



State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice

H.B. No. 5445 (RAISED) An Act Concerning the Death Penalty

Joint Committee on Judiciary
March 10, 2010

The Division of Criminal Justice respectfully recommends and requests the Committee's Joint Favorable Substitute for H.B. No. 5545, *An Act Concerning the Death Penalty*, to delete all but sections 1 and 2 of the Raised Bill (LCO No. 2001). The provisions of sections 1 and 2 of the bill deal with the filing process for habeas petitions in death penalty cases and the provisions for an automatic stay of execution in death penalty cases. These sections would begin the process of bringing finality to what have become never-ending death penalty cases and with that finality justice to the victims and their survivors. The remaining sections of the bill would simply make the current, intolerable situation even worse by producing even more delays and unnecessary litigation.

Whether there should or should not be a death penalty is a public policy question reserved to the General Assembly and the Governor. The General Assembly has the constitutional right and authority to pass legislation to repeal or otherwise modify the death penalty. The Governor has the equal constitutional right and authority to sign or veto such legislation, subject to override by the General Assembly should enough members so deem. The obligation placed on the Division of Criminal Justice is different. We have no option but to enforce the law and apply the death penalty where appropriate. To do otherwise would not only be an abdication of our duty to the victims of capital crimes and their families, but a violation of our sworn oath and constitutional duty and responsibility to uphold and enforce the law.

Thus it is also our responsibility to offer guidance and recommendations to public policy makers, including the General Assembly, to provide for the effective enforcement of the law, i.e., to craft a statutory scheme that provides for a "workable" death penalty. It is in accord with this obligation that the Division recommends to the Judiciary Committee a Joint Favorable Substitute Report for H.B. No. 5545 retaining sections 1 and 2 of the Raised Bill and deleting the remaining sections of LCO No. 2001 in their entirety. Sections 1 and 2 of the bill seek to expedite the process for the resolution of post-conviction proceedings in capital cases where a sentence of death has been duly ordered. Never-ending delay is the cardinal rule of defense strategy in capital cases throughout the country and perhaps even more so here in Connecticut, where the longest pending case of an inmate now under sentence of death dates from the original imposition of the sentence

in 1989. We must take the reasonable steps proposed in sections 1 and 2 of this bill to attempt to bring finality to the never-ending proceedings and what has clearly become delay for the sake of delay.

The remaining sections of H.B. No. 5545 would mean only more delay, and ultimately more delay for the mere sake of delay. The steps and procedures proposed in the bill are unnecessary and would simply provide new avenues and grounds for further appeals. These provisions seek to "fix" aspects of the system that are not broken. This is not a debate over incompetent lawyers falling asleep at trial. The defense bar in the State of Connecticut, whether private counsel or public defender, is second to none in this country - as evidenced in part by the mere fact that these cases continue with no resolution in sight. Nor is this a debate over innocent people being sentenced to death. As the Division has stated repeatedly, it is an unchallenged fact that there is no claim of actual innocence by any of the individuals currently under sentence of death in this state. 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.

This is solely a debate over the failure or inability of the criminal justice system to bring finality to death penalty cases. The protections already in place allowing an individual convicted of a crime to challenge his or her conviction are redundant to the point of absurdity. Our Appellate Court began one recent opinion in a non-capital case with the remark that the appeal in question was a "habeas on a habeas," an apparent reference to the repeated and potentially unlimited petitions that can be brought by those convicted of crimes. The review already mandated by law for any case in which a death sentence is imposed is exhaustive and certainly provides for the most painstaking scrutiny of the investigative practices involved in the case in question and each and every step in any and all subsequent legal proceedings up to and including the imposition of the sentence. The only thing that is lacking from the process is a declaration either through the General Assembly or the courts that justice demands that there be an end to the proceedings and the implementation of the duly imposed punishment as provided by law. The adoption of sections 1 and 2 of H.B. No. 5545, and the elimination of the remainder of the Raised Bill, would begin the process of bringing long-overdue finality to these cases and justice to the victims and their survivors. The Division of Criminal Justice respectfully requests a Joint Favorable Substitute Report.

Respectfully submitted,

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