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Testimony of Attorney James O. Ruane
Connecticut Criminal Defense Lawyers Association
Raised Bill No. 460 – *An Act Concerning Compensation for Wrongful Incarceration*
Judiciary Public Hearing – March 21, 2016

The Connecticut Criminal Defense Lawyers Association is a not-for-profit organization of more than three hundred lawyers who are dedicated to defending persons accused of criminal offenses. Founded in 1988, CCDLA is the only statewide criminal defense lawyers' organization in Connecticut. An affiliate of the National Association of Criminal Defense Lawyers, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States constitutions are applied fairly and equally and that those rights are not diminished.

CCDLA strongly opposes Raised Bill 460, An Act Concerning Compensation for Wrongful Incarceration and supports the proposal of the Office of the Chief Public Defender to create a working group to examine any proposed future changes to the statute.

The State of Connecticut has been a thought leader nationally in the area of compensation for wrongful imprisonment. A cursory examination of the national data regarding exonerations shows a marked increase in the annual exonerations¹ and scientific and human frailties may lead to more false convictions in the future. While it is understandable that the legislature shows concern for the financial penalty our society suffers when an innocent person is released and exonerated, one must also consider the dramatic, life altering and mentally devastating impact that such legislation is attempted to remedy, all perpetrated upon an innocent person in the name of justice.

Under 2(B)(d)(2) of the proposed legislation the Claims Commission is required to award an amount based on the median state income for each year of incarceration and may only increase or decrease that amount by twenty-five percent based on the assessment of other factors listed in Section 2(B)(c) – a person's age, income, vocational training/education, loss of familial relationships, damage to reputation, severity of the crime, registration requirements, and any other relevant factors—using the “consumer price index for urban consumers.” This language is troubling because there is zero indication at this time that any potential awardee is a member of the “urban” community, and there is sometimes significant difference between the urban and other community consumer price index. This simply is racially based legislation meant to reduce the award given out under the guise of relevance.

One of the benefits of the existing state legislation is that it allows the state to resolve the protracted litigation that likely would occur when exoneration occurs and can insulate and isolate the various law enforcement entities from the expense of such litigation. The state has a duly authorized agent, in the form of

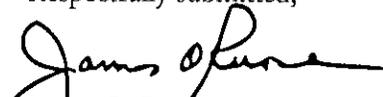
¹ <https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx>

the Claims Commissioner who undertakes the analysis of the length of the incarceration and applies a commonly applied per diem rate so that the awards as given out all satisfy a "standardization," and no beneficiary is awarded an amount of order with prior (and future) victims to be compensated.

Subsection 3 of the legislation would seek to place a burden on the petitioner for redress in instances where law enforcement or a member of the prosecution took action which led to the wrongful incarceration and actually reduce the award significantly for the incarceration if the person could not prove the malfeasance by a preponderance of the evidence. This places a significant burden on the victim in this case. First and foremost, criminal courts of law are reluctant, even in the face of overwhelming evidence, to make factual findings that would inculcate law enforcement.² Even after evidence arises, there is no central repository exists for the documentation of malfeasance, and individual victims and their attorneys would be at the mercy of anecdotal evidence and conjecture to begin to piece together the necessary proof needed to rise to achieve compensation. Once again, it would frustrate the original purpose of the legislation to avoid the unnecessary expense of litigation and the protracted timelines for compensation. Therefore, the necessary litigation to prove such evidence would inevitably fall into a civil context, further subjecting the victim to unnecessary costs of litigation, as well as a significant time delay. This time delay further frustrates the original purpose of the litigation – to compensate for a dramatic failing of the criminal justice system and to assist the victim reestablish their life after such incarceration.

Finally, Subsection 3(g), which effectively precludes additional avenues for compensation for wrongful incarceration, regardless of the genesis of the error which caused the incarceration, would require civil counsel to forgo the established mechanism to resolving the claims without expensive litigation because of the tactical decisions necessary to avoid seeking compensatory redress in the established manner due to burdens of proof and possible limitations of compensation. Essentially, as drafted, we anticipate an "opting out" by civil counsel essentially vitiating the legislation and potentially significantly increasing the financial impact of law enforcement with awards much higher than currently exist.

Respectfully submitted,



James O. Ruane

President, Connecticut Criminal Defense Lawyers Association

² For example, oftentimes in situations where the Appellate Court has found that prosecutorial impropriety has so impacted a case that relief is granted, there is zero disciplinary action taken against the prosecution by the trial court or the appeals court.