



CONNECTICUT INNOCENCE PROJECT

State of Connecticut
DIVISION OF PUBLIC DEFENDER SERVICES

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TESTIMONY OF KAREN A. GOODROW, DIRECTOR, CONNECTICUT INNOCENCE PROJECT

Raised Bill No. 280
An Act Revising the Penalty for Capital Felonies

Judiciary Committee Public Hearing
March 14, 2012

My name is Karen Goodrow and I am the Director of the Connecticut Innocence Project, which is a part of the Division of Public Defender Services. **We support Raised Bill No. 280, An Act Revising the Penalty for Capital Felonies** which would repeal the death penalty prospectively, and impose a sentence of life without the possibility of release for all capital felonies.

I. Mistakes are made.

As has been demonstrated by the recent exonerations of James Calvin Tillman, Miguel Roman and Kenneth Ireland, mistakes are sometimes made in our criminal justice system, even here in the State of Connecticut. Both Mr. Roman and Mr. Ireland were facing potential capital offenses and death penalties based upon the facts of the cases for which they were wrongly convicted. Both individuals spent over twenty years in prison before new DNA evidence proved their innocence. Had the State of Connecticut pursued a death sentence against them, and had no DNA evidence existed to prove innocence, it is likely that each would have received a death sentence and been erroneously executed. Additionally, had the victim in Mr. Tillman's case lost her life in the course of the brutal attack, Mr. Tillman would likely have been convicted of capital felony and received a death sentence.

II. Cases of innocence are extremely difficult to prove.

The Innocence Project estimates that less than ten percent of all criminal cases contain evidence of DNA. See www.innocenceproject.org. Proving someone's innocence is extremely difficult, particularly since these cases often come to the attention of the Innocence Project years after the conviction. Often, the causes of wrongful convictions involve mis-identifications, informant testimony, unreliable confessions, credibility of witnesses, and circumstantial evidence. In the vast majority of the cases reviewed by the Connecticut Innocence Project, and by other projects which review non-DNA cases, no DNA evidence exists to prove innocence. Indeed, the fact that there existed DNA evidence to prove the Innocence of Mr. Tillman, Mr. Roman and Mr. Ireland is highly unusual; they are considered among the "lucky" few whose cases and demonstrations of innocence turned on DNA evidence. However, approximately ninety percent of the cases of claimed innocence either consist of no DNA evidence, or the DNA evidence that exists is insufficient to prove innocence. In recognition of the daunting task of proving innocence in non-DNA cases, the Department of Justice created a Wrongful Conviction Grant for the purpose of funding such cases. In 2011, the Connecticut Innocence Project was awarded funding from the Grant to further its work on non-DNA cases.

III. There exists a risk of executing an innocent person.

There exists a very real risk that a death penalty will be imposed on an innocent citizen of the State of Connecticut. DNA is not a magic bullet which can ensure that innocent people will not be wrongfully convicted and executed. The vast majority of criminal cases do not contain DNA evidence. The irreversible imposition of a death sentence simply cannot be remedied by the mistaken belief that DNA will set the innocent free. It is difficult to quantify the level of risk of a wrongful execution due to the fact-specific nature of criminal cases. However, the FBI estimates that in 24% of all cases where an individual was arrested or indicted based on non-DNA evidence, subsequent DNA testing excluded the defendant as the perpetrator. See Testimony of Barry C. Scheck, Commission to Study the Death Penalty in New Hampshire, May 14, 2010, citing Office of Justice Programs, National Institute of Justice, Department of Justice, *Convicted by Juries, Exonerated by Science: Case Studies in the use of DNA Evidence to Establish Innocence after Trial*, 20 (June, 1996).

IV. Repeal of the death penalty is consistent with protecting the innocent and ensuring that our justice system functions in a fair and reliable manner.

In the past several years, Connecticut has been in the process of adopting reforms to protect the innocent, and to insure fairness and reliability in our justice system. In 2007, in the wake of our first DNA exoneration, the Legislature passed a Special Act to compensate Mr. Tillman for his wrongful conviction and incarceration. That same year, the Legislature enacted a compensation statute for the wrongfully convicted, and ensured that the Office of the Chief Public Defender receive designated funding for the Connecticut Innocence Project. In 2011, the Legislature established the Eyewitness Identification Task Force, charged with the duty of examining the procedure by which law enforcement administer photographic arrays to eye-witnesses for purposes of obtaining identifications. At the same time, the Legislature mandated the use of “double blind” administration of identification procedures. The recommendations of the Task Force are the bases for proposed statutory changes, and training protocols, in eye-witness identification procedures. Also, in 2011, Gov. Malloy created the Governor’s Forensic Lab Working Group to address various concerns and challenges existing at the State of Connecticut Forensic Laboratory. All of these efforts by the State of Connecticut exist in large measure to insure that the innocent are protected, and that our criminal justice system functions in a fair and reliable manner.

It is said that “death is different.” The death penalty *is* different; it is finite and it is irretrievable. We, as stake-holders in the criminal justice system, are incapable of knowing with certainty that an innocent person will not be executed. Repeal of the death penalty is consistent with protecting the innocent and insuring that our justice system functions in a fair and reliable manner. A fair and reliable justice system is one in which mistakes can and will be corrected. Execution of an innocent person can never be corrected. In order to fully protect the innocent, repeal of the death penalty is necessary.