



STATE OF CONNECTICUT

OFFICE OF VICTIM ADVOCATE
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**Testimony of Michelle Cruz, Esq., State Victim Advocate
Judiciary Committee
Wednesday, March 10, 2010**

Good afternoon Senator McDonald, Representative Lawlor and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised House Bill No. 5445, An Act Concerning the Death Penalty

First, as the State Victim Advocate, I must be clear that the Office of the Victim Advocate (OVA) does not have a position as to whether Connecticut should have or should not have the death penalty available in certain criminal prosecutions, as crime victims are not united as to the death penalty. As you know, some victims vehemently support the death penalty while other victims strongly oppose the death penalty. However, as so far as the systems in place, if there continues to be a death penalty in Connecticut, the OVA is providing this testimony concerning Raised House Bill No. 5445, to ensure that crime victims' rights are protected regardless of whether the defendant is exposed to a sentence of death or not.

All crime victims have constitutionally protected rights through the criminal justice process. Those rights include, but are not limited to, the right to be treated with fairness and respect, the right to a timely disposition of the case, the right to be reasonably protected and the right to address the court at plea and at sentencing. In the limited number of cases for which the death penalty can be sought, crime victims are increasingly frustrated as death penalty cases take much longer to investigate and prepare for prosecution. In addition, the majority of death penalty cases are high profile in nature, therefore, gain unsolicited attention by the media.

There is no doubt that Connecticut must address the habeas corpus structure, not only in capital felony cases, but all criminal cases. Most habeas corpus appeals are filed on a claim of ineffective assistance of council, among other claims. In some cases, the ineffective assistance of council claim is being filed as late as ten years and more after the conviction. This becomes problematic as witnesses, and even some attorneys, may have moved on or even died. Not only is it difficult for the state's attorney to investigate and litigate habeas corpus petitions that are filed after a long period of time, similarly the defense will also experience difficulties in proving their claim for the same reasons. In addition, the trauma of endless and often frivolous appeals, which are a constant reminder of the crime committed against the victim, leads to further harms and a feeling of

helplessness for crime victims. Additionally, offenders who have a valid and viable claim must wait for justice as the system processes numerous repetitive and frivolous claims by well seasoned offenders. Furthermore, in some cases our current limitless habeas system is a tool for the prisoner to abuse in order to further victimize and harass the victim(s) and/or their families. Raised Bill No. 5445 does nothing to improve the structure or address the real issues within the filing of habeas corpus petitions in capital cases.

Section 5 of Raised Bill No. 5445 will allow a defendant charged with the commission of a crime punishable by death to raise a claim that considerations of race, ethnicity, gender, religion or sexual orientation of the defendant or the victim played a significant role in the decision to seek or impose a sentence of death. This process will require a hearing wherein "statistical evidence or other evidence" may be introduced to support this claim. This will only cause further delays in the proceedings, as yet another hearing will have to be held. Additionally, "statistical evidence or other evidence" presented at a hearing does not have any relevance to the actual crime committed. There are eight specific capital offenses for which the death penalty can be sought. A prosecutor should be focused solely on, first, whether the offense is one of the enumerated offenses for which the death penalty can be sought and then, on whether the facts and evidence of the case support the consideration of a sentence of death. Statistical data should not play a role in this analysis. In order to address the important issues of discrimination within the Criminal Justice System, the better venue would be to address these disparate issues with the Committee on Racial and Ethnic Disparities and/or the Criminal Justice Advisory Commission within the Office of Policy and Management.

Section 6 of Raised Bill No. 5445 will establish a Death Penalty Authorization Committee to review and authorize a request by a prosecutor to seek the death penalty. Again, this will delay the proceedings unnecessarily. Connecticut currently has ten inmates facing the death penalty; many of whom have been on death row for a long period of time. Obviously prosecutors have been very careful in deciding whether they will seek the death penalty in capital felony cases.

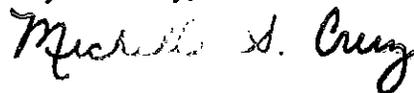
Section 11 of Raised Bill No. 5445 will allow the Supreme Court to consider, while conducting a sentence review, whether the sentence of death is disproportionate or excessive to the penalty imposed in similar cases. Again, there are eight specific offenses for which the death penalty can be sought. These cases are given the utmost review by the prosecutor when determining whether he/she should seek a sentence of death or not.

Finally, Section 17 of Raised Bill No. 5445 allows for a victim impact statement to be read in court after the jury or court returns a special verdict. The constitutional amendment provides the right for a crime victim to address the court prior to the acceptance of a plea and prior to the defendant being sentenced. This right anticipates that the victim will have an impact on whether the plea is an appropriate disposition and/or whether a sentence is appropriate. This right does not provide the victim with the power to veto a plea or dictate a sentence; only to have an opportunity to meaningfully be heard and participate in the criminal justice process.

In capital felony cases, the statute on its face and its practice stands in contradiction with the constitution as it pertains to crime victims' rights to provide a meaningful impact statement. In a capital felony case, where the death penalty is sought, a special verdict is returned by the jury, or judge, where upon the sentence of the court has been determined. During the sentencing, the judge simply and formally imposes the sentence. There is no place, currently, for the victims' surviving family members to provide an impact statement to the jury or court; the victim's surviving family is currently only permitted to provide an impact statement after the jury, or judge, returns the special verdict for the offender. Therefore, a victim's right to be heard is essentially meaningless. In order to uphold crime victims' Constitutional right to be heard, the victim impact statement should be presented to the court or jury prior to the return of a special verdict so that the victim's opinion of the sentence can be considered. The United States Supreme Court decision, Payne vs. Tennessee, 501 U.S. 808, 1991, has held that the United States Constitution does not bar victim impact evidence from being admitted during the penalty phase of a capital trial. Rather, the decision held that the victim impact evidence is relevant and legitimate information regarding the appropriate punishment for the defendant and that the information violates no right of the defendant. The fear that is often voiced that the jury or court will be swayed by the impact statement of a victim is ill founded and those arguments have been rejected by the U.S. Supreme Court. First, as stated above, not all crime victims and/or their family members are in support of the death penalty. Furthermore, the finder of fact, either a jury or in cases of a judge trial, in a capital felony case, where the death penalty has been sought, has already been found capable of weighting evidence, viewing gruesome autopsy photographs, and being able to hear the facts of a death penalty case. To prohibit the victims' and/or the surviving family's voice during the penalty phase, simply re-victimizes the crime victim and their family.

By way of information, the OVA has submitted a proposal in the past to correct this inconsistency surrounding the death penalty. I would urge the committee to consider an amendment to this proposal so that the statute comports with the constitutional rights afforded to crime victims. I thank you for consideration of my testimony.

Very Sincerely,

A handwritten signature in cursive script that reads "Michelle S. Cruz". The signature is written in dark ink and is positioned below the typed name.

Michelle Cruz, Esq.
State Victim Advocate

