

Legislative History for Connecticut Act

Act Number: 07-8 (special act)
Bill Number: 1456
Senate Pages: 3224-3228, 3327-3328 7
House Pages: 5865-5875 11
Committee: Judiciary: 7618-7670, 7721, 7724-7728, 7952-7957 65

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
2007

VOL. 50
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3006-3343

003224

jmk

219

Senate

May 23, 2007

Aye.

THE CHAIR:

Opposed, "nay". The ayes have it. Senate
Amendment "B" is adopted. We'll go to the bill now.
Would anybody like to remark further? Senator Daily.

SEN. DAILY:

Thank you, Mr. President. If there's no
objection, I would move this to the Consent Calendar.

THE CHAIR:

Hearing and seeing none, so ordered. Mr. Clerk.

THE CLERK:

Calendar Page 22, Calendar 518, File 626,
Substitute for Senate Bill 1456, An Act Concerning the
Compensation of Persons Wrongfully Convicted and
Incarcerated, Favorable Report of the Committee on
Judiciary and Finance, Revenue and Bonding. Clerk is
in possession of an amendment.

THE CHAIR:

Senator McDonald.

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SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Acting on approval of the bill, will you remark further, Sir?

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I believe the Clerk is in possession of LCO 7723. I ask that it be called and I be granted leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 7723, which will be designated as Senate Amendment Schedule "A". It is offered by Senator McDonald of the 27th District, et al.

THE CHAIR:

Senator McDonald.

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Senate

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SEN. MCDONALD:

Thank you, Mr. President. This bill--

THE CHAIR:

Could you please move adoption, Sir.

SEN. MCDONALD:

I'm sorry. I move adoption of the amendment.

THE CHAIR:

Please proceed, Sir.

SEN. MCDONALD:

Thank you, Mr. President. This bill, as its title suggests, is intended to address the issue of the compensation of persons wrongfully convicted and incarcerated.

Section 2 of the bill dealt specifically with the wrongful conviction and incarceration of James Calvin Tillman, and we have already taken care of that item in another bill, and I move to strike this section, Section 2.

THE CHAIR:

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Will you remark? Will you remark further on
Senate Amendment "A"? Will you remark further? If
not, let me try your minds. All those in favor,
signify by saying "aye".

SENATE ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay". Senate Amendment "A" is adopted.

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, the
remaining section of the bill will allow the Advisory
Commission on Wrongful Convictions that already exists
in our statutes to investigate and consider possible
ways in which individuals, such as Mr. Tillman, might
be compensated or otherwise recompensed for a wrongful
conviction.

We need to have, in this state, a process by
which we handle the rights of innocent people, who

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were sent wrongfully to jail. And many states across the country have similar processes. They range over a wide array of options on how to deal with this.

And we think it's important that Connecticut finally put into place a more rigorous process to deal with situations such as this.

THE CHAIR:

Thank you, Senator McDonald. Would you remark further on the bill as amended by Senate "A"? Will you remark further on the bill? Senator McDonald.

SEN. MCDONALD:

Mr. President, if there's no objection, might this item be placed on the Consent Calendar.

THE CHAIR:

Hearing and seeing no objection, so ordered. Mr. Clerk.

THE CLERK:

Calendar 525, File 670, Substitute for Senate Bill 1439, An Act Concerning Conservators and Appeals

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Calendar Page 20, Calendar 457, Substitute for
Senate Bill 1151.

Calendar Page 21, Calendar 506, Substitute for
Senate Bill 1451.

Calendar Page 22, Calendar 518, Substitute for
Senate Bill 1456.

Calendar 525, Substitute for Senate Bill 1439.

And Calendar Page 25, Calendar 585, Senate
Resolution 58. Mr. President, that completes those
items previously placed on the second Consent
Calendar.

THE CHAIR:

Please call the roll. The machine will be open.

THE CLERK:

The Senate is now voting by roll call on the
second Consent Calendar. Will all Senators return to
the Chamber.

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The Senate is now voting by roll call on the second Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Members voted? If all Members have voted, the machine will be closed. Mr. Clerk.

THE CLERK:

The motion is on adoption of Consent Calendar No. 2.

Total number voting, 35; necessary for adoption, 18. Those voting "yea", 35; those voting "nay", 0. Absent or not voting, 1.

THE CHAIR:

Consent Calendar is adopted. Senator Looney.

SEN. LOONEY:

Yes, thank you, Mr. President. Mr. President, would move that all items referred today from our Calendar to various Committees be transmitted immediately.

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House of Representatives

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If all the Members have voted, the machine will be locked and the Clerk will take a tally. Will the Clerk please announce the tally.

CLERK:

House Bill Number 7025, as amended by House Amendment Schedule "A".

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	148
Those voting Nay	0
Those absent and not voting	3

SPEAKER AMANN:

The Bill passes as amended. Will the Clerk please call Calendar Number 672.

CLERK:

On Page 20, Calendar Number 672, Substitute for, Senate Bill Number 1456, AN ACT CONCERNING THE COMPENSATION OF PERSONS WRONGFULLY CONVICTED AND INCARCERATED, Favorable Report of the Committee on Finance, Revenue and Bonding.

SPEAKER AMANN:

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Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

SPEAKER AMANN:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the Bill. Will you remark, Sir, and will you sneeze, Sir? Think of a cow. Think of the sun.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker.

SPEAKER AMANN:

Will you remark, Sir?

REP. LAWLOR: (99th)

Yes, Sir. Mr. Speaker, this Bill has two sections. The first section authorizes the existing advisory Commission on Wrongful Convictions to consider recommending a method of compensating persons who have been wrongfully convicted in the future in

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the same way that many other states and the federal government currently do.

There are many factors that need to be considered. Different states have different methods for doing this and this would allow the Commission on Wrongful Convictions, which consists of prosecutors and defense attorneys and police and academics and others to come back to us next year with a recommendation for how the Legislature might establish such a compensation scheme in the future.

A second section was thought to be an alternative method for compensating Mr. Tillman for his wrongful conviction.

And as I think we're all aware the Legislature has already taken final action on that and for that reason, the Senate proposed an Amendment striking Section 2 in its entirety.

So, Mr. Speaker, the Clerk has LCO Number 7723, previously designated as Senate Amendment "A". I'd ask the Clerk to call and I be allowed to summarize.

SPEAKER AMANN:

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Will the Clerk please call LCO Number 7723, which was previously designated Senate Amendment "A".

CLERK:

LCO Number 7723, Senate "A", offered by Senator Williams, et al.

SPEAKER AMANN:

The Representative has asked leave to summarize the Amendment. Is there objection on summarization? Is there objection? Hearing none, Sir, you may summarize.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. This Amendment strikes Section 2 of the file copy, which I indicated was a different method for compensating Mr. Tillman. The Legislature has already taken action on that issue and I would urge adoption of this Amendment.

SPEAKER AMANN:

Will you remark further on the Amendment before us? Will you remark further? If not, let me try your minds. All in favor, please signify by saying Aye.

REPRESENTATIVES:

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Aye.

SPEAKER AMANN:

Opposed, Nay. The Ayes have it. The Amendment
is adopted. Care to remark further on the Bill before
us? Representative Dyson.

REP. DYSON: (94th)

Thank you, Mr. Speaker. Mr. Speaker, the Clerk
has an Amendment, LCO Number 7999. I would like to
have him call it and I be allowed to summarize it, Mr.
Speaker.

SPEAKER AMANN:

Would the Clerk please call LCO Number 7999,
which will be designated House Amendment Schedule "A".

CLERK:

LCO Number 7999, House "A", offered by
Representative Dyson.

SPEAKER AMANN:

Representative Dyson.

REP. DYSON: (94th)

Thank you, Mr. Speaker. Mr. Speaker, I want to
bring to the attention of this Chamber an item, an

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issue that I think is most appropriate to be debated
at this point in time.

The Bill that you have before us and the
Amendment that I'm offering, is an Amendment that
deals with the abolition of the death penalty, death
penalty being abolished, and in its place, the
sentence to be commuted to a sentence of life
imprisonment without the possibility of release. Mr.
Speaker, I'd like to move the adoption of the
Amendment.

SPEAKER AMANN:

The question is on adoption. Representative
Christ. For what purpose do you rise, Sir?

REP. CHRIST: (11th)

Point of Order, Mr. Speaker.

SPEAKER AMANN:

Representative Christ. For what purpose do you
rise, Sir? Sorry.

REP. CHRIST: (11th)

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Mr. Speaker, I don't believe that this Amendment is germane to the underlying Bill and therefore not properly before us.

SPEAKER AMANN:

Thank you, Representative. The Chamber will stand at ease for a moment.

(CHAMBER AT EASE)

The Chamber will come back to order. Ladies and gentlemen, the question before this Chamber is whether the Amendment LCO Number 7999 is germane to the underlying Bill.

To determine if this Amendment actually is germane to the Bill, we have to actually must examine provisions of Mason's Manual, and in particular we looked at Section 402, Subsection 2, Section 402, Subsection 3, and 402 and Subsection 4.

If you look at Subsection 2 of Section 402, requires an amendment that has to be relevant, appropriate and also in a natural and real logical sequence to really have the subject matter of the original proposal. Subsection 3 of that Section 402

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requires that the subject of the amendment relate to the same subject as the original proposal.

Then in Subsection 4 of Section 402, requires that an amendment be germane to the main purpose of the original proposal.

After examination of these provisions of Mason's Manual, basically reveals that a common theme that is the theme that is the subject of both the amendment and the underlying bill and must be the same in that the relationship with that bill and the amendment must be reasonably related.

So we have to now examine, I guess at that point, the amendment and the bill itself. The underlying Bill requires an advisory commission on wrongful convictions to study compensation procedures for individuals who have been wrongfully convicted.

On the other hand, the amount of House Amendment Schedule "A", if we do pass that, would eliminate the death penalty. While both the Bill and the Amendment deal with criminal justice system, the subject of each

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proposal is different. And that is to say that the subject of these two measures is not the same.

In the case of the Bill, the subject is compensation for individuals that are wrongfully convicted, and in the case of the Amendment, the subject changing penalty of capital offenses, the mere fact that both deal with different aspects of our criminal justice system does not satisfy the requirements that an amendment must be reasonably related to that subject.

Subject matter, I should say, of the underlying bill, the amendment that is neither relevant, appropriate or in a natural sequence of the subject matter of the bill.

So consequently, the Amendment is not germane.
Representative Christ, your point of order is well
taken, and the Amendment is ruled out of order.

Will you remark further on the Bill before us?
Will you remark further? If not, staff and guests please come to the Well of the House. Members, please take your seats. And the machine will be opened.

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CLERK:

The House of Representatives is voting by Roll
Call. Members to the Chamber. The House is voting by
Roll Call. Members to the Chamber.

DEPUTY SPEAKER GODFREY:

Have all the Members voted? Have all the Members
voted? If all the Members have voted, is your vote
properly recorded? If so, the machine will be locked
and the Clerk will take the tally. And the Clerk will
announce the tally.

CLERK:

Senate Bill Number 1456, as amended by Senate
Amendment Schedule "A", in concurrence with the
Senate.

Total Number Voting	147
Necessary for Passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER GODFREY:

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The Bill is passed in concurrence with the
Senate. Will the Clerk please call Calendar Number
280.

CLERK:

On Page 28, Calendar Number 280, Substitute for
House Bill Number 6955, AN ACT CONCERNING OPERATOR'S
LICENSES BEARING A SCHOOL BUS ENDORSEMENT, Favorable
Report of the Committee on Judiciary.

DEPUTY SPEAKER GODFREY:

The Distinguished Chairman of the Education
Committee, Representative Fleischmann.

REP. FLEISCHMANN: (18th)

Thank you, Mr. Speaker. Mr. Speaker, I move
acceptance of the Joint Committee's Favorable Report
and passage of the Bill.

DEPUTY SPEAKER GODFREY:

The question is on acceptance and passage. Will
you explain the Bill please, Sir?

REP. FLEISCHMANN: (18th)

Thank you, Mr. Speaker. Mr. Speaker, this
measure that we now have before us is one that

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reh

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CHIEF STATE'S ATTY KEVIN KANE: Requiring people to secure their weapons in a manner to prevent them from falling into the wrong hands, yes.

SEN. GOMES: And that protects a child in the house. That protects the next person that gun is used on in a crime and so on and so forth.

Maybe we're in the wrong area, where you should be talking about securing weapons in the household, making that a law. Thank you.

REP. LAWLOR: Further questions? If not, thank you, Kevin. So we're about 20 minutes over the first hour of testimony.

So we'll switch now to the public portion, and we'll try and weave in the state and local officials as we go. So next are James Tillman and Attorney Smyth.

ATTY. GERARD SMYTH: Good afternoon, Representative SB1456 Lawlor and Members of the Committee. I am Attorney Gerard Smyth.

And I'm privileged to represent James Calvin Tillman, who I accompany here today to address the Committee in regard to House Bill 6673 which would provide compensation to James in the amount of \$5M dollars for the 18 years, four months, and 11 days that he spent incarcerated for a sexual assault and kidnapping that he did not commit.

I think you're all familiar with Mr. Tillman and his story. He was sentenced to 45 years in prison in 1989, and in June 2006, DNA results

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exonerated him and confirmed that he was not the perpetrator of the crime.

And in July of last year, all of the convictions were vacated, and the charges against him were dismissed.

We are here seeking just compensation for him for the years and the life experiences that he lost, for the mental torture that he endured, for the fact that for all those years he had no career.

He currently does not own a home. He has no family because he was locked up from age 26 to age 45.

We're seeking compensation for the physical injury and the poor medical care that he received while he was in prison, for the loss of income and future earnings, for the impact that his incarceration had on his family relationships, and particularly his mother, who visited him every week for 18 years.

And for essentially the loss of the prime years of his life. I will be addressing the particulars of the bill, and there is another bill, Senate Bill 1456 which I will comment on.

But before I do that, I would like for James to address the Committee himself and share his experience and his thoughts about this.

JAMES TILLMAN: Good evening, everyone. Thank you for having me here. Most of you all know my

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story. I've been locked up since 1988. And I was accused of rape and kidnapping.

And I felt like I was kidnapped. I felt like I was raped, and you know, it's difficult going into a prison system with a rape conviction. I mean, it's just difficult going into prison, period.

But when you go into prison, and you go into prison with a rape conviction, everyone looks at you like you're scum, like you're a piece of garbage.

I mean, you already have society looking at you like you're a piece of garbage, but when you get into the prison system, you also have to deal with that also.

But I endured. I filed [inaudible]. I filed everything, and few people helped me. Legal teams helped me. I had lawyers and some of everybody. And then I found my spiritual part. I found Christ, at which time I started praying.

And I started asking God, why did you let this happen to me? Why? Why am I in here for something I didn't do? I said I'm not trying to prove to everybody else, but you know and you're God.

And at which time I just broke down at the door of my cell. I started crying. I was tired of their food. I was tired of living in the cell. I was tired of just CO's telling me what to do. I was tired of being felt on.

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I was tired of just not being able to look at the sky, look through the windows when I want or go to MacDonal'd's or Burger King. I was just tired of everything. I was just tired of walking down the hallway with the brass, wearing that brown outfit.

I was tired of smelling my cellie after he used the bathroom. I had to smell that. I was just sick and tired of everything, and I just broke down at my door after 18 years.

And I didn't have nothing left, at which time, the next day, after I cried and after I just broke down, people were looking at me like I was crazy. But I just didn't have nothing left.

And then the next day, the Innocent Project came up to the prison. And when they came up to the prison, they said, James we've come to help you. And when they said, we came to help you, I said well, thank you, Lord, and I just broke down crying because I felt that I was forgotten about.

I felt that no one ever believed in me. I thought that I was going to die in prison because I was never going to plead guilty to a crime I didn't commit, and that's what I told the judge when I first got sentenced.

And I said I'll do 100 years before I plead guilty to this crime, and then the guy said, well, you should just give him 100 years. But

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instead, they gave me 45 years. They gave me half of that.

And I really thought I wasn't getting out. I really thought that I was just going to spend the rest of my life in prison, being convicted of the crime or rape that I didn't commit.

And at which time, I had enough strength, even though I didn't know whether I was going home or not, that gave me strength knowing that somebody cared enough to want to come help me and to want to just look into my case and just see whether I was the one, or whether I wasn't the one.

And it was the same public defenders that I had. It was like this public defender is helping me get out, at which time I just told him, it wasn't me. And I know they believed me. And they said they couldn't find the evidence.

And I said, well why couldn't you find the evidence? They said, well we just can't find it. And I said, well, you know, my case is still ongoing, so why isn't the evidence still secure? Why isn't it still where it's supposed to be because I'm still fighting? So why isn't anything available?

And then they finally located the evidence which they sent to a lab, and I got out, and here I am in front of you, everyone, now, and I have my freedom back. And I want to thank you.

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REP. LAWLOR: Is there anything else you want to say, Mr. Smyth?

ATTY. GERARD SMYTH: Yes, please, Representative Lawlor. House Bill 6673 would, as I said, would award James \$5 million, and I would like to make it clear that James' case in terms of the injuries and the damages that he has suffered is not worth \$5 million dollars. It's worth considerably more than \$5 million dollars.

And certainly, I think we'd all agree that no amount of money could repay him for what has been taken from him. But in cases like this that are litigated around the country, the typical award is in the range of a million dollars per year for each year of wrongful incarceration.

So we believe that James' case is worth at least \$18 million dollars. So the \$5 million dollars that is proposed by Representative Green, Representative McCrory and other cosponsors of the bill, is, in fact, a compromise or a settlement of any and all claims that James has against the State of Connecticut and its officials and against the City of Hartford and the Hartford police.

James does have the option to bring lawsuits. He does have council ready and able to file lawsuits if this method of compensating him is not ultimately passed by the Legislature.

But he really does not want to do that. He doesn't want to litigate. It would take years

of litigation to bring lawsuits and have a trial.

And no doubt, there would be appeals and considerable delays in his receiving any compensation at all. He's been at liberty now for almost a year.

He currently works two jobs. He works at CREC, where he is an office assistant and also has been trained to do public speaking and is doing motivational speaking with students in both elementary, high school, middle school, college level students, and he intends to do some more of that.

And he also has a part-time job at a printing shop on Press Street in Hartford. But for a man who has been out of society for all those years, he shouldn't have to work two jobs to barely get by.

He really should be compensated so that he and his family can live a comfortable life. I would submit that he shouldn't have to work at all, although I think he wants to make a positive out of this negative that has occurred to him and does intend to continue with CREC.

But litigating this and having to wait years to receive compensation is not in his interest and I would submit, is really not in the State of Connecticut's interest either because the state does have considerable exposure here if lawsuits have to be filed.

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And the \$5 million dollar amount that is proposed in full settlement of all of these claims is really quite reasonable under the circumstances.

In terms of why should the Legislature compensate James, I think all of us have a moral obligation to do so. It was our legal institutions and our legal system that produced the grave injustice that was done to him.

And I think we as a society have a moral obligation to rectify that, and as I've said, I think this is not a no-fault case. It's not simply a case of an honest mistaken identification.

There were other misfeasance or malfeasance that took place having to do with police handling of the case, the State Health Services Department Laboratory's failure to test all of the biological evidence which I submit if they had done would have eliminated Mr. Tillman at the time as the perpetrator of the offense.

And so, there is fault and legal liability here, and so what's proposed, I think, is a reasonable resolution to the situation.

James is willing to waive any and all claims as is specified in the bill in return for a lump sum payment of \$5 million dollars.

There is precedent in Connecticut for compensating a wrongfully incarcerated person by a special act of the Legislature.

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Attorney Rick Taft was kind enough to do some research and found a special act in 1947 and a special act in 1951 when the Legislature provided monetary compensation to individuals who had been wrongfully incarcerated.

And so, I would request your support for this bill. There is another bill before you, that's Senate Bill 1456. This proposes to give James an initial payment of \$500,000 followed by unspecified annual payments for life based upon proceeds from the investment of the \$3.5 million dollars in unclaimed lottery prize money from February of 2007.

We appreciate the thought that went into coming up with that proposal, but frankly, it is not the method by which James would like to be compensated.

I think you can appreciate that after over 18 years of being completely controlled by the state, by the Department of Corrections, being told everything that he could or couldn't do, being told when to eat and when to sleep and where to live and not being able to make any decisions for himself.

That he would just like to get the money that he justly deserves and be able to control it himself, not to have it controlled further for the remainder of his life, use it wisely.

He does have financial investors, financial advisors who are working, will work with him, and I think it's the simplest and cleanest way to do it.

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reh

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So we strongly favor House Bill 6673. I don't want to rule out the possibility that he would waive his claims as would be required under House Bill 1456, but there are many shortcomings in that bill the way it's currently drafted.

And I did submit written testimony with some suggestions as to how that bill could be improved, which would include exempting the proceeds under that bill from the state income tax which is part of House Bill 6673.

But that language is not included in House Bill 1456. Also, specification of some type of a formula for determining what the amount of the annual payment would be.

Also a guarantee of a minimum of 25 years of annual payments for James or his heirs, if he doesn't survive that long. And then in addition, it's not clear under that bill as to who would own the \$3 million dollars that would be invested.

And we think that if that's the route that the Legislature chooses to go, then that money should be owned by James, not owned by the state, and he just gets the proceeds from the investment.

But as I say, we really strongly urge your support for House Bill 6673. Just a couple of other brief points to point out, \$5 million dollars in a lump sum sounds like a large amount of money.

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It is a large amount of money. On the other hand, James has earned it the hard way, and I want you to be aware that it is the position of IRS that any portion of that \$5 million dollars which is not designated as damages for physical injury would be considered income and would be taxable for federal purposes.

Now certainly, if that turns out to be the case, James, with a lot of help with lawyers who are working with him, would challenge the IRS, but it's hard to fight the IRS, and we have no guarantee that he wouldn't have to pay income tax on almost the whole \$5 million dollars, which at 35% is \$1.75 million dollars.

So considering that possible implication, the \$5 million dollar amount net to him would be less than it appears.

I do want you to know that all of the attorneys who are working with [Gap in testimony. Changing from Tape 1B to Tape 2A.]

--are working pro bono. That would include myself and attorneys at McCarter and English in Hartford as well as attorneys at Cochran, Newfeld, and Scheck in New York.

So there are no attorney fees that would be paid out of that \$5 million dollar settlement. And lastly, I think you will all recall that the Governor proposed a lump sum nontaxable payment to James of \$500,000.

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reh

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I just want you to know that the Governor is aware that James, with my assistance, is seeking more than the \$500,000 dollars.

Based on conversations with I have had with the Governor's legal council and based upon the Governor's public pronouncements since she made her very nice gesture, and I think very classy apology to James at the start of the session.

Those pronouncements indicate that she is amenable to a larger amount and I think would go along with whatever the Legislature decides. So I would respectfully request your support for House Bill 6673. Thank you.

REP. LAWLOR: Thank you, too, both of you. And I think, I know I speak on behalf of every member of this Committee and probably beyond that, every member of the Legislature. And I'm sure many of them will speak on their own behalf as well.

As the Governor said in her speech to open the Legislative Session, Mr. Tillman, we're very sorry for what happened to you. We are very sorry. And part of our obligation is to make it right for you.

And part of our obligation is to make sure this doesn't happen to anyone else, at least to the extent that we can control these things.

So that's our job. And I think there are so many questions members of this Committee would like to ask you today, not just about how

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you're doing and what your plans are for the future.

But I'm sure there are many insights we could obtain about our state's prison system and our state's criminal justice system from you because you're one of the few people who, unfortunately, has had a very up-close and personal look at the system and the way it runs.

And maybe in the future, today is not the day for that, that you can help us understand what's good and what's wrong with our prison system. Because it is always a focus of our attention, and I guess we have to assume that you were probably not the only innocent person in prison.

It's very difficult for us to know how many people were wrongfully convicted, either through negligence or just simple mistake.

But it is something we're very, very interested in. So I just felt it is very important to say those things to you at the outset.

And for Attorney Smyth, I just have some technical questions because many of my colleagues have asked these questions, so this is our best opportunity to have a full discussion about it.

You mentioned that Mr. Tillman has some legal remedies available to him. In other words, the Legislature could, just on its own, decide to grant some money. But beyond that, he could

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bring a lawsuit on his own behalf and claim that the state and others potentially owe him money for misconduct or negligence or whatever it is.

And so apart from the fact that he actually did spend 18+ years in prison, and apart from the fact that he actually is innocent, what other claims are there? And what can you tell us about those claims so we can help evaluate this request for \$5 million dollars?

ATTY. GERARD SMYTH: Okay. The attorneys who are representing him in connection with the civil claims are attorneys at the firm of Cochran, Newfeld, and Scheck in New York, and they do this type of litigation around the country.

They have filed notice with the City of Hartford of claims, federal claims, federal 1983 actions against the Hartford Police Department and individual police officers which could be brought in federal court.

Similar actions could be brought against state officials, particularly officials of the state, what was then the State Health Services Department Laboratory that did the serological, forensic testing in this case.

And potentially against other state officials that could be developed through depositions and further investigation. On Mr. Tillman's behalf, the law firm has also filed a notice of claim in the State Claims Commission.

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So that would be a state claim. That seeks permission to sue the state and specifically the claim is against the Health Services Department Laboratory for their failure to test all of the biological evidence that was available to them at the time of the trial.

And then he also has council locally who is prepared to file a medical malpractice suit against the University of Connecticut Health Center and physicians there because while James was incarcerated, he ruptured his Achilles tendon which required surgery to repair the tendon.

And because of the manner in which the surgery was done and the postoperative care was administered, he suffered infection and considerable pain and some disability for almost a year before he was finally returned to the health center and was operated on again when they removed some foreign object from his ankle, and that cured the problem as of that point. So those are all legal actions that he could bring.

REP. LAWLOR: So you don't represent him on any of those individual actions?

ATTY. GERARD SMYTH: No. My role in representing James is limited to representing him here before the Legislature in connection with the bills that propose to give him compensation.

REP. LAWLOR: But I think you did just represent, and just to be clear about this, that whatever the merits of those various claims are, the

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claim against the health center for the medical procedures performed on Mr. Tillman after he was injured, the claims against, I guess it's the Health Department, for the mix up?

ATTY. GERARD SMYTH: At the time, it was called the Health Services Department Laboratory. I believe it's now the Department of Public Health, and it's their laboratory which is just off of Elm Street right here in Hartford.

It was not the State Forensic Laboratory under the Department of Public Safety. It was the Health Department.

REP. LAWLOR: But at least, there's an allegation that a mistake was made in the analysis done by the Health Services Department or whatever.

ATTY. GERARD SMYTH: In fact, the primary biological stain which was the seminal stain on the crotch of the victim's pantyhose was not tested.

REP. LAWLOR: But it ultimately was tested? Is that correct?

ATTY. GERARD SMYTH: It ultimately was tested, and the DNA test results confirm that the source of that seminal stain was not Mr. Tillman and was not the woman's husband. It was an unknown third party who was the perpetrator of this offense.

REP. LAWLOR: And so that mistake, there's a potential claim that that mistake was result of negligence and in part, led to Mr. Tillman

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being convicted during his trial for the sexual assault.

ATTY. GERARD SMYTH: Absolutely.

REP. LAWLOR: And then there's an additional claim you mentioned against the Hartford Police Department. And could you briefly--

ATTY. GERARD SMYTH: There are allegations with regard to the way that individual officers conducted the investigation.

And specifically with regard to a statement that one of the officers attributed to Mr. Tillman and testified to at trial which Mr. Tillman denies making and which he couldn't possibly have made knowing that he's not the perpetrator of the offense.

And there are also allegations with regard to the way the police treated the alibi witnesses and potentially manipulated the alibi witnesses.

REP. LAWLOR: So the claim there again, we don't have the ability to determine whether they're legitimate, whether they're true or not, but there at least is an allegation that the police officers involved in the investigation of the case said that Mr. Tillman made some incriminating statements, testified to that effect.

And there appears to be a fair amount of evidence that he could not have made those statements.

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But would it be fair to say that in the context of the trial, the eyewitness identification of Mr. Tillman's photograph, the victim's identification, there was some question about whether or not his blood type was consistent with what was found on the bodily fluids on the victim, right?

ATTY. GERARD SMYTH: Correct.

REP. LAWLOR: Which we subsequently know that it wasn't his fluid, but at the time, based on the testing they did, it could have been.

ATTY. GERARD SMYTH: Based on the extent of the testing they did, one of two stains could have been him, but they never tested the primary stain, which we know was not him.

And the other stain, which we knew at the time of the trial, was not him, they attributed to the woman's husband, and we now know that was from the perpetrator also.

REP. LAWLOR: And the attribution to the woman's husband, that was made by the state in prosecuting the case?

ATTY. GERARD SMYTH: That was the state's way of trying to explain that there were seminal stains on the victim's dress that were not consistent with Mr. Tillman.

And so their theory was they were consistent with the woman's husband from whom she was estranged and from whom she had last had sexual

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relations a month before. And there was never any testimony that she was wearing that dress at the time.

REP. LAWLOR: So your statement is that taken together, that if, in fact, it is true that police officers testified to something that actually never happened, Mr. Tillman's statement, that was very incriminating in the context of the evidence that was presented in the trial?

ATTY. GERARD SMYTH: Yes.

REP. LAWLOR: You could argue that it corroborated the photo identification at--

ATTY. GERARD SMYTH: Right and the serological testimony.

REP. LAWLOR: So if the photo ID was a mistake, and the other two pieces of evidence were the result of somebody's negligence or willful misconduct, then all of that taken together certainly could have led to his conviction.

ATTY. GERARD SMYTH: Did lead to his conviction, and I would submit that had all of the serological testing been done at the time, that it would've eliminated Mr. Tillman because it was consistent with the seminal stains on the victim's dress.

And we know that there was a single perpetrator, and we know that her last sexual experience prior to the rape was a month before.

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REP. LAWLOR: And with regard to the medical procedure done once Mr. Tillman was an inmate, there's an allegation at least that there was medical malpractice involved and the physician involved was an employee of the state at the UConn Medical Center. Is that correct?

ATTY. GERARD SMYTH: Correct. Yes.

REP. LAWLOR: And do you know whether, has an expert been retained who has concluded there was in fact medical malpractice.

ATTY. GERARD SMYTH: James is represented by Attorney Mark Solak of Hartford, and he has consulted with an orthopedic physician and with an orthopedic nurse, and he has expert opinion to the effect that there was both medical and nursing malpractice.

REP. LAWLOR: So these are the potential claims above and beyond the simple fact, and I shouldn't say simple fact, but the basic fact that Mr. Tillman served 18 years and was innocent.

So in addition to that, there may be some negligence or willful misconduct, and there certainly may be some medical malpractice.

And so it's your testimony here today that the \$5 million dollar figure you've suggested, if that's what the Legislature approved, Mr. Tillman would waive any claims and relinquish any claims he has against any of those individuals.

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ATTY. GERARD SMYTH: Against the state or any of the state's agents which would include the City of Hartford and employees of the city. And yes, so--

REP. LAWLOR: And UConn Health Center?

ATTY. GERARD SMYTH: And UConn Health Center. And I should also point out in terms of the claims, there was another very important piece of biological evidence that no one ever had tested.

And that was a rape kit that was done at the hospital where the woman was treated following the assault. Not the police, not the prosecutor, not the defense attorney ever asked for that rape kit to be tested.

REP. LAWLOR: All right. I forgot what the question was.

ATTY. GERARD SMYTH: At any rate, the language of the bill clearly sets out that he would have to sign a release and waive any and all claims which he is prepared to do.

REP. LAWLOR: And Mr. Tillman, apart from what I said before, I just wanted to emphasize one other thing. I just wanted to say thank you because you've continued to reach out to people and to preach to people from your very unique perspective here.

And I know you've given hope to quite a few people about a variety of things. And more

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than most people, you understand what it's like not to give up hope when all hope is apparently lost.

And I just wanted to thank you for doing that because it's an inspiration certainly to me and to a lot of people. It's a very important thing, I think, so. I know Senator Kissel has a question.

SEN. KISSEL: Thank you very much, Chairman Lawlor. First off, Attorney Smyth, you are a wonderful Chief Public Defender. I'm honored that you're one of my constituents and really an outstanding advocate for Mr. Tillman.

And Mr. Tillman, I would like to also be on record with Chairman Lawlor and the other folks in the Legislature to express my personal apologies for what took place.

You know, your story sort of says, there but for the grace of God go I, or anyone in this room or anyone in this state. And in the Bible, in the Book of Job, I think one of the earliest books in the Bible, no matter what you believe as far as religion, it is a tale that bad things can happen to a good person.

And sometimes we forget that. Sometimes we think that the system sort of always works or that, you know justice always prevails. And that is simply not the case.

On the merits of your claims as articulated, and for the record, Attorney Smyth met with me

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personally the very beginning of this session.
We went over this.

I don't want to speak specifically for the leadership of the Senate Republican Caucus, but I can tell you that I have discussed at length with my leadership the \$5 million dollar offer, and it was not badly received whatsoever.

In fact, many people feel very strongly that the state will rue the day that it does not accept your very generous offer to settle these claims.

And the way I look at it is that there are two grounds, the one that was very meticulously outlined by Chairman Lawlor that surely, if we were looking at this from an exposure perspective. Let's just say the state stood in the shoes of an insurer, I think there's tremendous amount of exposure should all of these matters go to trial.

It might be piecemeal. It might take a long time. There might be high hurdles to overcome to make the claim. But certainly, you have an extraordinarily sympathetic case.

And so no matter what the merits are, should a jury in any of these instances find that there is the requisite element of evidence to make your claim, then I think once they get to the damages, I think it's not unrealistic to think that on the wrongful incarceration alone for 18 years, that the award would be in excess of \$5 million dollars.

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And when you add on top of that the other problems regarding what occurred to you and the medical malpractice, I think that the exposure, while it may be no guarantee that you'd be ultimately successful on all of these separate suits, certainly that window, should you be able to get past that, I think the exposure to the various parties is huge.

That's a purely, sort of, scientific view of it, very dispassionate. But I think what's more compelling is, Attorney Smyth the way you phrased it, is that there's a moral obligation that we as a state have.

And when I've talked to Attorney Carlow and some other folks, Deborah Delcote Sullivan, Dana, other folks, Susan Storey from the Public Defender's Office, I would like to see that initiative move forward.

And I think we, as a state, especially with the advent of DNA evidence and other technology racing forward, that we need to go back and continue to make sure that we don't have folks behind bars wrongfully.

But also, I think, let me put it to you this way, there are a lot of projects and a lot of programs that this state funds that I don't often agree with. And we spend millions of dollars.

In particular, building edifices with the hope that someone will come or something will happen, and it's sort of a wing and a prayer.

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And sometimes it works, and sometimes it doesn't.

But in your instance, it is so abundantly clear to me that we need to do something to help you, to compensate you for this, that it strikes me that we have this strong moral obligation.

And I bet you if I went back to my constituents and I asked them person, by person, by person, I think I would be very hard pressed to find anyone that doesn't want to try to help you out.

So what's the magic number? Is it \$500,000? I think the Governor does deserve an awful lot of credit. I think that was a good faith thing to build into her budget address.

But it makes me feel even better about, not that I need to, but I feel very good that Governor Rell is open to amenable to do whatever the Legislature decides to do.

So this will come down to the final budget negotiations that hopefully get resolved by June 6. But I can say, from the folks in the Senate on my side of the aisle, I think we're with you.

And I think most of my colleagues that I've spoken to so far, and I have no doubt that my constituents are as well, and I actually think, and I'll conclude with this, I think you're being more than fair with the State of Connecticut by stating here publicly today that

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you would accept a lump sum \$5 million dollar settlement to resolve all of these claims.

And so, you do have my apologies. God forbid this happens any further. We need to make sure that nobody is behind bars inappropriately, unjustly, and I strongly support the Public Defender's office for continuing their efforts.

But I wanted to add as a part of the record, and I really appreciate how you've taken this. You don't hold it against, you know, you don't have any umbrage. The few times that I've seen you, you know, you're a good guy.

And I don't know if a lot of people could've gone through everything that you've gone through and be taking it as well as you are. So thank you, sir.

REP. LAWLOR: Further questions? Senator Meyer, then Senator Gomes.

SEN. MEYER: Mr. Tillman, I just want to let you know that your case and your name came up before this Committee earlier today in the context of a different bill.

We had a bill to expand the use of DNA evidence, to take it early, at the time somebody's arrested. And you have made a contribution by your unfortunate case to our DNA dialogue and our DNA legislation. And I just want to recognize that and thank you for it.

JAMES TILLMAN: Thank you.

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SEN. GOMES: First of all, I want to offer an apology for the State of Connecticut, but I feel like without the payment that you are requesting, the apology would be just a hollow attempt to justify what has been done to you.

I have to admit I have talked to you a few times, and I have to admit you have a strong constitution which I wouldn't have had if I'd been incarcerated for 18 years for something I hadn't done.

I listened to you testify on how you felt day by day, sitting in a cell, behind a locked door where you can't move no more than six or seven feet with a cellmate that you didn't pick.

It isn't like being married to somebody you picked to somebody you'd be married to, and you have to live with that for 45 years. That's what you were facing at that time.

I feel like your request from the state is a request that is very miniscule in comparison to what you've lost. And I see where I agree with Senator Kissel on many things that he spoke about.

And I don't see a big hurdle from the Senate in approving the amount of money that you're requesting. And if they do, I don't know of anybody at this time that would not react to the situation.

Only thing I differ from Senator Kissel is I hope there will not be any piecemeal or any

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hurdles. I want it to be commensurated with the negative attitude to incarcerate you which I conclude did not take long. Therefore, making restitution to you I hope does not take long.

And I want to say a person like you who has a positive attitude that is trying to turn what they would say take a lemon and turn it into lemonade because you're out there trying to do something that's constructive for other people who would probably wind up in the same situation that you were in.

I wish you all the luck in the world. I wish you a long life because you deserve it to make up for those 18 years that somebody took away from you. When somebody takes away the best years of your life, there is nothing that anybody can compensate you for.

Five million dollars, to me, if I were incarcerated for 18 years, I would consider a drop in the bucket. And if somebody were to offer me \$10 million dollars, you go and do 18 years, and I'll give you \$10 million dollars when you get out, I wouldn't trade 18 years for \$10 million dollars.

So I hope you get what's coming to you, and that's what you requested. I thank you for distaining.

REP. LAWLOR: Representative Green.

REP. GREEN: Thank you, Mr. Chair. Thank you, Mr. Tillman, Mr. Smyth for coming. First, let me

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offer my personal apologies and apologies, if I can, from the state for the humiliation and the injustices that you endured for 18+ years.

I want to thank you also because there are a number of individuals, and they may not be innocent in jail, but our system, our criminal justice system, from arrests to the course, to corrections, is a system that I think is flawed.

And I think your case proves a number of the flaws involved. Senator Meyers mentioned the DNA bill that we talked about recently, about those individuals who are being arrested, whether they should submit to DNA.

I would suspect that you did submit to DNA when you were arrested and charged, and it got you 45 years. So I don't know if that is the way to go without someone being convicted where we need to do DNA.

I do have a couple of questions, and then I do want to make a statement. For Mr. Smyth, I just want to be clear because I think a lot of people may not understand, various individuals who are working with Mr. Tillman and their motive, and I think you mentioned there would be no attorney fees paid for your services.

Can you be clear with me and on record as to whether or not there might be other financial compensation that are made to you for any other reasons?

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ATTY. GERARD SMYTH: No. I expect nothing, and I would accept nothing.

REP. GREEN: Thank you. I just want to be clear because some people might think that the public statement that you made, that there might be something else down the road. So I thank you for that clarification.

Mr. Tillman, I think earlier attorney from the Public Defender, Brian Carlow, mentioned that in 2002, you might have applied for the Innocence Project in 2002, and I think he said he got to it in 2006. Do you recall when you applied for the Innocence Project.

JAMES TILLMAN: I'm not sure on the exact year, but it could have been then. I'm not 100% sure of the year.

ATTY. GERARD SMYTH: The project didn't come into existence until late 2004 or mid 2005.

JAMES TILLMAN: I think I wrote to the Innocent Project. I was writing to numerous Innocent Projects. I think I wrote to the Innocent Project in New York. I think I wrote to the Innocent Project, the New England Innocent Project. I think throughout my time, I think I was writing to various Innocent Projects.

REP. GREEN: All right. Thank you. Because I think that sort of indicates why we need to look at having an Innocent Project here in Connecticut so we can examine that. Because probably at that time when you began, we did not have one.

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So you began to write. Now you also stated, Mr. Tillman, that you have gone through a number of other legal procedures, Habeas and other terms that you use.

And tell me, was there any positive indication that any state agency or that any judge, at any time did the state indicate to you that they were going to take a serious review of your case and that you'd get a chance to sort of reargue why you think your case should be reopened?

How open was the state when you wrote us about the Habeas and those kinds of things? Did we respond?

REP. GREEN: Well, I got response from my Habeas, and I got response from my appeals that I had filed. But I don't know, it just wasn't the same type of, you know, I mean just so much law, and you know, you don't have a lot of means in the jail, you know, to, you know, now you have computers now, you know, where prosecutors can go in the computer, and you know, and they can shepherdize.

And then you've got guys with the old worn-out law books and trying, you know, to show you different things, and then, you know, you don't know who to really trust, and you know, you don't know whether they're working with you or against you.

So, you know, it just seemed to me that it was like all down hill. Every letter I got was a disappointment. You know, every phone call was

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a disappointment. It was just disappointment after disappointment.

And the only hope that I had seen throughout my incarceration was when we first did the first DNA testing in I think it was 1990, right? Around 1990. Yeah, that's when I really felt that I was going to go home.

REP. GREEN: So I guess along with the, and I like the way you describe your feelings of being kidnapped and raped by what the state had done, in all of the requests that you made, your sense was that they were not very positive. They were not very encouraging.

And I think that we need to understand that even through your innocence and trying to make it even made aware, because I think that's the other thing that I think is some concern about the criminal justice system.

It is easy for us to label those offenders who have been convicted, that they have no validation or their cases or their concerns are not valid.

And I think it should bring to our attention that we need to take a closer look at more than just procedures, more than just responses. That sometimes just a form letter, but maybe look at the human factor of this.

So again, I think you've already heard how much we admire your stamina, your constitution, your character to bring you here today to speak before us.

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A couple more questions. My belief is justice delayed is justice denied. I cannot, am very uncomfortable, with any further delay of awarding you any compensation of at least \$5 million dollars.

I think we here in the Legislature have procedures. We do not have to wait to June 7. We do not have to wait to budget. Special acts, we can do special things. We can do emergency certifications.

Legislatively, I think that we can move this along as fast or as slow as we want. And to make it any further delay, to me, would just be more of the injustice.

Senator Kissel mentioned for justice to prevail. For justice to prevail is at least \$5 million dollars. Senator Gomes talked about what are our lives worth for 18 years, 18+ years. I don't know if any of us could put a figure on it.

And the conversations that I've had with my colleagues, I've tried not to encourage the debate of the amount of money because who can put a value on their lives.

A couple more questions to Attorney Smyth. Were all of the lawsuits that possibly could happen, are some of those in various stages of being filed, or are all the lawsuits being contingent on what happens here with this particular legislature?

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ATTY. GERARD SMYTH: A Notice of Claim as is required by statute was filed with the City of Hartford. A notice was filed in the State Claims Commission of the claims against the state because the Statute of Limitations is one year from the date that the claim accrues which would, in James' case, be when the charges were dismissed last July.

And nothing has been filed as yet in the medical malpractice suit. So the only things that have been filed are things that were required in order to preserve his rights. But full lawsuits have not been filed as yet.

REP. GREEN: Okay. It's interesting because yesterday we had at hearing some issues about certain kinds of claims and time limits with the Judicial Review Council, and the gentleman mentioned about 15 to 16 percent of cases are not even reviewed based on timetables.

So I just wanted to make sure that we don't get caught up in that because, again, I am very concerned. I do not believe that Mr. Tillman should go through any other legal processes.

I can't imagine what it would be like to be presented before Connecticut's legal system, whatever form that may take, to expect justice after receiving 45 years and doing 18+ years. I think it's insulting, to be honest, to have you have to do that.

ATTY. GERARD SMYTH: I would just add the clock is running on his claims, and so unless this is

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resolved in this session of the Legislature, those suits would be filed immediately.

REP. GREEN: Okay. Thank you for mentioning that. I'm not going to ask the other questions. There might be some other people that may want to make comments.

But I also want to say that you've been out now since last July, I believe, or June or July of last year. So it has been almost a year, and I think, again, as a state, we've known for now almost a year of this situation, a little before that that we actually did know about it.

So it has been a year. So I think if anybody were to think that we're rushing or that we need to take more time to resolve this, you have been out since June, almost a year, so I think people have to realize that.

And I think people have to also realize that you have a full-time job, a part-time job. You want to reach out to our young people by becoming a community speaker, a public speaker, to share your story.

So again, I would just, in getting to know you and getting to meet you, there again are some comments that some people may feel like is this some idea to get rich? Far from it. You've been out for a year. You're working. You've been denied the prime of your life.

And I would think that sometimes, we as a Legislature, the Governor mentioned in her opening speech, let's be bold. We know what

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the issues are. Let's just do this. Thank you, Mr. Tillman.

REP. LAWLOR: Further questions. Representative O'Neill.

REP. O'NEILL: Yes. Thank you. I have a few questions, mostly for Mr. Smyth, I think. Who represented Mr. Tillman at the criminal trial. Let me preface that by saying I've heard, I've seen Mr. Tillman on TV or you or the Governor's speech and so forth.

But I, when this was all going on, didn't really follow the case, that is to say the exoneration, that closely. So some of these questions may seem very basic. Was it the Public Defender's Office who represented him?

ATTY. GERARD SMYTH: At the time of his original conviction in 1989?

REP. O'NEILL: Yes.

ATTY. GERARD SMYTH: Yes, he was represented by an attorney from the Hartford Judicial District Public Defender's Office.

REP. O'NEILL: Okay. And all of these things that relate to the lack of evidence being properly processed, were they raised as issues at trial, do you know?

ATTY. GERARD SMYTH: Well, to some extent they were. For example, the defense brought in a witness from the Forensic Laboratory, the Department of Public Safety Forensic Laboratory, to testify

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that the Health Services Department Laboratory should have tested the crotch of the pantyhose.

And also brought in a witness from either Hartford or St. Francis hospital to testify that a rape kit existed, but that it had not been tested.

What the defense attorney didn't do was independently request that testing be done himself. So I think there are lots of people who could have done the testing that wasn't done.

REP. O'NEILL: Because part of it is that, I'm wonder, since you are the head of the Public Defender's Office, would this have been considered some sort of a failure on the part of that attorney or is it just normal, don't ask for the kit because you're not really sure what it's going to reveal, so let sleeping dogs lie?

ATTY. GERARD SMYTH: Well, I wasn't the head of the Public Defender's Office at that time, but I mean, there's no conflict, I don't think. But the lawyers who are handling the civil claims have not as yet indicated that they would pursue any kind of a legal malpractice claim against the defense attorney.

I think that that possibility remains because of the fact that any and all of the things that the laboratory didn't do could've been done by the defense.

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REP. O'NEILL: And I assume all of these things were raised in the Habeas, well, were these things raised in the Habeas Corpus petition where you usually would allege ineffective assistance of council in a Habeas.

JAMES TILLMAN: Yes. I raised it on a Habeas in Rockville Court, and I had legal aide people, I raised the issue on DNA testing, and I also raised the issue at the beginning of the trial.

REP. O'NEILL: And I take it that the judge in the Habeas came to the conclusion that that wasn't sufficient basis for finding that there was ineffective assistance of council? I assume the Habeas was denied.

JAMES TILLMAN: The Habeas was denied, but the testing of the evidence was not denied. They did run a test on evidence, but they didn't run, like he said, I think they didn't run a complete test on the evidence.

ATTY. GERARD SMYTH: There was an attempt to do DNA testing during one of the Habeas Corpus proceedings, and the physical evidence was sent to a commercial DNA laboratory. And the results of that DNA resting were inconclusive, the reason being that the technology had not advanced to the point that it had by 2005, I'm sorry by 2006 when the testing was done, and they were able to do a DNA profile and conclude that it was not Mr. Tillman.

So no DNA was used at the time of the trial to procure the conviction. No DNA testing was

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done at that time, but they did use serology, which is determining blood type from a person's bodily fluids, and that's wherein the omissions occurred.

It is also not clear as to whether or not the rape kit could have been analyzed for DNA. There is some suggestion that it could have.

REP. O'NEILL: And the issue, or the question, about the police manipulating alibi witnesses or attributing statements to Mr. Tillman that he didn't make but which would've been apparently known to the perpetrator. So if he made a statement, then it makes him look very guilty because only the perpetrator would've known that.

Are these allegations that you're making or has someone finally acknowledged that in fact there was police misconduct of some sort.

ATTY. GERARD SMYTH: These are the allegations that would be included in a complaint if the federal civil rights action were filed by the law firm that's handling that. Excuse me, they have reviewed the police reports, the testimony, the transcript of the trial.

And based upon their analysis of the totality of the evidence, it is their conclusion that a single statement attributed to Mr. Tillman could not have been made by him.

REP. O'NEILL: Okay. So, I got it, I think. Basically, someone else analyzed the information with an eye towards possibly

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bringing a lawsuit, and they think they've got a good basis based on that. Okay.

ATTY. GERARD SMYTH: And we know that Mr. Tillman was not the perpetrator so--

REP. O'NEILL: And now we know that he couldn't have because he wasn't the perpetrator. Therefore, that statement had to have been false, kind of backed into it that way.

You indicated that in typical cases like this around the country, the amount of damages that are awarded is \$1 million dollars per year. Is there a like, you know, unjustly convicted persons reporter or innocence project? You know, some sort of collection of this information? Where does that come from?

ATTY. GERARD SMYTH: That figure comes from the Innocence Project, Barry Scheck and Peter Newfeld's Innocence Project at Cardozo's School of Law in New York which is the original Innocence Project.

And they also have a law firm with attorneys on staff who do litigation in this area, and that is what they have indicated to me is the typical award that they have received in cases that have been litigated.

REP. O'NEILL: And those are cases that have actually been tried? Or are those settlements or--?

ATTY. GERARD SMYTH: That's after trial.

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REP. O'NEILL: Yeah. Settlement would be less. And the \$5 million, it's a nice, round number. It doesn't divide easily by three. So it's not a number a lawyer would usually come up with. So how was that arrived at?

ATTY. GERARD SMYTH: Well, I actually did a lengthy memorandum. And I don't know if you received a copy of it, Representative O'Neill, but I do have copies here which I can provide to anyone who would like it.

But the way it breaks down is \$2 million, \$250,000 would be for loss of liberty and enjoyment of life which at 18 years is \$125,000 per year.

Loss of income \$1 million, and there is another person, Attorney Tim Fisher, is going to testify later on this afternoon who can comment on that figure, which I think is an accurate figure in terms of the minimum amount of income that James lost as a result of his incarceration.

And \$250,000 for loss of future earnings, \$500,000 for physical injury which would be the medical malpractice suit which we believe, if tried, would be worth somewhere between \$750,000 and \$1 million.

Then \$1 million for mental pain and suffering psychological injury and loss of familial relationships.

REP. O'NEILL: Okay. I think that is it. Thank you.

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REP. LAWLOR: Are there further questions. If not, oh, I'm sorry. Representative Hamzy.

REP. HAMZY: Thanks, Chairman. Mr. Tillman, thank you for being here. Gerry, good seeing you again.

ATTY. GERARD SMYTH: Likewise, Thank you.

REP. HAMZY: As I am thinking about this, it seems like there has been only one positive thing that has happened in this case in that you were finally released, Mr. Tillman.

And certainly, I think we're all happy about that and the fact that you were exonerated. I just have a couple questions.

With regard to the testimony that you presented, you cited potential claims against the Hartford Police Department, the State of Connecticut through the UConn Health Center as well as the predecessor to the Public Health Services Department.

As I understand it, Mr. Tillman, you were represented by the Public Defender's Office during this trial, during the original trial?

JAMES TILLMAN: Yes.

REP. HAMZY: Was there any thought given to bringing a claim against the Public Defender's Office for possible malpractice claim?

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REP. LAWLOR: Mr. Tillman, if you could just pull the microphone over so we can hear.

JAMES TILLMAN: Well, I thought of that, right. And I just, you know, a lot of times, there's a lot of legal stuff going on, and you know, I'm not a gift lawyer because if I was, I probably would've been out a long time ago.

But, you know, I followed a lead, and you know, a lot of lawyers gave me good advice, and you know, the people that are in my corner now are trustworthy. And you know, I take their advice on stuff to see where it leads.

And if I feel that someone has done something unjustly, then I feel they deserve, you know, to have their day just like someone felt I was unjustly, that I did something, and they gave me a day.

And you know, there are things we have to look into, you know, if we proceed.

ATTY. GERARD SMYTH: I don't think a legal malpractice claim against his defense attorney has been ruled out by the attorneys who would litigate it. We haven't specifically identified that as a claim, but I think it is something that really does have to be further evaluated. And of course, that would be a claim against the state also.

REP. HAMZY: I understand that. A couple things, and this is directed towards you, Gerry. With regard to these types of claims, I have been on this Committee, it is my 12th year in the

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Committee, and I don't remember any similar claim being made in the 12 years that I've been here. Has a similar [Gap in testimony. Changing from Tape 2A to Tape 2B.]

ATTY. GERARD SMYTH: --I don't recall either anyone being here, seeking compensation by special act of the Legislature. There was an exoneration of an individual by the name of Larry Miller following a Habeas Corpus proceeding.

And he did not seek compensation through the Legislature. He brought a lawsuit, and my understanding is he settled that lawsuit.

REP. HAMZY: With regard to these types of claims, I mean, I would assume, and I don't have any statistics, and I'm not sure if you would either.

But that there are a lot of people who go through the legal system who are tried by a jury of their peers and who are convicted of crimes that they did not commit.

With regard to precedent, how would those claims be handled going forward? I mean, would it be on a case-by-case basis? Would it be, you know, I'm--

ATTY. GERARD SMYTH: Senate Bill 1456, which is also before you, in Section 1, assigns responsibility to the Commission on Wrongful Convictions to do a report and make a recommendation to the General Assembly as to how individuals who are wrongfully convicted

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and exonerated should be compensated in the future.

And that could be by means of some type of compensation law that moving forward would cover people in situations like Mr. Tillman's. But of course, in his case, no such statute existed at the time of his exoneration. No such statute exists now.

And to require him to wait until the next session to see if something is passed would just further delay him receiving any compensation.

And so, I think he has to be treated uniquely as an individual case that took place when there was no provision expressly in the law for dealing with these situations.

But I do think the proposal to have the Wrongful Convictions Advisory Commissions make recommendations is a very good one.

REP. HAMZY: And you had mentioned in your testimony that none of the firms that are assisting Mr. Tillman with his claim before the General Assembly are being paid, that they're all working on a pro bono basis.

ATTY. GERARD SMYTH: Correct.

REP. HAMZY: Of the, let's say it is \$5 million dollars that is awarded, how much is owed to attorneys or legal fees that have been incurred?

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ATTY. GERARD SMYTH: Nothing that I'm aware of.

REP. LAWLOR: I point out that, Mr. Tillman, you are talking to your lawyer, which you have every right to do, but right in front of you is a live microphone. And you're broadcasting too, so. So if you want. Because these are--

JAMES TILLMAN: No. My attorney that I have for my injury, he had said that whatever, you know, that whatever comes out of this, that he wouldn't want anything, you know, if we put everything together, and he said that he wouldn't want anything.

ATTY. GERARD SMYTH: He has a contingency fee arrangement with the medical malpractice lawyer who has told me and James that he would not seek any fee if it is resolved legislatively.

REP. HAMZY: Thank you and thank you, Mr. Tillman.

JAMES TILLMAN: You're welcome.

REP. LAWLOR: Are there further questions? Senator Gomes.

SEN. GOMES: Now that they got to talking about the case a little bit, what happened or what is the status of the original alleged victim of this crime? Where is she? Has there been any contact made with her?

ATTY. GERARD SMYTH: Well, my understanding is that once the DNA test results were obtained, she was contacted by a Hartford State's Attorney's Office and informed, and she was in accord with

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taking whatever action was appropriate given the fact that the results showed that Mr. Tillman had not committed the offense.

So beyond that, we have had no contact with her. I think her privacy is being protected appropriately.

SEN. GOMES: Has a person or the alleged criminal that really performed this act, has he been apprehended?

ATTY. GERARD SMYTH: No. My understanding also is that the results of the DNA tests were put into the DNA databank, and it was run against whatever was in the bank, and there was no hit. So the person who did it is not apparently in the DNA databank.

SEN. GOMES: And the witness in the original trial, was that the victim herself or was that--

ATTY. GERARD SMYTH: Yes.

SEN. GOMES: It was the victim. One last question. Is there a Statute of Limitations that the alleged criminal performed the act, is there a Statute of Limitations at apprehending him?

ATTY. GERARD SMYTH: Well, normally, they have a five-year Statute of Limitations on a felony, but I don't know what the changes have been on sexual assault and whether there's a longer, the kidnapping charge actually, thank you James, is a Class A felony, and so that may still be prosecutable.

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SEN. GOMES: I guess one of these lawyers have to answer that.

ATTY. GERARD SMYTH: Yeah.

SEN. GOMES: Thank you, anyhow.

ATTY. GERARD SMYTH: I think that's a correct statement. I think there may not be a Statute of Limitations on the Class A felony, but I believe the Statute of Limitations in 1989, 1989, was it?

JAMES TILLMAN: Yeah, 89, 88.

ATTY. GERARD SMYTH: 1988 was probably five years for all of these. So on a sexual assault, the criminal Statute of Limitations has expired long ago.

REP. LAWLOR: Senator Coleman.

SEN. COLEMAN: Thank you, Mr. Chairman. Good afternoon, Mr. Tillman and Attorney Smyth.

JAMES TILLMAN: Good afternoon, Senator.

SEN. COLEMAN: I just wanted to take the brief opportunity to also express my apologies and my regrets that you had to endure the experience that you had to endure.

It undoubtedly has taken a great toll on you physically, psychologically, emotionally, and in many ways that perhaps we can't even imagine.

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And it just causes me to want to express that often times in the General Assembly, we worry about whether the public perceives us as being tough enough on crime.

But your case, I think, serves as a great reminder of many things, including that as we go about making criminal justice policy, that we ought to do so with great caution and that we ought to make every effort to balance the interests of the prosecution with the interests of the defense within the realm of the criminal justice proceedings.

I just wanted to commend you concerning your courage and your fortitude concerning all of the circumstances that you went through and also wanted to take a minute just to commend Attorney Smyth.

Many of my colleagues may not know that when I came out of law school, I worked in the Public Defender's system, and I had the good pleasure and good fortune to work in the same office as Attorney Smyth, and I, for a long time, have admired his principled advocacy and his talent and his ability.

It is no surprise at all to me that he is doing what he is doing at this moment, and he is doing what he has done throughout his career. As I said, I am a great admirer.

And the system ought to greatly appreciate all the contributions that you've made, Gerry, throughout your career in this criminal justice arena. So I just want to thank you for what

you've done. Also wanted to commend Mr. Tillman and his backbone, his mother, who I know, for all that she's contributed.

And I hope that not only the bill before us is successful within this process but that what you've had to experience will also be something that we, as policy makers, bear in mind whenever we're proceeding to make criminal justice public policy, and that your experience will just not be something that would be in vain. Thank you for being here.

JAMES TILLMAN: Thank you.

ATTY. GERARD SMYTH: And thank you, Senator. I appreciate your comments. Thank you.

REP. LAWLOR: Just to clarify, since people do watch these proceedings, and we're answering technical questions sometimes. On the Statute of Limitations issue, it is pointed out to me that we did in 2000 make a change for sexual assault cases based upon DNA evidence.

I believe notwithstanding that change that the Statute probably has expired for the 1988 case. However, what it does say is there is a 20-year Statute of Limitations for sexual assault prosecutions based on DNA evidence, and it is retroactive.

But under the Skakel case, I believe that where the Statute of Limitations had already expired, it can't be reactivated sort of, so it is an open question. But it appears as though the

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Statute of Limitations has expired for the sexual assault.

But who knows, maybe that's another case for the Supreme Case to decide, if a person is identified and prosecuted. So, there you go.

ATTY. GERARD SMYTH: Thank you.

REP. LAWLOR: Any further questions? Senator Roraback.

SEN. RORABACK: Thank you, Mr. Chairman. Just one question. There's talk of the possibility of malpractice on the part of the Public Defender's Office in the initial trial. And recognizing if that were so, that would require a claim against the state.

The question, the answer to which I don't know, would like to know, does the state carry malpractice insurance for its public defenders? So would it be a claim against an insurance carrier or would it be self-insured? How does that work?

ATTY. GERARD SMYTH: The answer is yes, the Division of Public Defender Services does have a malpractice insurance policy for its attorneys. I'm not certain what the status of that policy was. It's a claims-made policy, so--

SEN. RORABACK: So we'd be making a claim against today's, whatever policy is in effect today?

ATTY. GERARD SMYTH: I think so.

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SEN. RORABACK: And do you know what the limits of that policy may be?

ATTY. GERARD SMYTH: I don't know. Deborah Sullivan would be the person to--

SEN. RORABACK: Okay. To me, that seems like something that's germane or salient as this Committee deliberates because I don't think any of us would believe that Mr. Tillman isn't entitled to just compensation.

But if there's a way for that compensation to come from an insurance company, that's not a bad thing. And from Mr. Tillman's perspective, I would imagine as long as the compensation is his due makes its way to him, it's probably not of moment to him who bears the cost.

ATTY. GERARD SMYTH: I think, you know, if you want to go that direction, that means litigation because I don't think the insurance company is going to ante up money in June.

SEN. RORABACK: Well, okay, but--

ATTY. GERARD SMYTH: And his principle claim really, in my view, the strongest claim is against the Health Services Department Laboratory.

SEN. RORABACK: Sure, fair enough. I wouldn't want to deny the insurance company the opportunity to do the right thing. Thank you, Mr. Chairman.

JAMES TILLMAN: Excuse me.

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REP. LAWLOR: Mr. Tillman.

JAMES TILLMAN: Does the state have an insurance company?

SEN. RORABACK: Evidently they do. I just didn't know. That's why I was asking the question--

JAMES TILLMAN: Oh, I thought it was the same insurance company throughout the state.

SEN. RORABACK: I guess they have an insurance company that they might ask them for some money, and they might just give us some because if we demonstrated to them that--

JAMES TILLMAN: So the state has different insurance companies?

SEN. RORABACK: Evidently.

JAMES TILLMAN: Oh, okay.

SEN. RORABACK: Anyway, thank you.

JAMES TILLMAN: You're welcome.

REP. FOX: Thank you, Senator Roraback. Are there any other questions from Members of the Committee? Hearing none, thank you. Thank you, Mr. Smyth, Mr. Tillman.

JAMES TILLMAN: Thank you everyone.

REP. FOX: Next is Hartford Mayor Eddie Perez. No one is here for Mayor Perez? Then Mayor Fabrizi.

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REP. O'NEILL: Okay. So that even if someone tried to file off the VIN number they would still, but the serial number off of the pistol that they would, you would be able to retrieve that number unless, obviously, unless they went to an enormous amount of trouble, but just a simple, with a simple little file wouldn't really get it?

CHIEF JAMES STRILLACCI: That's correct. There are forensic processes to recover those. It may slow the identification of the gun, but it would not prevent it.

REP. O'NEILL: Okay.

REP. LAWLOR: Thank you, Mr. Chairman. Are there further questions? If not, thanks again, Chief.

CHIEF JAMES STRILLACCI: Thank you, Mr. Chairman.

REP. LAWLOR: It's back to the final person on the state list is Representative McCrory?

REP. MCCRORY: Good afternoon Members of the Judiciary Committee, Chairman, Ranking Members. SB 1456
SB 1240
Of course, you know my name is Representative McCrory and I'm here to testify on a couple of bills. Particular House Bill 6673 and, also I don't want to read each number, but every bill that deals with firearms, lost [inaudible] firearms.

Where shall I start? Get you the scenario. Sunday afternoon, March Madness, about

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reality. You heard from police chiefs throughout the state, you heard from citizens.

Everyone is dealing with this problem. What are we going to do? Do we have the political will? I would hope so. Remember, I believe in the constitutional right to bear arms. We should have that. We need to protect the good guys, but we also should handle those who do wrong.

They come in, they open their trunks, they sell the weapons, and they go back to where they came from. We know the stories. Just yesterday on the news a wife purchased nine guns for her husband who's a convicted felon and gave it to him. Do we have any authority over that right now? I don't think so.

So, you know, I'll just leave that alone, that's my piece on that. Hopefully, it'll get through here. I'll do everything I can to help.

Secondly, oh real quickly on Senate Bill 1240, AN ACT CONCERNING EYEWITNESS IDENTIFICATION. Real quick, I've been here three years. Everybody still thinks I'm [inaudible]. Okay. That's a problem.

So whatever we can do to fix those who committed crimes and making sure the right person is incarcerated, I'm all for it. And that leads me to my other support of House Bill 6673.

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I'm going to be brief. I sat here for about an hour and a half and listened to the discussion about should Mr. Tillman [inaudible] be compensated or should he have to wait?

Who's responsible, should the insurance companies pay for it? This is my take on it. The insurance companies [inaudible] put him in jail. The State of Connecticut putting James Tillman in jail. The State of Connecticut is responsible.

I do not support House Bill 1456, at least Section 2, where it says to finance this ill will should come from individuals who play the lottery \$3.5 million.

What if we had \$10 million in the lottery will we discuss [inaudible] getting \$10 million? People that played the lottery didn't put them in jail. The State of Connecticut did this.

We have a half a billion-dollar surplus. We spend money around here like there's no tomorrow. Sometimes we can't even count for it all the time and we're going to argue over \$3.5 million or \$5 million. What price would you pay to stay in jail for 18 years?

Honestly, think about it. How much would someone have to pay you to stay in jail for 18 years? And not only that come to find out I got [inaudible].

I pulled my Achilles, just like James Tillman pulled his Achilles, and do you know how

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painful that is, being incarcerated hobbling around.

I think it was about six months they didn't even diagnose it correctly for 18 years. And we're arguing over \$3.5 million. Well we should ration them out a little bit right here and then give them a little bit over investment? No, no, no. No, that's not right.

It's over and done with. They gave him an opportunity to get back on his feet. He shouldn't have to go to another courthouse in the State of Connecticut.

As a matter of fact, he shouldn't have to argue his point anymore. You know what, the entire country is watching the State of Connecticut right now.

I got phone calls from people all over the country in regards to this case. They're watching the state of, the progressive State of Connecticut how are they going to correct a wrong.

And we waited this long. People are talking about wait. It's been almost a year. I think we should be ashamed of ourselves. I think we should move this as fast as we possibly can to show that we understand that we made an error and now we're going to fix that error.

Think about the impact that was made on his community when he was unjustly accused of the crime and thrown in jail. Think about all the other kids that live in that community who knew

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James and knew he wasn't that type of individual.

What kind of impact that had on them for the rest of their lives and what relationship that they will have with law enforcement. Now think about the impact, our decision to fairly compensate this man will have on at least his family and his dignity and his ability to move forward.

I rest my case. I don't have nothing else to say.

REP. LAWLOR: Thank you very much. Are there any questions? Thanks. Oh, I'm sorry, Senator Gomes has a question. Hold on. Time out. [Gap in testimony. Changing from Tape 3A to 3B.]

SEN. GOMES: --I'm one of those guys they call Ernie Hewett Doug all the time, so he gets on me about that. I told him one of you has to grow hair. That [inaudible] part, you know.

But, you represent Hartford am I right?

REP. MCCRORY: Capital City.

SEN. GOMES: And your statistics are known here because your police chief evidently he testified here?

REP. MCCRORY: I think he spoke earlier, yes.

SEN. GOMES: But, I just want to thank you for testifying because we needed somebody. We've

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been within the confines of this building. I work within the confines of this building that testify on what you have said about Tillman there should be no hesitation on that.

I'm glad to see that you're here on that issue, and I'm very sorry to hear about the 17-year-old that got killed in Hartford, and like you said, where do these guns come from. We don't have gun shops in our city.

Even like you said some of the dope, where does the dope come from. It comes from with out the city, so, but they both present a problem to us.

And then when kids can get guns that readily as you stated \$200 to buy a gun and a kid of 12 years old knows that it takes \$200 to buy a gun, and probably if you would have asked him where he probably could have told you where, you know.

REP. MCCRORY: Oh, yes, of course.

SEN. GOMES: So I want to thank you for coming to testify. I don't have to ask you the specific questions because of the fact that you know what happens in your city, as well as what happens in mine. I want to thank you anyhow.

REP. MCCRORY: All right.

SEN. GOMES: Thank you.

REP. LAWLOR: Are there further questions? If not, thank you. Next is Moira Buckley. Is Attorney

JOINT
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PART 25
7797-8125

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TESTIMONY OF GERARD A. SMYTH, ESQ.
ON BEHALF OF JAMES C. TILLMAN CONCERNING SB 1456,
*AN ACT CONCERNING THE COMPENSATION OF PERSONS WRONGFULLY
CONVICTED AND INCARCERATED*

Judiciary Committee
April 10, 2007

Section (2) of SB 1456 would compensate James C. Tillman for his wrongful conviction in 1989 of kidnapping and sexual assault, and for the 18 years, 4 months and 11 days that he was incarcerated for a crime that he did not commit. In June 2006 DNA test results exonerated Mr. Tillman, leading to his release from prison and the dismissal of all of his charges.

SB 1456 proposes to pay Mr. Tillman an initial payment of \$500,000, followed by annual payments of an unspecified amount for the remainder of his life. The initial payment would come from unclaimed lottery prize funds of \$3.5 million, and the annual payments would be funded by investing the balance of the unclaimed prize funds in a manner to ensure annual payments to Mr. Tillman for life.

Another bill currently before this committee, HB 6673, *An Act Compensating James C. Tillman for his Wrongful Conviction and Incarceration* proposes alternatively to award Mr. Tillman a one time, lump sum payment of \$5 million in full satisfaction of any and all claims that Mr. Tillman has against the State of Connecticut and any of its agents, employees or officials. In separate testimony submitted today, I have urged the Committee's support for HB 6673 and expressed Mr. Tillman's preference for a single, lump sum payment of \$5 million, which would enable him, in consultation with his financial advisors, to make his own decisions as to how to best use and invest his money. After 18 years of having his entire life controlled by others, he understandably would like to be in full control of his own life and decisions.

If, however, it is the judgment of this Committee and the General Assembly that Mr. Tillman should be compensated in accordance with the method set forth in SB 1456, then I would request the following amendments to the bill as written:

1. *Addition of the language that is included in HB 6673, which provides that "[a]ny payment received pursuant to this act shall be exempt from the tax imposed under chapter 229 of the general statutes". This would exempt such payments from state income tax.*
2. *Specification of a formula for determining the amount of the annual payment to Mr. Tillman, including a minimum annual amount. As written the bill provides for annual payments for life, but is silent as to how the amount of the payments would be determined by the State Treasurer. In order for Mr. Tillman to make an informed decision as to whether to accept such payments*

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in full satisfaction of his claims against the state and its agents, as provided in Sec. 2(b), he would have to know what the approximate amount of the annual payments would be.

3. *Guarantee of a minimum of 25 years of annual payments to Mr. Tillman or his heirs, executors or assigns.* This would address the inequity that would arise if Mr. Tillman were to die before he received fair compensation for the injury that he has suffered.

In conclusion, I would respectfully urge the Judiciary Committee's support for fair and just compensation for James Tillman by a special act of the legislature, preferably in accordance with HB 6673. Thank you.

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**TESTIMONY OF
BRIAN S. CARLOW
DEPUTY CHIEF PUBLIC DEFENDER**

JUDICIARY COMMITTEE PUBLIC HEARING

April 10, 2007

Senate Bill No. 1456, An Act Concerning the Compensation of Persons Wrongfully Convicted and Incarcerated and House Bill No. 6673, An Act Compensating James C. Tillman for His Wrongful Conviction and Incarceration.

The Office of Chief Public Defender strongly supports Senate Bill No. 1456 (Raised) An Act Concerning the Compensation of Persons Wrongfully Convicted and Incarcerated and House Bill No. 6673, An Act Compensating James C. Tillman for His Wrongful Conviction and Incarceration. While the Office of Chief Public Defender certainly supports an award of monetary compensation for Mr. Tillman and any other person in a similar situation, we do not represent Mr. Tillman with respect to any claims for compensation he may make and have not advocated for him on this issue. Accordingly, we take no position as to what "just" compensation would be. At the same time, however, we do have some insight into the issues that a wrongly incarcerated person may face upon release and we ask that strong consideration be given to providing such a person with support services that are necessary to ease the transition from an incarcerated life to freedom.

While this is not an exhaustive list, some issues for which supportive services should be provided are:

1. housing;
2. job training;
3. living expenses;
4. health benefits; and,
5. a support network, including, mental health counseling and treatment.

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Some of these may not be necessary in every case, but they should be available in every case if such supportive services are needed. As Mr. Tillman's case has demonstrated, even if there is to be monetary compensation in a case, it may well be that such compensation is not immediately forthcoming. Thus, you could have a person released after an extended wrongful incarceration who has no money, no job, no health benefits and no support network. These are needs that should be immediately addressed to help ensure a successful and smooth transition as possible.

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TESTIMONY OF GERARD A. SMYTH, ESQ.
ON BEHALF OF JAMES C. TILLMAN
IN SUPPORT OF HB 6673,
*AN ACT COMPENSATING JAMES C. TILLMAN FOR HIS WRONGFUL
CONVICTION AND INCARCERATION*

SB1456

Judiciary Committee
April 10, 2007

On behalf of my client, James C. Tillman, I respectfully request the Committee's support for HB 6673, which would compensate Mr. Tillman in the amount of \$5 million for his wrongful conviction in 1989 of kidnapping and sexual assault, and for the 18 years, 4 months and 11 days that he was incarcerated for a crime that he did not commit. In June 2006 DNA test results exonerated Mr. Tillman, leading to his release from prison and the dismissal of all of his charges.

The amount of compensation proposed is both fair and reasonable under the circumstances, and the bill provides that this amount would be in full settlement of any and all claims that Mr. Tillman has against the state or any of its agents, its employees or its officials. This would include claims against the State and several of its employees for actions contributing to his wrongful conviction, against the City of Hartford and members of the Hartford Police Department, and against the UConn Health Center and its medical personnel for malpractice in its treatment of Mr. Tillman for an injury that he sustained while incarcerated.

One of the most significant of Mr. Tillman's legal claims involves the failure of the State Health Department laboratory to test all of the biological evidence that was available to them at the time of Mr. Tillman's trial and the misleading expert testimony that it provided to the jury based upon inadequate forensic testing. If all of the available evidence had been tested in 1989, Mr. Tillman would have been excluded as the perpetrator of the crime, as he subsequently was by DNA evidence.

The damages to which the State and its agents are exposed are far in excess of the \$5 million amount proposed in the bill. In cases of wrongful conviction and incarceration that have been litigated around the country, the typical award is in the range of \$1 million per year, for each year of wrongful imprisonment. In Mr. Tillman's case this would amount to at least \$18 million. While no amount of monetary compensation can ever repay him for the years of his life that he lost, Mr. Tillman is desirous of settling these claims and moving forward with his life, rather than litigate.

The losses endured by Mr. Tillman as a result of this injustice are considerable, and include the loss of liberty and enjoyment of life from age 26 to 45, the prime years of his life. He also endured mental suffering, psychological damage, and physical injury. In addition, he lost wages, has had his future earning capacity significantly reduced, and suffered a loss of familial relationships, including the fact that he was prevented from marrying, raising a family and owning a home.

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In addition to whatever legal liability that the State has, I believe that we as a society have a moral obligation to compensate Mr. Tillman, since it was our own court system and legal institutions that produced this grave injustice. It is now approaching one year since Mr. Tillman was released, and he has received nothing to compensate him for what he lost. In order to live and make ends meet, Mr. Tillman has been working 2 jobs for most of the time since his release. If he is forced to litigate his claims, it will only result in a further delay in his receiving any monetary compensation for what he has suffered. Considerable time has passed since his release and he continues to struggle financially.

While the amount proposed is substantial, you should also be aware that it is the position of the IRS that any compensation that Mr. Tillman or others like him receives for anything other than "physical injury" is income for federal tax purposes and would be taxable at a rate of 35%. While Mr. Tillman would contest this with the IRS, there is a strong possibility that he would have to pay federal income taxes on the award of up to \$1.75 million. The bill does provide that the award would be exempt for state income tax purposes.

In addition to HB 6673, there is another bill before the committee which proposes an alternative method for compensating Mr. Tillman. SB 1456 provides for an initial payment to Mr. Tillman of \$500,000, followed by annual payments of an unspecified amount for the duration of his life. I have submitted separate testimony in regard to SB 1456. However, as between the two methods of compensation, Mr. Tillman strongly prefers the one time, lump sum payment provided by HB 6673, which would enable him, in consultation with his financial advisors, to make his own decisions as to how to invest and use his money. After 18 years of having his entire life controlled by others, he understandably would like to be in full control of his own life and decisions.

While passage of this bill is in Mr. Tillman's interest, it would also be in the State of Connecticut's best interest. The cost of litigation alone would be considerable to the state, as well as the amount of any potential jury verdict. I would respectfully urge you to rectify the wrong that was done to Mr. Tillman by voting to approve this bill. Thank you.