

March 10, 2010

I have a number of concerns with the Raised Bill No. 5445

The Judiciary committee has again heard of concerns of excessive and "frivolous" habeas appeals clogging the system and wasting time. On January 19th of this year, before this committee, the Criminal Justice Division noted over 1000 habeas appeals pending, including a petition "filed by an inmate convicted more than 25 years ago"; it was noted that the appeals were "completely without merit", a lack of "substantive controls on the number of petitions-and appeals from petitions" representing "the single largest waste of resources in the criminal justice system." They estimated the cost at \$4,200 per case equaling 4.3 million dollars per year with this only accounting for cases in the criminal division and not including Judicial Branch or Division of Public Defender costs. Thus it would seem that establishing a specific time limit for habeas appeals as well as overhaul of the entire process is long overdue. I would note that prisoners were furloughed last year for what I read in the papers was to be an expected \$4.2 million savings. The Criminal Justice Division has told you that you can possibly save a similar amount of money over time with serious and thoughtful habeas petition revision. Combined with this is the fact that in ITEM 14 in the 2003 report; STATE OF CONNECTICUT COMMISSION ON THE DEATH PENALTY: Study Pursuant to Public Act No. 01-151 of the Imposition of the Death Penalty in Connecticut. ITEM 14 of the report recommended that the delays in adjudicating death penalty cases be made and there a number of suggestions made to improve the entire process. Thus as you address the most serious penalty, the death penalty, it would seem that you not ignore this general recommendation from a report that the state's legislative body commissioned.

I would note that the victims' families that were interview stated;

"1. The trial and appeal process take too long to the point of losing faith in the system and making a mockery of it.

2. A dreadful emotional toll is exacted, especially when a death sentence is handed down but never carried out. In the eyes, minds and hearts of the many families of victims, it is as though the offender has never been punished at all.

3. The financial burden is significant. The appeals process is very lengthy. Following the case requires traveling to the various hearings and taking time off from work, and this creates a real financial hardship for most families.

4. The need to see an end to the process in order for healing to begin has been expressed widely by the families of victims. They claim that there is no way to get on with life without a decisive conclusion, determining the fate of the offender. "

Thus again to repeat in this instance a specific time limit in filing a habeas petition would seem to be sensible, just, and cost effective, with obviously many other types of appeals needing limits as we currently have a death sentence from 1989 still being appealed. I would hope that the Judiciary Committee would feel some sense of responsibility to victims and not just those accused and then convicted.

In Section 5 of this bill you are asking for statistical analysis to be used as evidence which is nonsensical in this state as there are too few death penalty cases tried and fewer people sentenced to the death penalty. Thus there can be no hope of gleaning any statistically significant evidence from this approach. The entirety of the evidence, that is the specific facts of each case, is the critical issues to examine and not statistics. This will only confound and further delay each case and further increase costs. This does

not mean that there is no use in collecting statistics but utilizing small numbers in an attempt to manipulate the trial seems to defy logic.

You do much the same in section 6 where you establish a death Penalty Authorization Committee which would seem, to only add to the delays in these cases, to add yet another layer of time and cost. I am told that the District Attorneys meet monthly and the rare death penalty cases are already discussed. Even as this occurs early on in these cases it will take the District Attorneys away from other duties and does not seem to be an improvement.

In a recent survey by the National Center for Victims of Crime, over 1300 victims were asked to rate the importance of various legal rights. Over 80% stated that their ability to make a victim impact statement at sentencing and at parole was "very important."⁽¹⁾ "Every state allows some form of victim impact information at sentencing. The majorities of states allow both oral and/or written statements from the victim at the sentencing hearing, and require victim impact information to be included in the pre-sentence report. At the federal level, victim impact information is [to be] included in the pre-sentence report. "

The section that needs the most modification concerns the Victim's impact statement, where this bill (and current practice) only allows a statement AFTER the jury has rendered a decision in the penalty phase. This is an absolute slap in the face to the victims and their families. I realize that some jurisdictions have actually called victim's impact statements as 'irrelevant' but not 'unimportant' to the process. I am not sure how they can have it both ways. Now you have had a guilty verdict returned before you even go to the penalty phase. It seems that the accused who is now found guilty in the guilt/innocence phase can put on, at large cost to the state what I would consider a "statement of mitigation", while the State can state aggravating factors, it would seem that the victim's representatives should be allowed to inform the jury of the impact of the specific capital felony in the case. If you only allow statements after the jury has rendered a decision which the judge cannot change then you have again ignored all victims in these cases now affording the guilty client more rights than those who suffered and died. The U.S. Supreme Court in Payne v. Tennessee (1991) reversed its earlier ruling and found that the admission of victim impact statements in capital cases did not violate the Constitution and was admissible. I do not believe that this has been changed in the ensuing years.

In a paper by Senior Attorney Christopher Reinhart he noted that as of 2005 there were 10 states where a victim's survivor is authorized to testify in a death penalty sentencing hearing. In Maryland, the court has given discretion to allow victims to testify. The state Supreme Court of North Carolina "cited a statute giving victims the right to offer admissible evidence of a crime's impact as authorizing a victim impact statement in a death penalty sentencing proceeding. In Georgia, the death penalty sentencing statute authorizes the court to allow certain evidence from a victim's family." Attorney Reinhart also noted that, "Nine states have generally applicable constitutional or statutory provisions that give victims the right to testify at sentencing proceedings that appear to apply in death penalty sentencing proceedings." (2)

Paul G. Cassell in a 2009 paper in Restorative Justice On-Line writes that about victim's impact statements in Capital Felony cases and notes; the victim's impact statements would provide information to the sentencing jury about the true harm of the crime, secondly, he felt that the statements could be therapeutic, though personally I doubt that is true for the majority of victims. These statements also at least create a perception of fairness at sentencing, by ensuring that all the relevant parties-the State, the defendant, and the victim (s)-are heard. He further notes that victim impact statements provide information about the severity of crimes, a traditionally salient consideration for judges and presumably juries at sentencing. He states that empirical evidence has shown little effect from victim statements on sentence severity, thus disproving the claim that the statements are so emotional that they will overwhelm those who decide the penalty. These statements allow the victims to be heard as the defendant and their families are heard during the penalty phase. (3)

I would ask that as you consider making changes in the law surrounding death penalty cases that you make changes that stop the unnecessary delays and costs now associated with CT's process and that you allow the victim's impact statement to be given prior to the jury's deliberation.

(1)National Center for Victims of Crime. (1996). *Statutory and Constitutional Protection of Victims' Rights: Implementation and Impact on Crime Victims, Final Report*. Arlington, VA. Table C-9.

(2)<http://www.cga.ct.gov/2005/rpt/2005-R-0047.htm> (VICTIM'S FAMILY TESTIMONY AT PENALTY PHASE OF CAPITAL CASES Christopher Reinhart, Senior Attorney)

(3)<http://www.restorativejustice.org/articlesdb/articles/9816>

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