



State of Connecticut

DIVISION OF PUBLIC DEFENDER SERVICES

Office of Chief Public Defender
30 Trinity Street, 4th Floor
Hartford, Connecticut
(860) 509-6405 Telephone
(860) 509-6495 Fax

Christine Perra Rapillo
Chief Public Defender
Christine.Rapillo@jud.ct.gov

Testimony of Christine Perra Rapillo, Chief Public Defender
Attorney Darcy McGraw, Chief, Connecticut Innocence Project/Post Conviction Unit
Attorney Joseph Lopez, Senior Assistant Public Defender Office of Chief Public Defender,
DNA Forensic Project

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Raised Senate Bill 509, An Act Concerning Newly Discovered Evidence

Consistent with our commitment to due process and fair convictions, the Office of Chief Public Defender supports Raised Senate Bill 509, An Act Concerning Newly Discovered Evidence. This legislation ensures that justice can prevail, despite the passage of time, when convictions are found to have been based on unreliable or incomplete scientific evidence.

Newly-discovered non-DNA forensic scientific evidence exposes wrongful convictions.

The concept behind S.B. 509 is well-established in Connecticut. In 2000, our state adopted an exception to the statute of limitations on petitions for new trials to allow such petitions where newly-discovered DNA evidence could reveal a convicted person's innocence. After the DNA exonerations of James Tillman, Ken Ireland and Miguel Roman, innocent men who spent a cumulative total of 58 years of their lives in prison for crimes they did not commit, the General Assembly funded the Office of Chief Public Defender to house the Connecticut Innocence Project, a unit of lawyers and investigators dedicated to obtaining the release of innocent and wrongly-convicted individuals. The DNA/Forensic Project was created to help attorneys respond to ongoing developments in the science relating to evidence analysis and criminal investigation. Since that time, Connecticut has been part of a national movement to address the grave injustice of wrongful conviction. Across the country, hundreds of wrongful convictions have been overturned through the use of DNA evidence.

However, while DNA science has grabbed the most headlines, and often is the most conclusive evidence of innocence, it is far from the only forensic scientific evidence capable of revealing wrongful convictions. The National Registry of Exonerations at the University of Michigan Law School has determined that more than 80% of the wrongful convictions proven

since its 2012 founding have been overturned based upon the debunking of non-DNA evidence. That is, evidence once taken as infallible has been shown by more advanced methods to be “junk science” (examples include comparative bullet lead analysis, bite mark comparisons, arson analysis, and fiber and microscopic hair comparison) have been proved by our country’s finest scientists to be based upon flawed assumptions and incorrect methodologies. In fact, the members of the National Academy of Sciences, in a comprehensive review of the forensic sciences issued in 2009, updated in 2016, has called into question the science underlying each of these technologies. S.B. 509 reflects the reality that newly-discovered non-DNA forensic scientific evidence can expose wrongful convictions.

Without S.B. 509, people wrongfully convicted in Connecticut lack viable recourse.

It has taken years for forensic science to evolve and discredit techniques like those mentioned above, and additional techniques are being invalidated all the time as science advances. Unfortunately, such evidence was used to obtain hundreds of convictions. Connecticut’s post-conviction process does not allow an appropriate avenue to challenge a conviction if the science behind the evidence supporting that conviction is subsequently proven to be invalid. Raised Bill No. 509 would provide relief to those affected at trial by the use of such invalid forensic science.

Current Connecticut law requires that a petition for a new trial be filed within three years of a guilty verdict unless there is DNA evidence. It is often impossible to petition for a new trial in that timeframe. It normally takes years to do the necessary investigation to uncover evidence that an individual has been wrongfully convicted. After screening cases for problematic convictions, we gather all the records, locate forensic evidence and lab reports, locate and interview witnesses, read the relevant scientific research, and otherwise reconstruct a case many years after the events in question. For some individuals, the newly-discovered evidence will be the more recent, expert scientific conclusion that their convictions are based on faulty, invalid evidentiary analysis. A three-year time limit makes it impossible for an individual wrongfully incarcerated on junk science to challenge their conviction.

It should be noted that by removing Connecticut’s arbitrary three-year statute of limitations for new, material evidence, S.B. 509 will bring Connecticut in line with the majority of other states. Many of our sister states have no time limit at all to bring such new non-DNA evidence into court for a review of its effect on the outcome of the trial. A number of other states, like Wyoming and Nebraska, have limits with exceptions when the evidence could not have been discovered with due diligence at the time of trial (which applies to newly-discovered non-DNA evidence), and still others have a time limit that only begins to run from the time the new evidence could have been known. Significantly, none of those states has experienced a “floodgate” problem concerning these cases.

The Connecticut Supreme Court has held that after three years, an individual can seek relief only through a state petition for a writ of habeas corpus (claiming actual innocence), that approach has historically been used to address state and federal constitutional – not evidentiary – claims, and such petitions may not be the proper legal venue to present innocence claims based upon new non-DNA evidence. Indeed, our courts have been unwilling to recognize that the discovery of new evidence gives rise to claims of constitutional error in habeas.

As a result, out of desperation and without viable recourse, petitioners initiate numerous direct appeals, petitions for new trial, and repeated habeas filings seeking an opportunity for review of scientific evidence debunked by more recent advances using the newest scientific techniques.

In the past several years, the Connecticut Innocence Project has invested significant effort as we attempt to get our courts to recognize that flawed and scientifically-invalid evidence used at trial and subsequently debunked may create the right to have that evidence reviewed by the trial court. S.B. 509 sets out a viable process to provide such review by making it possible to directly and quickly to determine whether an underlying trial may have been unfairly affected by the use of such evidence.

Raised Bill No. 509 would allow people to bring innocence claims under the petition-for-new-trial statute in cases where new forensic evidence or new scientific research calls a conviction into question. The proposed bill removes the arbitrary three-year time limit and will put Connecticut in line with the majority of other states.

In conclusion, S.B. 509 is critical to ensuring the integrity of convictions and safeguarding against the languishing of innocent people and their families for decades. As an enlightened society, such injustice flies in the face of what our criminal justice system purports to stand for. We therefore urge the Committee's favorable report on this proposal.