15 minutes –done- No one would have spent a penny." Instead the case went to trial and Johnson was sentenced to death. The case was subsequently overturned on appeal by the Connecticut Supreme Court, and Johnson is now serving a life term. Defendants in several cases where the state was and now is seeking a death sentence filed motions with the court stating that they were ready to plead to life without the possibility of release. This was also true in the New Haven death penalty prosecution of Jonathan Mills who, despite his expressed willingness to plead early in the case, was forced to stand trial through the penalty phase, at substantial expense to state taxpayers. The jury's verdict at the end of

the penalty phase resulted in the imposition of a sentence of life without the possibility of release.

Some legislators and members of the public have expressed the concern that if Connecticut abolished the Death Penalty, then the public could not be assured that defendants would plead to life without the possibility of release. Recent data and studies on this subject would seem to indicate that states without the death penalty still have some of the highest rates of prisoners serving life without possibility of release, citing Massachusetts as an example where 7.9% of the prison population is serving such sentences. Studies also indicate that prosecutors in New Jersey have seen little difference in the number of guilty pleas in murder cases. This study, performed by the Brooklyn based organization, Equal Justice USA, also indicates that using the death penalty as a threat risks conviction of innocent persons who feel compelled to confess under duress or in order to save their own lives. The study cites several cases including the rape and murder of a woman in Nebraska, where 6 defendants were threatened with the death penalty. Several confessed and plead guilty, spending more than 20 years behind bars before DNA evidence recently exonerated them.

Further reason to abolish the death penalty is that any risk of disproportionate sentencing will be eliminated. The Division of Public Defender Services continues to study the way that death-eligible cases are prosecuted throughout the state. The Division hired Professor John J. Donahue, Esq. from Yale University to perform a follow-up study to the Division's earlier study to determine whether racial bias exists in the application of the death penalty in Connecticut. Donahue concluded that "the evidence suggests that race of both the defendant and the victim play a significant role in determinations of whether or not the state pursues and achieves a death sentence for capital eligible defendants." He further concluded that "[i]n no sense can it be said that Connecticut has limited its use of the death penalty to the 'worst of the worst' since many equally egregious or more egregious cases receive non-death sentences." He also noted that "in the 34 years since the adoption of the death penalty [in Connecticut], there as been a steady erosion in the percentage of murder cases that are unsolved. As a result roughly 40% of Connecticut murderers go free." In conclusion, he found that "[w]ithin the class of death-eligible murders, the discretion exercised throughout the post-arrest criminal justice system leads to arbitrary, irrational, or discriminatory outcomes."

The results of Professor Donahue's study are now being challenged by the Division of Criminal Justice, and there is ongoing litigation on behalf of 9 of 10 current Death Row inmates. All Death Row clients are represented by Special Public Defenders. Total expenditures for experts in the Racial Disparity in Death Penalty Cases study equal \$334,331 to date. In addition the Division has incurred \$17,667 in ongoing litigation expenses.

In conclusion, the Office of Chief Public Defender supports this bill, but I would ask this Committee to also seriously consider abolition of the Death Penalty in all cases.