State of Connecticut
DIVISION OF CRIMINAL JUSTICE

Testimony of the Division of Criminal Justice
Joint Committee on Judiciary
March 14, 2012

S.B. No. 280: An Act Revising the Penalties for Capital Felonies

The Division of Criminal Justice expresses its appreciation to the Committee for affording this opportunity to present testimony concerning S.B. No. 280, An Act Revising the Penalties for Capital Felonies. The Division would again reiterate our testimony from previous years: the question of whether there should or should not be a death penalty is a fundamental question of public policy that depends on the evolving standards of the people of the State of Connecticut. It is the elected members of the General Assembly who must act in accord with their perception of these standards. Notably, however, if polls are an indicator, Connecticut's citizens strongly support the death penalty. We must reiterate that we as prosecutors have a sworn, constitutional responsibility to enforce the law as established by the General Assembly and Governor and interpreted by the courts.

Regarding this policy debate the argument that the death penalty should be repealed because it is unworkable ignores the fact that the federal government and other states have made their death penalty process workable, reliable and relatively timely, through legislation and rules of court. The Connecticut General Assembly and Judicial Branch have the same power and authority to do so. To use the argument that the death penalty is unworkable as an excuse to abolish it is deceptive.

Whether repeal of the death penalty will result in substantial cost savings is another matter that that needs to be examined closely, not superficially. At least through the trial and sentencing stage the costs of prosecution will not be reduced substantially. Even in appellate and post-conviction proceedings the amount of savings are difficult to determine because of the likely increase in habeas petitions that will be filed if there is no habeas reform. Many of the costs and the accompanying delays are caused by the extremes to which those opposed to the death penalty will go to prevent an execution. While some of these costs are legitimate to ensure a strong defense, many are not. An examination of the costs incurred prior to the execution of Michael Ross, if it is possible, would shed some light on this issue.

Given the complexity of the legal issues and extensive deliberation that must be undertaken at all stages of a capital prosecution, the Division must urge the Committee to proceed with the utmost of caution as you consider S.B. No. 280 and to fully and thoroughly consider all of the potential implications that even the slightest change to the capital felony statutes could have

both in terms of policy and practice. Such considerations must include, but not necessarily be limited to:

• The notion that the death penalty can be repealed prospectively, as envisioned by S.B. No. 280 is tenuous at best. Prospective repeal of the death penalty will create two classes of people: one will be subject to execution and the other will not, not because of the nature of the crime or the existence or absence of any aggravating or mitigating factor, but because of the date on which the crime was committed. While the Division would not presume how the courts would rule, there is an extensive body of existing law that suggests the obvious argument that it would be untenable as a matter of constitutional law or public policy to execute someone today who could not be executed for committing the same conduct at a date in the future. Again, the Division will perform its sworn duty to enforce death sentences but that will be all the more difficult once this body adopts a policy eliminating that punishment.

• The repeal of the death penalty, whether prospectively or retroactively, will result in little if any financial savings to the state in the long term. In fact, the Division of Criminal Justice may actually realize greater demands with life in prison without the possibility of release as the sole penalty for a capital felony. Death penalty litigation will go away only to be replaced by as much and possibly more litigation challenging convictions and/or sentences of life without release. And as our experience with habeas matters clearly shows, such litigation will likely continue unabated throughout the entire lifetime of the inmates so sentenced. The state is no longer litigating the Michael Ross case but it is litigating numerous successive complaints brought by petitioners with long sentences who clog the system.

• The prosecution of death penalty cases in Connecticut today is not a matter of delaying the inevitable but rather one of inevitable delay. Any question of the actual guilt of those convicted in the oldest cases still pending was resolved many years, if not, decades ago. The cases have been tried - and in some cases retried - and then affirmed on appeal by the highest court of this state. Yet the duly ordered sentence of the court has not been carried out. These oldest cases are not cases where the inmate will be exonerated through DNA technology. Guilt is not at issue; it is delay and delay solely for the sake of delay.

The processes for trial and direct appeal in death penalty cases are rigorous and thorough - as they should be. The post-conviction process, however, has become a wasteland into which excessive amounts of money are dumped and through which the families and friends of victims are forced to wander as these proceedings drag on for years. It is inhumane that the innocent families of innocent victims of violent and unspeakable crimes should be subjected to the terror of decades of legal maneuvering before the punishment lawfully ordered by our judicial system can be carried out. Rather than requiring all parties to work for the lawful and efficient resolution of claims, our lack of legal and procedural boundaries on post-conviction proceedings permits and even encourages the defense bar to prolong death penalty cases for as long as possible and to spend as much as possible to prevent a final resolution. The sole reason for the reported high cost of capital litigation is delay for the sake of delay and not incompetent counsel or overzealous prosecutors. In effect, the argument has become that it costs too much to execute a guilty person but that it can never cost too much to spare that same person from duly and rightfully ordered execution.

In conclusion, the Division of Criminal Justice strongly recommends that the Committee carefully examine all of these issues in your deliberations on S.B. No. 280. Connecticut should not abolish the death penalty solely because those who oppose it have been so successful at achieving delay for the sake of delay rather than allowing the facts of each case to be finally adjudicated and the law rightfully applied. To allow delay for the sake of delay to effectively remain the law of the land is a grave injustice to the victims of these heinous crimes, their families and a disservice to jurors, ordinary citizens who gave of their time, energy and emotions, evaluated the evidence and decided that a fellow citizen should be executed. It is not possible to provide true closure to for the loss of a loved one. The best that we can and must strive for is finality to the process.