STATE OF CONNECTICUT

COMMISSION ON THE DEATH PENALTY

Study Pursuant to Public Act No. 01-151 of the Imposition of the Death Penalty in Connecticut

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INTRODUCTION

On July 6, 2001, the General Assembly created "a Commission on the Death Penalty to study the imposition of the death penalty in this state." Public Act No. 01-151 (the "Death Penalty Act")[1], Section 4(a). The Death Penalty Act required the Commission to study fourteen aspects of the death penalty and, by January 8, 2003, "report its findings and recommendations, including any recommendations for legislation and appropriations, to the General Assembly." Commission members were appointed and began their work in December of 2001. This is the Commission's report on its study of Connecticut's death penalty.

This Introduction provides: (1) an overview of how the Commission performed its study; and (2) a summary of some of the major findings and recommendations that the Commission makes in this report.

HOW THE STUDY WAS PERFORMED

The Commission prepared its report in a manner that responded to the statutory mission set forth in the Death Penalty Act. The Commission focused on Connecticut's experience with the death penalty from 1973 to the present, and attempted to seek as much information as possible with limited available resources. No funding was appropriated for purposes of conducting the study.

Statutory Mission

The Commission framed its study upon the fourteen topics set forth in the Death Penalty Act. These are:

(1) An examination of whether the administration of the death penalty in this state comports with constitutional principles and requirements of fairness, justice, equality and due process;

(2) An examination and comparison of the financial costs to the state of imposing a death sentence and of imposing a sentence to life imprisonment without the possibility of release;

(3) An examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based on the race, ethnicity, gender, religion, sexual orientation, age or socioeconomic status of the defendant or the victim;

(4) An examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based on the judicial district in which the offense occurred;

[1] A copy of the Death Penalty Act is included in Appendix A.

(5) An examination of the training and experience of prosecuting officials and defense counsel involved in capital cases at the trial and appellate and post-conviction levels;

(6) An examination of the process for appellate and post-conviction review of death sentences;

(7) An examination of the delay in attaining appellate and post-conviction review of death sentences, the delay between imposition of the death sentence and the actual execution of such sentence, and the reasons for such delays;

(8) An examination of procedures for the granting of a reprieve, stay of execution or commutation from the death penalty;

(9) An examination of the extent to which the Governor is authorized to grant a reprieve or stay of execution from the death penalty and whether the Governor should be granted that authority;

(10) An examination of safeguards that are currently in place or that should be put in place to ensure that innocent persons are not executed;

(11) An examination of the extent to which the victim impact statement authorized by section 53a-46d of the general statutes affects the sentence imposed upon a defendant convicted of a capital felony;

(12) A recommendation regarding the financial resources required by the Judicial Branch, Division of Criminal Justice, Division of Public Defender Services, Department of Correction and Board of Pardons to ensure that there is no unnecessary delay in the prosecution, defense and appeal of capital cases;

(13) An examination and review of any studies by other states and the federal government on the administration of the death penalty; and

(14) An examination of the emotional and financial effects that the delay between the imposition of the death sentence and the actual execution of such sentence has on the family of a murder victim.

The Commission agreed that the Death Penalty Act did not ask members of the Commission to recommend whether death as a punishment for crime is proper or should be abolished. Accordingly, the Commission confined its analysis to the fourteen topics set forth in the statute. This report expresses no opinion as to whether Connecticut should have a death penalty.

A Connecticut Focus

The Death Penalty Act required the Commission to perform a review of the death penalty "in this state." During the course of the Commission's review (which included review of other jurisdictions' death penalty reports pursuant to Topic 13), it became apparent that Connecticut's relationship with the death penalty is unique in the national landscape.

Many issues raised in other jurisdictions' death penalty studies were not implicated in the Commission's review of Connecticut's death penalty. For example, a top-notch capital defense unit within the Office of the Chief Public Defender represents indigent defendants in most Connecticut capital cases; it is recognized nationally for its ability to provide high quality defense counsel. Connecticut does not elect its judges, prosecutors or police officers, eliminating a factor discussed in other studies of the death penalty. The Commission did not evaluate whether Connecticut's system is better or worse than other states' systems, and the Commission expresses no such opinion in this report. The differences in Connecticut's system, however, made clear that observations about the death penalty in other states or on a national level could not automatically serve as a substitute for "findings and recommendations" about the death penalty in Connecticut.

The number of death prosecutions in Connecticut also shaped the Commission's review. Connecticut has executed no one since 1960, and has only seven people on death row. The death penalty is imposed infrequently in Connecticut. These facts differentiate Connecticut from states such as Florida, Illinois, Texas or Virginia, where many have been executed and hundreds of defendants occupy death row.

While the small number of death row cases made the Commission's review less burdensome in some ways, it added uncertainty in others. It was difficult for the Commission to extrapolate trends or reach conclusions on issues such as racial disparity in death penalty prosecutions, for example, given the relatively few total cases involved.

Time Frame

Capital punishment has been a part of the Connecticut legal scene since colonial times.[2] Through the years, the death penalty has changed in Connecticut, not only in terms of methods of execution, but also in terms of what crimes the death penalty punished.

The Commission confined its study of Connecticut's death penalty to the period between 1973 and the present. The United States Supreme Court's 1972 decision in *Furman v. Georgia* ruled that death penalty statutes that failed to set forth standards for when the death penalty could be imposed were unconstitutionally arbitrary. The United States Supreme Court expressly held Connecticut's former death penalty statute unconstitutional in *Delgado v. Connecticut*.[3] As a result, executions stopped in the United States after *Furman*, as states rewrote their death penalty statutes to conform to

[2] The history of the death penalty in Connecticut was discussed in the Connecticut Supreme Court's decision in *State v. Webb*, 238 Conn. 389, 403 (1996).
[3] Delgado v. Connecticut, 408 U.S. 940 (1972)

the requirements set forth in the Supreme Court's opinion in that case. In response to *Furman* and *Delgado*, Connecticut enacted in 1973 the earliest version of the current death penalty statute.

The Commission concluded that it would not be helpful to the General Assembly for the Commission to study the death penalty in the era prior to the modification of Connecticut's statute to conform to *Furman*. Accordingly, this report covers the time period between 1973 to the present.

Method of Review

The Commission received no State funding, and the Death Penalty Act did not provide for any formal staffing. All of the Commission's members served as volunteers. To gather information for this report, the Commission held a series of public meetings tied to one or more of the fourteen statutory topics. The Commission is grateful to its former Chairman, Kevin J. O'Connor, who developed a work plan for these meetings on the Commission's review. At Commission meetings, members of the public, representatives of state agencies, and experts on death penalty issues were invited to speak and offer information relevant to the topic or topics discussed at the meeting. The Commission is also grateful to all of the individuals who spoke before the Commission.

In addition, the Commission toured various facilities important to the Commission's review, including the State's death row at the Northern Correctional Institution in Somers; the execution chamber at Osborn Correctional Institution in Somers; and the State Police Forensics Laboratory in Meriden. The Commission would like to extend special thanks to John A. Armstrong, Commissioner of the Department of Corrections, and Elaine M. Pagliaro, Acting Director of the Department of Public Safety's Forensic Science Laboratory for making their facilities available for review.

Finally, the Commission benefited enormously from the input of members of the public and representatives of public interest groups – some of whom attended almost every Commission meeting.

Taking into account the information received during its review, the Commission posted a draft of its report on the Internet for public comment and review. A hearing was held on December 16, 2002, to receive public comment on the Commission's draft report. The Commission received many written and oral comments from members of the public. Following the public hearing, the Commission met again on December 20, 2002, to review the public comments and to finalize the recommendations included in this report.

SUMMARY OF RECOMMENDATIONS

The charge set forth for the Commission in Public Act No 01-151 was extremely broad in scope, and the fourteen issues areas to be addressed are very complex. The Commission has done its best work possible, within the limited (11 month) time frame and with the minimal staff resources provided. The Commission has developed a set of findings and recommendations, which should be viewed as an incremental step in a very important and ongoing examination of the death penalty in Connecticut. With each of these recommendations, one must take a longer view and understand that many require further research.

The Commission's recommendations that study and data collection occur in the future should not be viewed as an express finding that a particular disparity does or does not exist, for example. The Commission supports contemporaneous record keeping of many forms of data to ensure that the issues identified by the General Assembly can be accurately and cost effectively analyzed in the future.

Item 1. Constitutionality

No recommendations.

Item 2. Financial Costs

1. *To conduct a comprehensive analysis of costs associated with the death penalty, there would have to be dedicated staff assigned to this project, as well as improved documentation relating to cost factors, from the various state and local agencies.*

2. *To accurately and reliably compare the financial costs to the state of imposing a death sentence and of imposing a sentence of life imprisonment without the possibility of release, a detailed study comparable to the Duke University study of death penalty costs in North Carolina should be undertaken for Connecticut.*

3. *To undertake a valid comparison of the costs to the state of imposing a death sentence and of imposing a sentence of life imprisonment without the possibility of release, all agencies involved in investigation, prosecution, defense, adjudication, post-conviction review, incarceration and execution in connection with capital felony cases should be required to keep records of actual costs and expenditures in all capital felony cases.*

Item 3. Disparity Based Upon Race, Ethnicity, Gender & Other Factors

1. *All agencies involved in capitol felony cases should collect and maintain comprehensive data concerning all cases qualifying for capital felony prosecution (regardless of whether the case is charged, prosecuted or disposed of as a capital felony case) to examine whether there is disparity. This should include information on the race, ethnicity, gender, religion, sexual orientation, age, and socioeconomic status of the defendants and the victims, and the geographic data collected as recommended by Item 4. This data should be maintained with respect to every stage of the criminal justice process, from arrest through imposition of the sentence. The Office of the Chief Public Defender (OCPD), the Office of the Chief State's Attorney (OCSA), and the Judicial Branch should develop an implementation plan, which identifies the requirements necessary to collect and maintain this data.*

2. *In addition, for those capital felony cases that proceed to trial, data should be collected and maintained concerning the race, ethnicity and gender of jurors who actually serve on individual cases, as well as those excused from service by the court, the prosecution, and defense.*

3. *In 1998, the Connecticut Public Defender Services Commission authorized the expenditure of funds to undertake a complex analysis of qualifying homicide cases for the purpose of presenting statistical evidence to the courts to determine whether any systemic or individual racial or other bias exists in the decision to charge, prosecute and sentence and individual for capital felony. The General Assembly should review the results of the OCPD study, the OCSA's response to that study, and the court's resolution of the issues in litigation.*

4. *Connecticut should adopt legislation explicitly providing that no person shall be put to death in accordance with any death sentence sought or imposed based on the race, ethnicity, gender, religion, or sexual orientation of the defendant. To enforce such a law, Connecticut should permit defendants to establish prima facie cases of discrimination based upon proof that their sentence is part of an established discriminatory pattern.*

Item 4. Disparity Based on Judicial District

1. *Connecticut should improve its system for gathering, analyzing and reporting data in a central, neutral location on capital and non-capital murder cases. In addition to the data recommended for collection under Item 3, data should be collected on the nature and location of the crime, the location of the prosecution, and other relevant geographical factors. The OCPD, OCSA, and the Judicial Branch should develop an implementation plan which will accomplish this goal, and which will establish where the data is stored.*

2. *A committee of State's Attorneys should be established by statute to review any preliminary decision by a local State's Attorney to seek the death penalty in a particular case. The method used in federal cases[4] should serve as a model for this statute, including a procedure for defense counsel to provide input as to why the death penalty should not be sought.*

3. *See Item 6, recommendation 1.*

Item 5. Training & Experience of Prosecutors & Defense Counsel

1. *The State of Connecticut should pursue all federal grant opportunities and maintain adequate state funds, as necessary, for the ongoing training of prosecutors, public defenders, special public defenders, and judges, which are involved in death penalty litigation. A mandated minimum number of hours of training should be required on an annual basis. The Division of Criminal Justice and the Office of the Chief Public Defender should be encouraged to host both statewide and regional training conferences in the area of capital felony litigation and consider the establishment of a minimum number of training hours.*

2. *The State of Connecticut should increase the hourly rates for special public defenders in death penalty cases. A good benchmark is the rate paid to court-appointed attorneys in federal death penalty cases. The Commission finds that without such an increase, the availability of special public defenders will diminish and the quality of available representation will decline. In addition, accommodations are necessary for private attorneys in order to allow them to sustain the remainder of their practice during a lengthy trial. A maximum trial schedule of four days per week would meet this objective.*

3. *A Capital Defense Support Unit should be established within the Office of Chief Public Defender to provide support services to Special Public Defenders comparable to those services available to attorneys within the Capital Defense & Trial Services Unit. Special public defenders that accept appointments in death penalty cases are in need of investigators and mitigation specialists to assist in the preparation of cases for trial. While these services are available to public defenders, there is a shortage of qualified personnel who are available on a private basis to provide comparable services to special public defenders. Such a unit would operate independently of the Capital Defense & Trial Services Unit to protect against conflicts of interest in the representation of co-defendants.*

[4] *See* Department of Justice, United States Attorneys Manual, §§ 9-10.020-9-10.100 (2002).

Item 6. Appellate & Post-Conviction Review

The Commission agreed that the three levels of appellate and post-conviction review afford a defendant ample opportunity to raise any challenges to his adjudication of guilt or sentence of death. Nevertheless, the Commission makes the following recommendation:

1. *To (1) ensure that the death penalty is being administered in a rational, non-arbitrary, and even-handed manner, (2) provide a check on broad prosecutorial discretion, and (3) prevent discrimination from playing a role in the capital decision-making process, Connecticut should reinstate proportionality review of any death sentence to ensure that it is not excessive or disproportionate to the sentence imposed in similar cases. To prevent delays that have occurred previously in proportionality review, an efficient method for proportionality review, to take place contemporaneously, should be specified by statute, including a process for reviewing similar cases by means of summaries and not plenary reviews of the record.*

Item 7. Delay in Appellate & Post Conviction Review & Delay Between Imposition of Sentence and Execution of Sentence

1. *In death penalty cases, and in criminal litigation in general, technology and resources should be in place to ensure timely preparation of an appellate record. Further review is needed to determine the specific technology requirements and other resources needed to accomplish this goal. The appellate process should not be delayed by administrative inefficiencies.*

2. *Additional resources should be provided to the Judicial Branch, the Division of Criminal Justice and the Division of Public Defender Services for the adjudication of all habeas corpus matters in a timely manner, including death penalty cases, and the reduction of backlogs in the habeas docket that cause such delays.*

3. *The Commission approves of the current appellate practice in which defendants are allowed to present exhaustively all issues germane to legal errors or the validity of a death sentence. Steps taken to expedite death penalty litigation at the state level should not curtail a defendant's right to present any argument that is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law, or the establishment of new law.*

Items 8 & 9. Procedures for Reprieve, Stay of Execution, or Commutation of Death Penalty; Authority of Governor to Grant Reprieve

1. *The Commission recommends that no changes be made to the existing procedures for the granting of a reprieve, stay of execution or commutation from the death penalty.*

2. *The Connecticut General Assembly should adopt legislation to require an affirmative vote of a majority of the five members of the Board of Pardons in order to commute a death sentence to a sentence of life imprisonment without the possibility of release.*

3. *The Governor's authority to grant a reprieve or stay of execution should not be changed.*

Item 10. Examination of Safeguards

1. *Questioning in a police facility of people suspected of murder should be recorded. Videotaping is recommended. If that is not practical, audiotaping should be used.*

2. *Grant and other funding should be provided to police agencies to pay for electronic recording equipment and associated expenses.*

3. *Police departments should adopt witness identification procedures designed to eliminate false identifications. For example:*

    - *An eyewitness ought to be told that the suspect may not be in the line up, thus eliminating pressure on the witness to identify one of the people.*

    - *Line-ups and photo-spreads ought to be done sequentially. That is, each person or photo should be shown to the witness one at a time. The witness would inform the investigator whether or not the person is the suspect.*

    - *The investigator conducting the line-up or photo spread should be "blind" or unaware of whom the likely suspect is.*

4. *Prior to trial, the judge must hold a hearing to decide the reliability of, and admissibility in a capital felony case, of the testimony of a witness who is testifying to admissions the defendant allegedly made to an in-custody informant.*

5. *In capital felony cases, during the course of a criminal investigation, and continuing until any sentence is carried out, all biological and other evidence must be preserved. In addition, testing must be available to a defendant. If a defendant cannot afford testing, the state must pay. Moreover, defendants should have the right to counsel for purpose of pursing DNA testing and subsequent*

court procedures for obtaining a new trial. Connecticut may want to model Rhode Island's post conviction remedy act, which provides defendants with these rights.

6. *A uniform procedure for open-file discovery to the defense in all death penalty cases should be set forth in the Practice Book, including a mechanism for creating a joint inventory of the items disclosed and a formal record of their disclosure.*

Item 11. Effect of Victim Impact Statement

1. *In addition to the constitutional right of victims (including survivors of homicide) to present a live statement in court, the Commission recommends that C.G.S. Section 53a-46d be modified to require that the victim impact statement also be read in open court after the sentencing authority has reached its penalty determination, but before that determination is imposed by the presiding judge in open court. This is a departure from the current statute, which provides for placement in the court file of a written "victim impact statement" that "may" be read prior to imposition of the sentence.*

2. *The trial courts interpret C.G.S. Section 53a-46d in a manner in which the victim impact statement is not introduced during the penalty phase of the trial and therefore it has no effect upon the sentence in a capital case.*

3. *To ensure fairness to victims and to prevent the creation of false expectations, procedures should be created by the Office of Victim Services to make sure that victims are informed that under the trial courts' interpretation of C.G.S. Section 53a-46b described above, the victim impact statement will not affect the sentence imposed.*

Item 12. Financial Resources Needed to Address Delays

The Commission recognizes and considers valid the needs identified by the Office of the Chief State's Attorney and the Office of the Chief Public Defender listed below.

1. *The Division of Criminal Justice requests funding for additional prosecutors and support staff to prosecute appellate and habeas corpus proceedings in death penalty cases, in order to eliminate unnecessary delay in post conviction proceedings.*

2. *The Division of Public Defender Services requests two additional appellate lawyers, one paralegal and two secretaries or clerks. Additional office space, a computerized database for Connecticut death penalty law, and an attorney to design and maintain the database on a permanent basis are also requested.*

3. *Additional resources should be provided to the Judicial Branch, the Division of Criminal Justice and the Division of Public Defender Services for the adjudication of all habeas corpus matters in a timely manner, including death penalty cases, and the reduction of backlogs in the habeas docket that cause such delays.*

4. *The Division of Public Defender Services requests an independent Post-Conviction Office staffed by attorneys, paralegals, investigators, mitigation specialists and clerical staff, in order to eliminate unnecessary delay in the assignment of counsel, preparation and trial of state death penalty post-conviction proceedings.*

Item 13. Studies By Other States

No recommendations.

Item 14. Emotional and Financial Effects of Delays on Victims

The Commission makes recommendations that address the delays in adjudicating capital felony murder cases elsewhere in this report.

<u>Item 1:</u> An examination of whether the administration of the death penalty in this state comports with constitutional principles and requirements of fairness, justice, equality, and due process.

The Commission agreed that examination of this Item is most appropriately conducted in the judicial process.[5] Not only are courts best equipped to evaluate "constitutional principles" such as "due process," the adversarial system in the courts provides the best opportunity for these legal issues to be evaluated fully and fairly. Unlike the efforts of the Commission, death penalty litigation is conducted by entities with resources and subpoena power that increase the chances of a full presentation of the issues.

The Commission recognizes that Item 1 does implicate non-legal issues, and the Commission does examine concepts of "fairness, justice, and equality" as those terms are used by laypersons. Discussion of these concepts follows in the analysis of Items 2-14 set forth below.

<u>Item 2:</u> An examination and comparison of the financial costs to the state of imposing a death sentence and of imposing a sentence of life imprisonment without the possibility of release.

BACKGROUND

Given the limited resources available to the Commission, and the limited nature of many Connecticut agencies' record keeping, the Commission could not compare, in a precise manner, the financial costs of imposing a death sentence versus imposing a sentence of life imprisonment without release. To perform its review, the Commission solicited information from several state agencies involved in various aspects of administering the death penalty, and compiled their data to provide an overview of estimated costs. Those agencies included the Department of Criminal Justice; the Division of Public Defender Services; the Judicial Branch; and the Department of Corrections. The Commission found that, with the exception of the Division of Public Defender Services, most state agencies do not track expenditures for capital felony cases separately, so there is very limited information from which to draw conclusions. For background purposes, the Commission reviewed national studies on the cost of implementing the death penalty, including the widely recognized 1993 Duke University study on North Carolina's system.

[5] The Connecticut Supreme Court has ruled that Connecticut's death penalty statute is constitutional. *State v. Ross, State v. Cobb.*

I. Connecticut's Costs

A. The Division of Criminal Justice

The Division of Criminal Justice (DCJ) does not specifically track the cost of death penalty cases, as the agency's expenses are budgeted based on standard line items for services, commodities and equipment. To compare the cost of prosecuting capital felony cases versus other serious felony cases, the DCJ surveyed state's attorneys and assistant state's attorneys with experience in capital cases to identify the qualitative differences between death penalty cases, life imprisonment without release cases, and murder cases.

The DCJ has reported that while there are some increased costs in the prosecution of capital felony cases, the costs are actually spread out over several different agencies. For example, the DCJ frequently relies on advanced forensic analysis of evidence and expert witnesses in death penalty cases. Other state agencies, such as the State Police Forensic Laboratory and the Office of the Chief Medical Examiner, bear their own costs, and as a result, the DCJ does not incur additional expenses from use of these resources. It is intuitive that added costs exist in death penalty cases (such as in proving aggravating and mitigating factors), but such costs are not readily quantifiable, and have not been tracked separately within the DCJ.

Post-conviction review of death sentences involves additional costs that are not found in serious, non-death felony cases. The post-conviction process is virtually assured in death penalty cases; it is not as automatic in cases where the death penalty is not imposed. A great deal of litigation occurs during habeas proceedings. This process (see Item 6 on pages 35-38 for a full discussion of the post conviction review process) usually begins after direct appeals have failed, and after a death sentence has been affirmed by the Connecticut Supreme Court. The litigation often requires a re-examination of all of the evidence and an analysis of the effectiveness of the defense counsel. It is a time-consuming process, which requires significant resources of prosecutors and support staff.

B. Division of Public Defender Services

Unlike other state agencies, the Division of Public Defender Services (DPDS) is able to calculate and compare the defense costs of capital felony cases to the costs of those cases where defendants are sentenced to life imprisonment without release. This is possible, in part, because the Division has a Capital Defense and Trial Services Unit, which is devoted to representing indigent defendants in capital felony cases and which tracks cost information on an ongoing basis. The Capital Defense and Trial Services Unit currently has a staff of 6 attorneys, 3 investigators, 2 mitigation specialists, 1 secretary, and one paralegal.

The DPDS was able to compare the defense costs involved for defendants sentenced to death (following a trial and a penalty hearing) to those sentenced to life imprisonment

without release (also following a trial and penalty hearing). The defense cost for cases resulting in a sentence of life imprisonment without release ranged from a low of $85,540 to a high of $320,580, with an average of $202,365 (figures include cases dating back to 1989). Of the seven men currently on death row, the defense costs ranged from a low of $101,870 to a high of $1,073,922, with an average defense cost of $380,000 per case. The analysis by the DPDS of Public Defender Services indicates that, in Connecticut, the defense costs for capital felony cases are, on average, 88% higher than the defense costs incurred for those sentenced to life imprisonment without release. (See Appendix B and C.)

C. The Judicial Branch

At the request of the Commission, the Judicial Branch conducted an informal internal review to determine whether there are any additional or significant costs associated with capital felony cases as compared to serious felony cases not involving the possibility of a death sentence. The Judicial Branch was unable to identify these costs with specificity for the following reasons:

- The financial resources of the Judicial Branch are allocated based on court locations and the overall volume of court business. They are not allocated on the basis of any particular type of case.

- There is insufficient data to draw a conclusion as to the typical costs, or average costs for capital felony cases, in part because of the numerous procedural differences in actual capital felony cases. For example, in one case a jury was used for the trial phase, and a three-judge panel was used for the penalty phase. In another case, the defendant initially sought a trial by jury, then opted for a three-judge panel, and then reverted to a jury for the penalty phase. In a third case, a jury was used for the trial and penalty phase, and subsequent to appeal, the case was remanded for a new penalty hearing which was held before a three-judge panel.

- Since the reestablishment of the death penalty in Connecticut, no one sentenced to death has been executed. The Judicial Branch predicts that additional costs will most certainly occur prior to an execution, but the Branch has no experience upon which to base any specific cost estimates.

Generally, capital felony cases are more time-consuming than other serious felony cases, particularly in the areas of jury selection, the filing of motions, the trial itself, the preparation of transcripts, and the filing of various appeals that are automatically filed in death penalty cases. From the Judicial Branch perspective, the majority of time required for these cases to work through the system (at the trial phase and at the appellate phase) is necessary to allow counsel for the state and the defense adequate time to research,

prepare, and reply to complex legal and constitutional issues, where the ultimate outcome and the stakes are very high[6].

D. The Department of Corrections

Seven men are currently on Connecticut's death row. The average age of these offenders is approximately 37 years old. The average annual expense to the Department of Correction to support and sustain each of these men on death row is $46,942 -- the same amount expended for each of the approximately 485 inmates who are also housed at the Northern Correctional Institution, where death row is located. Northern Correctional Institution is the most expensive Correctional Institution on a cost per prisoner basis.

A death sentence automatically places a defendant in the State's most costly correctional institution. Many offenders sentenced to life without parole, however, are incarcerated in less expensive facilities such as the MacDougall-Walker Correctional Institution where the annual cost per inmate is $29,454, or the Cheshire Correctional Institution where the cost is even less, $25,721 per year.

Because no one has been executed in Connecticut since 1960, it is impossible to calculate the average number of years an inmate will spend on death row before execution. Connecticut's current death row inmates have served, since their most recent death sentences, a range of over 11 years (Sedrick Cobb) to just over two years (Ivo Colon).[7] All who testified before the Commission agreed that it is unlikely that any current Connecticut death row inmate will be executed soon.[8]

While estimates from other states may be available on the actual cost of conducting an execution, none are available for Connecticut because no execution has recently occurred here. Commissioner Armstrong anticipated that an execution would likely attract many members of the public and the media, calling for additional State Police and DOC personnel in the vicinity of Osborne Correctional Institution, where an execution would likely occur.

Based on Connecticut's limited experience with capital felony cases, it is very difficult to compare DOC's actual cost of implementing the death penalty to the cost of life imprisonment without the possibility of release.

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[6] Remarks before the Death Penalty Commission by the Honorable John J. Ronan, Deputy Chief Court Administrator, The Judicial Branch, April 3, 2002.

[7] "Most recent" sentence refers to the fact that two death row inmates (Ross and Breton) had their initial death sentences vacated on appeal and have been sentenced to death a second time. See the timeline chart of Connecticut's death row inmates in the Appendix.

[8] Other states have calculated the average stay on death row between conviction and execution. For example, in Virginia, since 1991, the average time spent on death row prior to execution is 7.3 years, and in Texas the average time on death row is 10.58 years. (Remarks before the Death Penalty Commission by the Honorable John Armstrong, Commissioner, Department of Correction, March 6, 2002)

II. National Studies

The Commission has found very limited research comparing the financial costs to states in imposing death sentences versus imposing sentences of life imprisonment. Connecticut's own Office of Fiscal Analysis (OFA), which provides fiscal research and analysis for the state legislature, recognized this fact in preparing a research paper on the cost of implementing the death penalty in April of 1994. OFA staff noted the lack of cost comparison research on this subject, and identified a 1993 Duke University study as the most comprehensive analysis available. This study still appears to be the most widely recognized research on this subject. Duke University's Terry Sanford Institute of Public Policy conducted extensive research on death penalty costs, and in 1993 published its results in a report entitled "The Costs of Processing Murder Cases in North Carolina". Its inclusion in this report is meant to provide the reader with some quantifiable data and respected research --- and a level of cost analysis that is not available for Connecticut. It is not meant to reflect what Connecticut's costs might be, should a similar study be undertaken. However, the study does provide documentation that supports the Commission's overall findings, which are that as a general rule, capital felony cases are more expensive to adjudicate than non-capital cases.

The Duke study compared the cost of a group of capital felony cases to the cost of a group of first-degree murder cases, all of which were adjudicated in North Carolina. Researchers examined costs in four areas: trial court costs; appellate and post conviction costs; and prison costs. In summary, the study found that death penalty cases cost an average of $163,000 more than first-degree murder cases, and that the cost per execution was estimated to be between $0.78 million and $2.16 million.

RECOMMENDATIONS

1. *To conduct a comprehensive analysis of costs associated with the death penalty, there would have to be dedicated staff assigned to this project, as well as improved documentation relating to cost factors, from the various state and local agencies.*

2. *To accurately and reliably compare the financial costs to the state of imposing a death sentence and of imposing a sentence of life imprisonment without the possibility of release, a detailed study comparable to the Duke University study of death penalty costs in North Carolina should be undertaken for Connecticut.*

3. *To undertake a valid comparison of the costs to the state of imposing a death sentence and of imposing a sentence of life imprisonment without the possibility of release, all agencies involved in investigation, prosecution, defense, adjudication, post-conviction review, incarceration and execution in connection with capital felony cases should be required to keep records of actual costs and expenditures in all capital felony cases.*

<u>Item 3:</u> An examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based upon race, ethnicity, gender, religion, sexual orientation, age or socioeconomic status of the defendant or the victim.

BACKGROUND

The Commission was charged to study and report on whether or not there is evidence of disparity in the decision to charge, prosecute and sentence a person for a capital felony based upon the race, ethnicity, gender, religion, sexual orientation, age or socioeconomic status of both defendants and victims in capital felony cases. Initially this required that all such cases that have arisen since 1973, when Connecticut's current capital felony statute was enacted, be accurately identified. Since no official comprehensive records of such cases are maintained, it was necessary for the Commission to rely upon information obtained from several sources.

The Office of Chief Public Defender provided the Commission with records that it has maintained contemporaneously over the past two decades concerning capital felony prosecutions. These include: *List of Capital Felony Cases Prosecuted Under §53a-54b in Connecticut Since 1973*; *Convictions of Capital Felony (§53a-54b) Statewide Since October 1973*; *Hearings on Imposition of Death Penalty Conducted Statewide Under §53a-46a, C.G.S. Since October 1973.* [See Appendix D, E, and F, respectively.] OCPD has examined information from individual case records of the Judicial Branch in connection with a study that OCPD is conducting.

FINDINGS

The records maintained by the Office of Chief Public Defender disclose 166 cases prosecuted between 1973 and the present in which a defendant was originally charged with capital felony, 60 convictions of capital felony, and 25 cases in which hearings on imposition of the death penalty have been held following conviction. These records identify the judicial district in which the cases were prosecuted, and contain information concerning the race, ethnicity and gender of the defendants, and the race and ethnicity of the victims. Information obtained by the Office of Chief Public Defender from Judicial Branch case files also provided the age and socioeconomic status of the defendants, as well as the age, socioeconomic status and gender of the victims. No information available to the Commission was adequate to identify the religion or sexual orientation of defendants or victims in the overwhelming majority of these cases.

A. Race and Ethnicity

By way of background, it should be pointed out that numerous studies conducted in the United States since the U.S. Supreme Court decided *Furman v. Georgia* in 1973 suggest

that, when significant non-racial factors are accounted for, race is a factor that influences the outcome of capital cases. In 1990 the U.S. General Accounting Office reported to the Senate and House Committees on the Judiciary that its synthesis of 28 studies on the subject disclosed a pattern of evidence indicating racial disparities in the charging, sentencing and imposition of the death penalty after the *Furman* decision.[9]

The report stated: "In 82 percent of the studies, race of victim was found to influence the likelihood of being charged with capital murder or receiving the death penalty, i.e., those who murdered whites were found to be more likely to be sentenced to death than those who murdered blacks." The findings further indicated that "[t]he evidence for the influence of the race of defendant on death penalty outcomes was equivocal," and "the relationship between race of defendant and outcome varied across studies."

In 1987 the United States Supreme Court considered evidence from a Georgia study, which revealed a pattern of racial bias in the imposition of the death penalty during the period 1973-80. The study, which involved 2400 cases, indicated that, after adjusting for the presence or absence of hundreds of variables for legitimate case characteristics, defendants whose victims were white faced odds of receiving a death sentence that were 4.3 times greater than similarly situated defendants whose victims were black. However, in *McCleskey v. Kemp*, 481 U.S. 279 (1987), the Supreme Court held that such evidence of systemic racial disparity in capital cases does not establish actual discrimination against an individual defendant and failed to find any federal constitutional violation. The court stated, "[l]egislatures also are better qualified to weigh and evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts".

A 2001 report by the U.S. Department of Justice, *The Federal Death Penalty System: Supplementary Data, Analysis and Revised Protocols for Capital Case Review*, stated that: "While the Department's study of its death penalty decision-making process has found no evidence of bias against racial or ethnic minorities, the study has indicated that certain modifications of the capital case review procedure are warranted to promote public confidence in the fairness of the process…"

Accordingly, DOJ now requires that where a United States Attorney has obtained an indictment charging a capital offense or conduct that could be charged as a capital offense, the United States Attorney must submit gender, race and ethnicity information for defendants and victims, even if the United States Attorney does not intend to seek the death penalty.

The issue of racial disparity in the imposition of the death penalty in Connecticut has been raised before the Connecticut Supreme Court in *State v. Cobb*, 234 Conn. 735 (1995). In that case the defendant moved to enlarge the class of similar cases to be used for proportionality review to include "all cases prosecuted in Connecticut after October 1, 1973, in which a capital felony *could have been charged* pursuant to Conn. Gen. Stat. §

[9] *DEATH PENALTY SENTENCING, Research Indicates Pattern of Racial Disparity*, United States General Accounting Office, February 1990

53a-46b and which resulted in a homicide conviction, following a plea or trial." The defendant contended that the enlarged class would demonstrate that race had an impermissible effect on capital sentencing decisions in Connecticut.

The Court wrote that "[a]ccording to the defendant, his preliminary data show that: (1) since 1973, prosecutors have charged a capital felony pursuant to General Statutes § 53a-54b in seventy-four cases, of which only eleven, or 15 percent, have involved the murder of a victim who was black, even though 40 percent of all murder victims in the state during that same time period were black; (2) since 1973, although there have been eighteen capital prosecutions for murder committed during the course of kidnapping, none was prosecuted where the victim was black; (3) during the same period, there have been twelve capital prosecutions for murder committed in the course of a sexual assault, and only one involved the murder of a black victim; (4) since 1973, twenty-eight cases have resulted in a conviction of capital felony, by verdict or plea, and eighteen of those twenty-eight have proceeded to a hearing on the imposition of the death penalty. Of the twenty-eight capital felony convictions, only four, or 14 percent, have involved the murder of a victim who was black, and of the eighteen that have gone to a penalty phase hearing, only one, or 5.5 percent, has involved the murder of a black victim; (5) of the sixty-six capital convictions in which the guilt phase has been concluded, twenty-one involved black defendants and forty-five involved nonblack defendants. Of the black defendants, thirteen of twenty-one, or 62 percent, were convicted of capital felonies and fifteen of forty-five, or 33 percent, nonwhite [sic] defendants were so convicted." *Id.,* note 4 at p. 740.

In denying the defendant's motion, the Supreme Court stated: "Our point is simply that the defendant's claim in this motion is essentially based on statistics--his preliminary data, and what he necessarily claims those will ultimately prove--and that, to the extent that the defendant's statutory interpretation claim in this motion resembles the federal constitutional challenge made by *McCleskey*, some sort of statistical evidence and fact-finding, similar to that presented and undertaken in *McCleskey,* will be necessary." *Id.*, at p. 740. The Court went on to state that the proper forum for the presentation of statistical evidence in support of such a claim is either in the trial court or through a petition for writ of habeas corpus, where it would be subjected to a full evidentiary hearing. *Id.*, at pp. 761-62.

However, the three dissenting justices stated: "The significance of the capital felony data brought forward by the defendant may be summarized as follows. If the defendant is an African-American, he is more likely to receive the death penalty than if he were white. If the victim is white, a defendant also is more likely to receive the death penalty. If the defendant is an African-American and the victim is white, the defendant is highly more likely to receive the death penalty. Although the accuracy of the data is not challenged, the state and the defendant both recognize that it is preliminary and that additional research, as well as mathematical analysis, must be conducted in order to determine whether these results are statistically significant." *Id.*, at p. 768.

Accordingly, in 1998 the Connecticut Public Defender Services Commission authorized the expenditure of funds to undertake a complex multivariate analysis of qualifying homicide cases for the purpose of presenting statistical evidence to the courts in order to determine whether any systemic or individual racial or other bias exists in the decision to charge, prosecute and sentence an individual for capital felony. The project director hired for this study is Attorney Elizabeth Vila Rogan, an attorney with extensive experience in the litigation of death penalty cases. Also retained as experts to conduct the actual data analysis were Dr. Neil Weiner, Dr. Paul Allison, and Vera Huang of the University of Pennsylvania. Professor David Baldus of the University of Iowa, the architect of the original study undertaken in Georgia during the 1980's, was retained to assist in the creation of the research design for the Connecticut study.

Elizabeth Rogan appeared before the Commission on the Death Penalty to explain the study, together with Attorney Patrick J. Culligan, Chief of Capital Defense & Trial Services for the Division of Public Defender Services. Updating the information that had been presented to the Connecticut Supreme Court in *Cobb*, Attorney Culligan reported that as of April 1, 2002, twenty-four (24) capital felony cases had proceeded to a penalty hearing, three (3) of which involved a black victim or victims. Of the seven (7) individuals currently on death row, six were sentenced for the murder of a white victim or victims and one was sentenced for the murder of a Hispanic victim. An additional death sentence that was vacated on appeal involved the murder of a white victim. No one has been sentenced to death in Connecticut during this period for the murder of a black victim.

Attorney Rogan described in detail for the Commission the study that the Office of Chief Public Defender has undertaken, including the study design and research protocol, data collection procedure and creation and use of the data collection instrument. Two hundred cases were initially identified that met the criteria of the study. Cases were then removed from this inventory if the defendant was not actually eligible to be sentenced to death (e.g., under age 18; acquitted; not convicted of a homicide), leaving 104 cases for inclusion in the study. The study involves a statistical comparison of similarly situated defendants who could have been subject to the death penalty, whose cases resulted in a sentence of death or a sentence less than death, either before or after a penalty phase. The case inventory for the study includes every case prosecuted as a capital felony from 1973 to 1998, as well as every homicide case that could have been prosecuted as a capital felony during the same period. (The end date of 1998 was selected on the basis of when the study was commenced and the need to have some cutoff date in order to complete it.)

Although the study results were not available to the Commission prior to the submission of this report, the Office of Chief Public Defender reported that the study was near completion and would be available for use in litigation in early 2003. Once available, this report is expected to provide information regarding race, ethnicity, gender, age, and socioeconomic status of defendants and victims in capital felony cases, and will be available for review by the Legislature at that time.

Ms. Rogan pointed out that in certain other states there is a statutory requirement in place for collecting information about death eligible cases contemporaneously with the prosecution of such cases. For example, the data is collected in New York by the State Capital Defender's Office and in New Jersey by the Judiciary. Ms. Rogan recommended that such data be collected here.

Assistant State's Attorney Michael O'Hare and Executive Assistant State's Attorney Judith Rossi addressed the Commission on behalf of the Division of Criminal Justice. In regard to the issue of disparity in the decision to charge an individual with capital felony, Attorney Rossi indicated that the decision to charge capital felony is different than the decision to seek the death penalty, and that capital felony is charged more frequently than the death penalty is actually sought. The death penalty decision is based upon the strength of the evidence, the severity of the crime and the existence of at least one solid aggravating factor, and the decision to pursue the death penalty is within the discretion of the 13 individual State's Attorneys, who are independent constitutional officers. The decisions made by State's Attorneys are very case specific and sometimes involve factors "independent of the criminal justice system" (e.g., intra-family homicides where victims are opposed to the death penalty).

The DCJ indicated that any disparity based upon the race of the victim was attributable to the lack of capital felonies involving non-white victims or the lack of an aggravating factor, and that State's Attorneys have sought the death penalty in cases involving black victims, they just have not been successful.

The records provided by the Office of Chief Public Defender included information concerning the race or ethnicity of the defendants and victims in each of the 166 capital felony prosecutions, including the breakdown by race or ethnicity of defendants and victims in cases resulting in actual convictions of capital felony, cases resulting in sentences of life imprisonment without the possibility of release, cases in which a hearing on imposition of the death penalty was conducted, and cases resulting in a sentence of death.

A review of these records disclosed the following data concerning the cases in which a charge of capital felony was actually prosecuted:

Race of Defendant

- 66 Prosecutions involve a White defendant;
- 65 Prosecutions involve a Black defendant; and,
- 35 Prosecutions involve a Hispanic defendant.

Race of Victims

- 91 Prosecutions involve a White victim or victims (includes 17 co-defendant cases, representing 72 actual capital offenses);

- 38 Prosecutions involve a Black victim or victims (includes 9 co-defendant cases, representing 29 actual capital offenses);

- 30 Prosecutions involve a Hispanic victim or victims (includes 15 co-defendant cases, representing 14 actual capital offenses);

- 2 Prosecutions involve a victim or victims of "Other" race or ethnicity; and

- 5 Prosecutions involve a victim or victims of Unknown race or ethnicity.

As percentages of all capital felony prosecutions, 40% of the defendants have been white, 39% have been black, and 21% have been Hispanic. Combining the percentages of minority defendants, minorities have constituted 60% of the defendants in all capital felony prosecutions.

In regard to the race of victims, 55% are white, 23% are black, 18% are Hispanic, 1% are other and 3% are unknown. Combining the percentages of minority victims, minorities constituted 42% of the victims in all capital felony prosecutions.

The data concerning those cases in which a defendant was *convicted* of capital felony is as follows:

Race of Defendant

- 22 Convictions of White defendants over age 18;
- 16 Convictions of Black defendants over age 18; and,
- 11 Convictions of Hispanic defendants over age 18.

Race of Victim

- 27 Convictions involve a White victim or victims;
- 10 Convictions involve a Black victim or victims;
- 10 Convictions involve a Hispanic victim or victims; and,
- 2 Convictions involve a victim or victims of Unknown race or ethnicity.

Amongst those defendants who have been convicted by verdict or by plea, 45% have been white, 33% have been black, and 22% have been Hispanic. Combining the percentages of minority defendants, 55% of those convicted of capital felony have been minorities.

In regard to the race of victims in cases that resulted in a conviction of capital felony, 55% have involved the murder of white victims, 20% have involved black victims, 20% have involved Hispanic victims, and 5% have involved victims of unknown race or

ethnicity. Combining the percentages of minority victims, 45% of victims in convictions of capital felony have been minorities.

The data concerning those cases in which a defendant was *sentenced to life imprisonment without the possibility of release* for conviction of capital felony is as follows:

Race of Defendant

- 19 White defendants over age 18 sentenced to Life Imprisonment;
- 13 Black defendants over age 18 sentenced to Life Imprisonment; and,
- 10 Hispanic defendants over age 18 sentenced to Life Imprisonment.

Race of Victim

- 21 Life sentences imposed in cases involving White victim or victims;
- 10 Life sentences imposed in cases involving Black victim or victims;
- 9 Life sentences imposed in cases involving Hispanic victim or victims; and,
- 2 Life sentences imposed in cases involving Unknown race or ethnicity of victim or victims.

Amongst the defendants who have been sentenced to life imprisonment without the possibility of release following conviction, 45% have been white, 31% have been black, and 24% have been Hispanic. Combining the percentages of minority defendants, 55% of defendants sentenced to life imprisonment without the possibility of release following conviction have been minorities.

In regard to the race of victims in cases that resulted in a sentence of life imprisonment without the possibility of release, 50% have involved the murder of white victims, 24% have involved black victims, 21% have involved Hispanic victims, and 5% have involved victims of unknown race or ethnicity. Combining the percentages of minority victims, 45% of victims in cases that resulted in a sentence of life imprisonment without the possibility of release have been minorities.

The data concerning those cases in which a *hearing on imposition of the death penalty* was held following a conviction of capital felony is as follows:

Race of Defendant

- 12 Hearings in which the State sought the death penalty against a White defendant;
- 8 Hearings in which the State sought the death penalty against a Black defendant; and
- 3 Hearings in which the State sought the death penalty against a Hispanic defendant;

Race of Victim

- 17 Hearings in which the State sought the death penalty for killing a White victim or victims;
- 3 Hearings in which the State sought the death penalty for killing a Black victim or victims; and,
- 3 Hearings in which the State sought the death penalty for killing a Hispanic victim or victims.

Amongst the defendants who have had a hearing on imposition of the death penalty following conviction, 52% have been white, 35% have been black, and 13% have been Hispanic. Combining the percentages of minority defendants, 48% of defendants who have had a hearing on imposition of the death penalty have been minorities.

In regard to the race of victims in cases that have had a hearing on imposition of the death penalty, 74% have involved the murder of white victims, 13% have involved black victims, and 13% have involved Hispanic victims. Combining the percentages of minority victims, 26% of victims in cases in which a hearing on imposition of the death penalty was held have been minorities.

The data concerning those cases in which a *sentence of death* was imposed following a conviction of capital felony is as follows:

Race of Defendant

- 3 White defendants currently under sentence of death;
- 3 Black defendants currently under sentence of death; and
- 1 Hispanic defendant currently under sentence of death.

Race of Victim

- 6 Death sentences imposed in cases involving White victim or victims;
- 1 Death sentence imposed in cases involving Hispanic victim or victims; and,
- 0 Death sentences imposed in cases involving Black victim or victims.

Amongst the defendants who have been sentenced to death, 43% have been white, 43% have been black, and 14% have been Hispanic. Combining the percentages of minority defendants, 57% of defendants sentenced to death have been minorities.

In regard to the race of victims in cases that have resulted in a sentence of death, 86% have involved the murder of white victims, 0% has involved black victims, and 14% have involved a Hispanic victim. Combining the percentages of minority victims, 14% of victims in cases that resulted in a death sentence have been minorities.

A summary of the data concerning the defendants and the victims by racial and ethnic group in all capital felony cases is as follows:

Race of Defendant

- **WHITE** - 38% of Prosecutions; 45% of Convictions; 45% of Life Sentences; 52% of Penalty Hearings; 43% of Death Sentences;

- **BLACK** - 40% of Prosecutions; 33% of Convictions; 31% of Life Sentences; 35% of Penalty Hearings; 43% of Death Sentences; and,

- **HISPANIC** - 22% of Prosecutions; 22% of Convictions; 24% of Life Sentences: 13% of Penalty Hearings; 14% of Death Sentences.

Race of Victim

- **WHITE**- 54% of Prosecutions; 55% of Convictions; 50% of Life Sentences; 74% of Penalty Hearings; 86% of Death Sentences;

- **BLACK**- 23% of Prosecutions; 20% of Convictions; 24% of Life Sentences; 13% of Penalty Hearings; 0% of Death Sentences; and

- **HISPANIC** - 18% of Prosecutions; 20% of Convictions; 21% of Life Sentences; 13% of Penalty Hearings; 14% of Death Sentences.

While the percentages are difficult to interpret and the Commission does not attempt to do so, one disparity that is suggested by the data is in the race of the victim in those cases in which the defendant has been sentenced to death. Six (6) of the 7 death sentences have been imposed for the murder of a white victim and no death sentence has been imposed for the murder of a black victim.

B. Gender

The Commission's review of the records of capital felony prosecutions in Connecticut since 1973 disclosed seven (7) cases in which the State initially charged a female defendant with capital felony. Four of these cases involved a mother who killed her own child, and in each of these four cases the female defendant was convicted of manslaughter in the first degree. In the remaining three cases, the female defendant was convicted of capital felony. The latter three cases resulted in sentences of life imprisonment without the possibility of release. In two of these cases the State sought a death sentence and proceeded to a hearing on imposition of the death penalty, following which the jury returned special verdicts resulting in life sentences. In the third case, the State waived the right to seek a death sentence as a condition of the defendant's extradition to Connecticut from the Republic of Ireland. As such, no female defendant

has been sentenced to death under current law. All other capital felony prosecutions and all of the death sentences imposed involved male defendants.

Nationally, women account for only one in fifty–two (1.9%) of the death sentences imposed at the trial level since 1973. This is in contrast to the fact that women account for about one out of ten murder arrests (10%) nationally during the same period. Women also account for 1.5% of persons presently on death row and 1.1% of persons actually executed in the modern era.[10]

In addressing the Commission, Attorney Judith Rossi of the Office of Chief State's Attorney stated that the victims in cases in which the state seeks the death penalty "are typically women, children, and police officers". On a separate occasion John Connolly, State's Attorney for the Waterbury Judicial District, made a similar statement to the effect that the victims in cases that have resulted in death sentences have been primarily women and children. These acknowledgements gave the Commission at lease some preliminary indication that the gender and/or age of the victim may be factors in the decisions to charge, prosecute, and sentence an individual for capital felony. In addition, it was noted that five of the seven death sentences that have been imposed involved the murder of a female victim.

The study by the Office of Chief Public Defender will include gender in its analysis of capital felony prosecutions.

C. Age

Nationally, only a minimal amount of data regarding age could be located. That data concerned the age of defendants under sentence of death at the time of their arrest for a capital offense. As of the end of 2000, the Bureau of Justice Statistics reported that the median age of defendants on death row at the time of arrest was 27 years. Eighty-seven percent (87%) were between the ages of 18 and 39 at the time of arrest, including 49.4% in the age group of 20 to 29.[11]

No comparable national data was found regarding the age of victims in capital cases. As was indicated above, however, representatives of the Division of Criminal Justice did suggest that the victims in cases that are prosecuted as capital felonies frequently are children. Of the seven individuals sentenced to death and currently on death row in Connecticut, 4 were convicted of offenses involving minor victims (16 or under).

One obvious explanation for the high incidence of prosecution for capital felony in cases involving minor victims since 1995 is the fact that a murder of a child is a capital felony. In that year the legislature amended the capital felony statute (§53a-54b) to include "murder of a person under sixteen years of age." As such, the age of the victim in such

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[10] *Death Penalty for Female Offenders, January 1, 1973, through October 9, 2002*, Professor Victor L. Streib, Ohio Northern University

[11] *Capital Punishment 2000*, Bureau of Justice Statistics Bulletin, December 2001

circumstances is itself an element of the crime. Since the enactment of this portion of the capital felony statute, 27 capital felony prosecutions have been instituted under this particular subsection for the alleged murder of a person under age 16. Two of the individuals currently on death row in Connecticut for the murder of a child were convicted under this specific subsection.

In addressing the Commission in regard to this topic, Attorney Elizabeth Rogan indicated that information concerning age had been collected as part of her review of capital felony case files in connection with the Public Defender study, and that an analysis based upon the age of defendants and victims would be done as part of that study.

D. Religion and Sexual Orientation

No comprehensive data was available to the Commission regarding the religion or sexual orientation of defendants or victims in capital felony cases. As such, the Commission is unable to report any findings in regard to these two categories. In regard to the study by the Office of Chief Public Defender, no information was compiled about the defendants' and victims' religion and sexual orientation and these factors will not be examined.

E. Socioeconomic Status

No comprehensive data was available to the Commission regarding the socioeconomic status of defendants or victims in capital felony cases. As such, the Commission is unable to report any findings in regard to this category. The study being conducted by the Office of Chief Public Defender includes information regarding the socioeconomic status of defendants and victims and an analysis based upon socioeconomic status will be done as part of that study.

Recommendations

1. *All agencies involved in capitol felony cases should collect and maintain comprehensive data concerning all cases qualifying for capital felony prosecution (regardless of whether the case is charged, prosecuted or disposed of as a capital felony case) to examine whether there is disparity. This should include information on the race, ethnicity, gender, religion, sexual orientation, age, and socioeconomic status of the defendants and the victims, and the geographic data collected as recommended by Item 4. This data should be maintained with respect to every stage of the criminal justice process, from arrest through imposition of the sentence. The Office of the Chief Public Defender (OCPD), the Office of the Chief State's Attorney (OCSA), and the Judicial Branch should develop an implementation plan, which identifies the requirements necessary to collect and maintain this data.*

2. *In addition, for those capital felony cases that proceed to trial, data should be collected and maintained concerning the race, ethnicity and gender of jurors who actually serve on individual cases, as well as those excused from service by the court, the prosecution, and defense.*

3. *In 1998, the Connecticut Public Defender Services Commission authorized the expenditure of funds to undertake a complex analysis of qualifying homicide cases for the purpose of presenting statistical evidence to the courts to determine whether any systemic or individual racial or other bias exists in the decision to charge, prosecute and sentence and individual for capital felony. The General Assembly should review the results of the OCPD study, the OCSA's response to that study, and the court's resolution of the issues in litigation.*

4. *Connecticut should adopt legislation explicitly providing that no person shall be put to death in accordance with any death sentence sought or imposed based on the race, ethnicity, gender, religion, or sexual orientation of the defendant. To enforce such a law, Connecticut should permit defendants to establish prima facie cases of discrimination based upon proof that their sentence is part of an established discriminatory pattern.*

<u>Item 4:</u> An examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based on the judicial district in which the offense occurred.

BACKGROUND

In examining this issue, the Commission heard from the following individuals who spoke at its June 4, 2002, meeting: John Connelly, State's Attorney for Waterbury District; Michael O'Hare, Office of Chief State's Attorney and Ronald Gold, Senior Assistant Public Defender, Capital Defense and Trial Services Unit, Office of the Chief Public Defender. Also received by the Commission at that meeting was a letter from Michael Dearington, Chief State's Attorney for New Haven District. For background, the Commission reviewed studies on the death penalty in other jurisdictions (see Item 13), and some of these studies are discussed here.

FINDINGS

A. Question of Disparity

Ronald Gold of the Office of the Chief Public Defender, who has worked as a Public Defender for 16 years, 10 of which have been in the Capital Defense and Trial Unit, provided the Commission with his analysis of records concerning capital felony prosecutions that the Office of the Chief Public Defender has maintained since October 1,

1973. That analysis included four charts [See Appendix G, H, I, and J, respectively.], which are detailed below. The first chart entitled, "Number of Capital Felony Prosecutions by Judicial District Since October 1, 1973," indicates that of the 166 such prosecutions brought in the time period, the highest number of cases have occurred in the following six districts:

- 66 from Hartford (40%)
- 31 from Fairfield (19%)
- 17 from New London (10%)
- 12 from New Haven (7%)
- 11 from Waterbury (7%)
- 10 from Windham (6%)

A second chart presented by the Office of the Chief Public Defender entitled, "Number of Death Penalty Trials by Judicial District Since October 1, 1973," indicates of the 40 capital felony cases that have proceeded to trial in this time period, the highest number of those cases (17) were in the Hartford District. After that, Waterbury district had 8; Fairfield, 6; and New London, 5. Six districts (Danbury, Litchfield, New Britain, New Haven, Stamford-Norwalk, Tolland) have had *no* death penalty cases proceed to trial. Windham had only one and Middlesex, two.

A third chart, entitled "Percentage of Death Penalty Trials by Judicial District Since October 1, 1973," shows a different geographic disparity. While Hartford had more than double the number of trials than Waterbury in the previous chart, only 26% (17 of 66 cases) went to trial, while in the Waterbury district, 62.5 percent (5 of 8 cases tried) went to trial. That percentage in Waterbury is more than twice as high as the statewide average, which is 24%.

A fourth chart entitled, "Number of Death Sentences by Judicial District Since October 1, 1973," shows that only eight capital felony cases have had a death sentence. Five of those cases have occurred in the Waterbury district, one in Hartford, one in New London, and one in Windham. The sentence in the Windham case (*State v. Johnson*) was reduced on appeal to life without the possibility of release.

Attorney Gold's charts showed differences in raw numbers between various geographic districts in Connecticut. The charts did not, however, take into account the number of death-eligible homicides in each jurisdiction or compare, in a qualitative way, the nature of the crimes involved the strength of prosecution evidence in the cases involved, the venue in which the case was tried, and the nature of the trier of fact.

Judith Rossi, of the OCSA, noted that of the five death row inmates whose prosecutions originated in the Waterbury Judicial District, one was sentenced to death by a Middlesex Judicial District jury (Reynolds). Two were sentenced to death by entirely different three-judge panels (Breton and Cobb). Thus, of the five death row inmates whose prosecutions originated in the Waterbury Judicial District, two were sentenced to death by members of the Waterbury jury pool and three were not.

Studies from other states suggest methods to analyze geographic disparity in a clearer, more accurate way. A New York study[12] found that upstate homicides were more likely to be prosecuted as death penalty cases than downstate homicides. A Nebraska study[13] found that prosecutors in urban areas were more likely to charge homicides as death penalty cases than their rural counterparts, but the rural areas tended to impose a sentence of death more often than urban areas. A Virginia study[14] found that homicides in rural areas were more likely to result in a sentence of death than urban homicides. Each of these studies concluded that geography was a determining factor by considering and ruling out other important factors in a prosecutor's decision to seek the death penalty, such as strength of evidence against a defendant or heinousness of a crime. The Virginia study, for example, concluded that geography was a central factor by identifying a geographic pattern of different outcomes in cases with similar brutality and strength of prosecution evidence. After performing a similar analysis, the Nebraska study found that jurisdictions' varying financial considerations in prosecuting a homicide as a death case, experience of prosecutors in handling and trying capital cases, and attitudes of judges about the death penalty produced outcomes that varied with geography.

To be useful and accurate, any analysis of geographic disparity in Connecticut must rule out factors other than geography that might account for disparity. For example, can the number of death penalty cases in Hartford be explained by a higher number of death eligible homicides occurring in Hartford? In the Recommendations for this Item, the Commission recommends that data be collected to allow an accurate analysis of geographic disparity to occur.

Speakers at the June 3 meeting of the Commission offered reactions to the Connecticut data presented by the Office of the Chief Public Defender and other explanations for how it is determined that a homicide will be prosecuted as a death case.

Constitutional Power of the State's Attorneys

Under the Connecticut system, the State's Attorneys are independent constitutional officers who have the power and discretion to decide which crimes will be prosecuted in their districts and what charge will be brought for each. Thus, there is no overarching

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[12] See "Capital Punishment in New York State: Statistics from Six Years of Representation (1995-2001)," A Report from Capital Defender Office.

[13] The Disposition of Nebraska Capital and Non-Capital Homicide Cases (1973-1999): A Legal and Empirical Analysis (10/11/02); [http://www.nol.org/home/crimecom/homicide/homicide.htm].

[14] "Review of the Virginia System of Capital Punishment," issued January 2002 by the Joint Legislative Audit and Review Commission. [http://jlarc.state.va.us/reports/rpt274.pdf]

authority or panel in this state that these State's Attorneys must consult or advise as to their decision to charge or not charge a capital felony case.

John Connelly, State's Attorney for the Waterbury District, provided the Commission with some insight into how he decides to prosecute or not prosecute a capital felony. He was not aware that any other State's Attorneys have a similar process in their districts.

Immediately following a police report of a murder where a capital felony charge might be involved in the District, Attorney Connelly convenes a group of individuals from his office including Senior State's Attorneys, the police department of the jurisdiction where the crime was committed, and others as may be appropriate. Some members of this group from his Office may have viewed the crime scene themselves and worked with the police from the time the body was found. He addresses three questions to this group:

1) Did the person arrested for the crime commit the murder beyond all doubt, not just a reasonable doubt?
2) Is there sufficient evidence to prove a capital felony in this case? and,
3) Are there any mitigating factors that are known at that time that might be involved in this case?

If the answer to the first question is yes, then the group proceeds to question 2 and 3 and following that discussion, he may charge a capital felony if warranted.

After a person is charged with a capital felony, the State has 60 days after the arrest of that person to present its case to the judge at a probable cause hearing. In all eight of the cases that have been brought since 1984 when Attorney Connelly became the State's Attorney for the Waterbury District, the judge has found probable cause. Of those eight cases, five have resulted in a sentence of the death penalty.

Attorney Connelly attributes his willingness to seek the death penalty and his success rate in capital felony cases to the fact that he and his office know how to handle capital cases. Because these cases take a lot of time and effort, and are difficult and emotionally draining on everyone involved including the victim and defendant, Attorney Connelly said that he does not make the decision to prosecute a capital felony charge lightly or do so in a haphazard way. In fact, he said he believes that as a prosecutor he is required to enforce all the laws of the state of Connecticut and it is clearly within his discretion as a prosecutor to charge or not charge in a capital felony case but that discretion is bridled by the legislature and the courts in the state law and constitution.

Attorney Connelly does not take into consideration the feelings of the victim's family in deciding whether to seek the death penalty. For example, Attorney Connelly has told victims' families who wanted him to pursue a capital felony charge that the facts of the case did not fit the capital felony statute and did not warrant the death penalty.

Attorney Connolly's remarks suggested several possible explanations for geographic disparity in Connecticut. It is possible for two State's Attorneys to see the same murder

case differently in terms of a capital felony case, Attorney Connelly said. Every case is different and not every State's Attorney has the same talents and abilities to pursue these cases. If each State's Attorney has the discretion to decide their own case, then it is only natural that there would not be uniformity in the decision-making.

Another reason for this disparity may be the varying degrees of capital litigation experience in each of the States' Attorneys' districts. There is no practice of rotating Assistant State's Attorneys within districts who might have more expertise in such cases, nor is there a pool of attorneys with such expertise in the state. Other factors that may influence this disparity are outlined below.

Allocation of scarce resources may also be a factor. Death penalty cases require significant time and effort on the part of State's Attorneys' offices; accordingly, State's Attorneys are reluctant to take a case unless they have a good chance of success. If a case is close or mitigating factors are involved, prosecutors will be more inclined to not charge a capital felony or eventually agree to a plea of life in prison without release. If one or more capital felony case is pending at the time that another murder occurs, which might also warrant a capital felony charge, staffing resources are challenged. The State's Attorney may then have to make choices as to which case to pursue.

B. Consequences of Disparity

Given the potential for geographic disparity indicated in the Connecticut data described above, what are the consequences? Does this create a legal or constitutional problem for Connecticut's death penalty statute?

Legal or Constitutional Challenge

There is some case law from other states that addresses arbitrariness in the prosecution and adjudication of the death penalty. In one 1980 Massachusetts Supreme Court case, *District Attorney for the Suffolk District v. Watson*,[15] the state's death penalty was found to be in violation of the Massachusetts State Constitution, as arbitrary. The Court wrote, "It can be said that the officials [prosecutors] must necessarily have these discretionary powers to exercise most of their functions. Nevertheless, the criminal justice system allows chance and caprice to continue to influence sentencing, and we are here dealing with decisions as to who shall live and who shall die. With regard to the death penalty, such chance and caprice are unconstitutional." The Court concluded: "While other forms of punishment may also be arbitrary in some measure, the death penalty requires special scrutiny for constitutionality."

More on point, in *State of New Jersey v. Marshall*[16], a 1992 New Jersey Supreme Court case, the defendant argued that a "unique geographic combination" meant that his chance of receiving the death sentence was greater than that of any other defendant. The Court wrote: "After a careful review of the statistical evidence submitted by the Master and the

[15] 411 N.E.2d 1274 (Mass. 1980)
[16] 613 A.2d 1059 (N.J. 1992)

State's Expert, we conclude that the defendant has not shown any variation in capital-prosecution and sentencing practices in the state that amount to a constitutional deficiency in the application of the death penalty. We remain mindful of the potential for abuse of prosecutorial discretion in capital decision-making and the threat it poses to the desired uniformity in pursuit of such sentences. However, the data presented in this appeal do not establish the existence of such arbitrariness on the part of prosecutors."

The data in *Marshall* was a study by an independent expert hired by the state that showed that in New Jersey the overall death-sentencing rate among death-eligible offenses is more than twice as high in non-urban as in urban areas. In addition, the report found a substantially higher death-sentencing rate in the southern part of the state, making the overall rate there approximately two times higher than it is in the north and northwest.

Ultimately, the report determined that prosecutors in non-urban counties seek the death penalty at a rate of 1.6 times more frequently than their urban counterparts. With respect to jury behavior, the report indicated that the overall death-sentencing rate was more than twice as high in non-urban than in urban counties.

While not swayed by this data, the New Jersey Supreme Court did hearken to the fact that guidelines had recently been adopted by the New Jersey County Prosecutors Association that would require prosecutors to "hew closely to the statutory requirements of the (death penalty) Act and to evaluate the weight of the evidence to sustain any aggravating factor." The guidelines also require avoidance of any extraneous influences of race, sex, status of defendant or victim, or of notoriety of any case or the resources to prosecute it, the Court added. However, adopting such guidelines was the suggestion of this same Court in an earlier case, *State of New Jersey v. Koedatich*[17]. There, the Court also rejected any claims that geographic disparities in the prosecution of capital penalty cases in the state were arbitrary or unconstitutional.

Fairness as a Public Policy Issue

If not legally or constitutionally invalid, are geographical disparities with regard to death penalty cases an unfair outcome? If such disparity in the decision to charge, prosecute and sentence capital felony cases is the logical and normal consequence of allowing each State's Attorney to decide for him or herself what cases might be brought in their districts, what can be done at a public policy to alleviate unfair results? The Virginia Commission that reviewed its system of capital punishment expressed its view of this public policy dilemma. "The findings of this study are clear that local prosecutors do not consistently apply the death penalty statutes. Cases that are virtually identical in terms of the premeditated murder and predicate offense, the associated brutality, the nature of the evidence, and the presence of the legally required aggravators are treated differently by some Commonwealth's Attorneys across the State."

[17] 548 A.2d 939

The Virginia study went on:

> Still, it must be noted that the presence of widespread inconsistency in the system does not mean that the State is executing persons who are innocent of the crime for which they were sentenced. In fact, for the majority of capital-eligible cases reviewed by JLARC staff, the evidence of guilt appeared overwhelming, often including oral or written confessions, forensic evidence implicating the accused, and sometimes eyewitnesses to the actual crime. However, the rather uneven application of the statutes observed in this study calls into question the equity of the application of the death penalty in Virginia and raises significant policy questions that defy a simple solution.[18]

The Virginia study astutely defined the policy question at hand:

> On one hand, no viable system of capital punishment can be sustained without vesting Commonwealth's Attorneys with the discretionary authority they need to prosecute these difficult and troubling cases. Conversely it must be recognized that this discretion, which is so needed to ensure that the system is operated with a sense of proportion, will generate outcomes that cannot easily be reconciled on the grounds of fairness.[19]

While the Virginia report had no specific recommendations on how to solve such a public policy issue, it did state the precise question that any state must consider as it deliberates issues about the use of the death penalty. The report said: "*The key question that must be answered is whether some disparate outcomes can be accepted where the ultimate sanction is execution.*"[20]

RECOMMENDATIONS

1. *Connecticut should improve its system for gathering, analyzing and reporting data in a central, neutral location on capital and non-capital murder cases. In addition to the data recommended for collection under Item 3, data should be collected on the nature and location of the crime, the location of the prosecution, and other relevant geographical factors. The OCPD, OCSA, and the Judicial Branch should develop an implementation plan which will accomplish this goal, and which will establish where the data is stored.*

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[18] See supra note 14, at pg. 282.

[19] Id. at pg. 49.

[20] Id. at iv, "Summary of Report".

2. *A committee of State's Attorneys should be established by statute to review any preliminary decision by a local State's Attorney to seek the death penalty in a particular case. The method used in federal cases*[21] *should serve as a model for this statute, including a procedure for defense counsel to provide input as to why the death penalty should not be sought.*

3. *See Item 6, recommendation 1.*

Item 5: An examination of the training and experience of prosecuting officials and defense counsel involved in capital cases at the trial and appellate and post-conviction levels.

BACKGROUND

Providing high quality legal representation in capital cases, both by prosecutors and defense attorneys, is vital to protecting against wrongful convictions, avoiding death sentences when death is not the appropriate punishment in an individual case, and insuring that no innocent person is ever executed. Indeed, "[a] primary reason for the American Bar Association's 1997 call for a moratorium on executions was the urgent concern that many individuals charged with capital offenses are not provided with adequate counsel at one or more levels of the capital punishment process."[22] The training and experience of prosecuting officials and defense counsel involved in capital cases at the trial, appellate and post-conviction levels are key factors in guaranteeing adequate representation of an accused, the proper exercise of discretion, and a fair trial.

In examining the training and experience of prosecuting officials and defense counsel in capital cases in Connecticut, the Commission solicited input from the Division of Criminal Justice (DCJ), the Division of Public Defender Services (DPDS), and the private criminal defense bar. Materials and/or testimony were provided to the Commission, respectively, by Executive Assistant State's Attorney Judith Rossi of the Office of Chief State's Attorney, Assistant Public Defender Karen A. Goodrow of the Capital Defense & Trial Services Unit of the OCPD, and Attorney Hope Seeley, private practitioner with the Hartford law firm of Santos & Seeley and President of the Connecticut Criminal Defense Lawyers' Association.

FINDINGS

The Commission received no information indicating that additional training would have changed the result in any of the cases of the seven men on Connecticut's death row.

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[21] *See* Department of Justice, United States Attorneys Manual, §§ 9-10.020-9-10.100 (2002).
[22] *Death without Justice: A Guide for Examining the Administration of the Death Penalty in the United States,* American Bar Association, June 2001

Training is essential to ensure that the system of capital litigation operates fairly in the future.

A. Training and Experience of Prosecuting Officials

Training

Executive Assistant State's Attorney Judith Rossi discussed the specific training that Connecticut prosecuting officials have received in capital litigation. While the DCJ does not specifically track attendance at training programs, she reported that 17 individual prosecutors have attended capital litigation training programs around the country during the period 1994 to 2002. Six (6) prosecutors have attended multiple programs, including a core group of four (4) prosecutors who have acquired the most training (2 trial attorneys; 2 appellate attorneys). The training programs have included national conferences sponsored by the National District Attorneys Association (NDAA) and the Association of Government Attorneys In Capital Litigation (AGACL). The two appellate attorneys have been presenters at national conferences. There is also an informal training relationship with New Jersey prosecutors.

The Office of Chief State's Attorney (OCSA) emphasized the need for increased funding and support for training in order to provide adequate training to prosecutors statewide in the area of capital litigation. Currently the DCJ has a training budget of $75,000 per year for a total of 550 personnel, including 259 prosecutors. At current funding levels, only 2 prosecuting attorneys attend capital litigation training per year. The New York Prosecution Training Institute, a formal institute for all levels of training, has an annual budget of $2 million, $1.336 million of which is dedicated to training in capital litigation. This includes maintenance of a centralized brief bank and a prosecutors' case management system.

Experience

Death penalty cases are handled by highly experienced prosecutors with extensive resources. In addition, there is always more than one prosecutor assigned to a case at the trial and appellate level. The DCJ does not have a statewide capital prosecution unit, preferring to leave responsibility for capital prosecutions in the hands of the State's Attorney for each individual Judicial District.

For trials, two prosecutors are assigned to every capital felony case, even if the State is not seeking a death sentence. The practice is for a prosecutor with prior capital experience to sit first chair, and for a prosecutor with case-specific experience (e.g., DNA; child abuse) to be second chair. Typically each of the attorneys involved has more than 15 years of major trial experience, including homicide cases.

The same experienced Senior Assistant State's Attorney has been assigned to all of the death penalty appeals to date. Post-conviction litigation is handled by the Civil Litigation Bureau, which is headed by a senior prosecutor with appellate death penalty experience.

B. Training and Experience of Defense Counsel

Training

Training of defense attorneys involved in capital cases has been carried out primarily through the OCPD for the benefit of public defenders and special public defenders.[23] Typically this has been accomplished by attendance at death penalty defense programs held throughout the United States. With the exception of a 2-day in-house training program in capital defense that was conducted by the DPDS for public defenders in 1985, all such training has only been available outside of Connecticut.

There are several programs held annually which public defenders and special public defenders regularly attend. These include "Life In The Balance", sponsored by the National Legal Aid & Defender Association, and the NAACP Legal Defense Fund Death Penalty Conference. Other programs include selected subjects involving capital defense presented by the National Association of Criminal Defense Lawyers and the National Association of Sentencing Advocates. Records provided by the OCPD indicate that the agency has expended a total of $37,540 for attendance at such programs since 1993, an average of only $4200 per year.

Although no information was available regarding training in capital defense received by private defense attorneys, the limited number of private attorneys involved in capital cases and the restrictions on enrollment at the various national programs indicate that the extent of participation by the private bar is very limited. Even special public defenders have not had a substantial opportunity to participate due to lack of funding and limited invitations to these programs. Clearly there is a strong need for training programs within Connecticut that all interested defense attorneys could attend. This would help attract more private attorneys to accept assignment of capital cases as special public defenders and insure the quality of representation that is provided by all members of the bar at all levels.

Experience

The overwhelming majority of legal representation in death penalty cases in Connecticut is provided by appointed public defenders and special public defenders through the DPS. Because of the expertise required and the extraordinary amount of time involved in the preparation and trial of a death penalty case, the cost of private representation in such cases is extremely expensive. As such, it is highly unusual for any defendant in a death penalty case to be able to retain private counsel. To date, private attorneys have only represented accused in three (3) of the twenty-five (25) capital cases that have proceeded to a death penalty hearing.

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[23] Special public defenders are attorneys in private practice who accept court appointments to represent defendants in cases that cannot be assigned to public defenders due to a conflict of interest. This typically involves a situation where a public defender represents a co-defendant in the same case, or where the public defender represents or has previously represented a witness against an accused. In such circumstances, ethical considerations require that attorneys from outside the Division of Public Defender Services provide representation at state expense.

The DPDS's responsibility for providing representation in death penalty cases is carried out primarily through the Capital Defense & Trial Services Unit of the OCPD. This Unit was established in 1985 and has statewide responsibility in all death penalty cases. The Unit is made up of 5 trial attorneys, 1 appellate attorney, 3 investigators, 2 mitigation specialists, 1 paralegal, and 1 secretary. Trial attorneys and investigators from the 13 Judicial District offices work in conjunction with members of the Unit, as do appellate attorneys in the Legal Services Unit. Under certain circumstances, counsel from outside the Unit must be appointed due to a conflict of interest. In those instances, representation is provided by experienced private attorneys who accept appointment in death penalty cases as special public defenders.

The experience level of the public defenders in the Capital Defense & Trial Services Unit is substantial. These six (6) attorneys have been in practice for an average of 20 years, with a range of 14 to 31 years, with an average of 15 years service as public defenders and 9 years as members of the Capital Unit. They have tried an average of 5.5 capital felony cases, and two of the attorneys have had 9 capital trials.

The Capital Defense & Trial Services Unit has received national recognition for the quality of representation that it provides, including the 1998 the National Legal Aid & Defender Association and American Bar Association *Clara Shortridge Foltz Award* for outstanding achievement in providing indigent defense services in capital cases.

It is the policy of the Public Defender Services Commission that two lawyers be assigned to represent a defendant in a capital felony case if the state is seeking the death penalty. This is consistent with the American Bar Association (ABA) *Standards and* the National Legal Aid and Defender Association (NLADA) *Standards for the Appointment and Performance of Counsel in Death Penalty Cases.* See Public Defender Services Commission's *Policy Concerning Two Lawyers Appointed to Each Case in Which the State Seeks the Death Penalty*, [Appendix, K].

The Public Defender Services Commission has also adopted minimum experience requirements for attorneys who serve as special public defenders in capital felony cases. Qualifications to serve as lead counsel in capital cases include seven (7) years litigation experience in criminal defense, nine (9) criminal jury trials of serious and complex cases, including three (3) murder cases, experience with expert witnesses, and training or familiarity with capital defense. Similar but lesser qualifications are required for an attorney to serve as co-counsel in a capital case. See *Qualifications of Attorneys to be Appointed as Special Public Defenders in Capital Felony Cases*, [Appendix L].[24]

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[24] These qualifications are comparable to those established in other states. See, for example, *Virginia Standards for the Qualifications of Appointed Counsel in Capital Cases* (1992); *Indiana Criminal Rule 24* (1993) *Rule 65, Supreme Court of Ohio Rules of Superintendence for Courts of Common Pleas* (1987). They are also similar to the American Bar Association *Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (1989) and the National Legal Aid & Defender Association *Standards for the Appointment and Performance of Counsel in Death Penalty Cases* (1987).

While the adequacy and effectiveness and experience level of counsel in death penalty cases has been an issue in other states, it is apparent that accused in death penalty cases are being well-represented in Connecticut at the trial level by highly experienced defense attorneys. In fact, the high quality of defense that is provided in death penalty cases is well recognized and acknowledged within the legal community both in Connecticut and throughout the country. This is a credit to the fact that the DPDS has dedicated significant resources to this function and has made it a very high priority.

Even though the experience in Connecticut of public defenders, special public defenders and private attorneys involved in capital cases at the trial level is well above acceptable standards, the pool of attorneys in Connecticut who are qualified and available to handle capital trials is limited. Particularly in regard to special public defenders, there are only a dozen or so private attorneys who can consistently be relied upon to serve in this capacity. Ongoing recruitment efforts are essential to bring additional attorneys into the pool and to offset the natural attrition that occurs when individuals handle capital cases over an extended period of time. Low rates of compensation, strain on private practices, lack of training and resources, and the overall stress of this work are all obstacles to any recruitment efforts.

Attorney Hope Seeley, past president of the Connecticut Association of Criminal Defense Lawyers, presented the Commission with the perspective of the private bar in regard to serving as capital defense counsel. Attorney Seeley was personally involved in two of the three death penalty cases handled privately by defense counsel in Connecticut, *State v. Eric Steiger* (as paid defense counsel) and *State v. Chastity West* (as a special public defender). She emphasized that it was extremely unusual for attorneys to be retained privately in death penalty cases. By illustration, she pointed out that the *Chastity West* case had required 2 years of preparation and 8 months of trial, totaling 4000 hours of combined attorney time. At regular hourly rates the fee would have been $1 million, but the firm was paid for approximately 20% of the actual time. Because these fees are cost-prohibitive for a typical accused, most death penalty cases will be handled at state expense by public defenders and special public defenders.

Attorney Seeley recognized the need to involve the private bar in death penalty cases as special public defenders. Attorney Seeley identified three important "fear factors" that make private attorneys reluctant to serve in this capacity. They are:

- <u>Financial Fear</u>
  At current compensation rates of $65 per hour for all services, private attorneys fear the financial consequences to themselves and their firms. In comparison with a standard private fee of $200 per hour for an attorney with 10 years experience and $250 per hour for 25 years experience or more, payment at the SPD rate can result in financial ruin for a typical firm with average overhead. At $65 per hour, the fees generated can be less than a firm's operating expenses for the duration of a capital trial. Because the cases are so "all consuming," the remainder of the practice can also suffer with the risk of losing other clients. Attorney Seeley suggested that Connecticut follow

the federal model, under which prosecutors receive $125 per hour with a budgeted total of $300,000 per case. In addition, private attorneys serving as special public defenders should be given accommodations to allow them to sustain the remainder of their practice during a lengthy trial. Attorney Seeley recommended that trial weeks in capital cases be limited to four days.

- Fear of the Law
  Death penalty law is different from ordinary homicide law, is very complex, and requires a substantial amount of learning on the part of the attorney. Voluminous pretrial motions are required, jury selection is lengthy and involves its own unique law of voir dire. The preparation of mitigation evidence is an aspect of capital litigation not found in other homicide cases. Given these complexities and demands, training for special public defenders is needed. Sending special public defender candidates to national conferences at the state's expense will help to recruit and retain attorneys to serve as special public defenders.

- Fear of the Stakes
  Most special prosecutors have never handled cases in which the stakes were life and death. To provide the best defense possible, special prosecutors need resources similar to those enjoyed by OCPD. Most special public defenders lack the support staff and resources available to public defenders within the Capital Defense & Trial Services Unit, such as mitigation specialists and full-time investigators. While assistance is provided in funding expert witnesses, comparable support staff is not widely available to special public defenders. Consequently, there is a need for full-time investigators and mitigation specialists to assist special public defenders in handling these cases.

APPEALS

Most appeals in capital cases, both death and non-death, have been handled by full-time public defenders from the Legal Services Unit of the OCPD. This Unit is comprised of attorneys who specialize in providing representation in criminal appeals before the Connecticut Supreme Court and Appellate Court. The most experienced attorneys within the Unit are assigned to represent defendants in capital cases. The average experience level of attorneys assigned to these cases to date is approximately 20 years of practice.

Nine appeals have been filed by public defenders in capital cases in which the defendant was sentenced to death. To better meet its responsibility to provide representation on appeal in these highly demanding and time consuming cases, the OCPD has recently assigned two appellate lawyers to handle death penalty appeals on a full-time basis. One attorney is a member of the Legal Services Unit and the other is within the Capital Defense & Trial Services Unit. In addition to appeals following trial and conviction, these attorneys are also responsible for any interlocutory appeals in pending death penalty cases that the Chief Justice agrees to accept (e.g., *State v. Courchesne*; *State v. Sostre*).

Through this specialization in capital cases, the overall expertise of these defense counsels will be further enhanced at the appellate level.

Post-conviction representation in capital cases involves both state and federal habeas corpus proceedings, including appeals in such matters, as well as representation before the Board of Pardons.[25] To date, two (2) capital cases have reached the state habeas corpus stage (*State v. Webb*; *State v. Cobb*). No federal habeas corpus proceedings have been initiated to date, nor have any applications for commutation of death sentences been filed with the Board of Pardons.

Typically state habeas corpus proceedings in death penalty cases will be handled by special public defenders on a court appointed basis. This is necessary because most individuals under sentence of death will have been represented by public defenders at trial and/or on appeal, and the habeas proceeding is likely to involve a claim of ineffective assistance of counsel by trial and/or appellate counsel. As such, the habeas must be handled by a special public defender from outside of the Division of Public Defender Services.

To qualify for appointment as a special public defender in a state habeas corpus proceeding, an attorney must meet the Public Defender Services Commission's qualifications for appointment in capital felony cases, as well as for appointment in habeas corpus matters. See *Standards for Appointment of Special Public Defenders In Habeas Corpus Cases*, [Appendix M]. Consequently, the experience level of post-conviction defense counsel is high, although it is difficult for the reasons stated above to recruit attorneys to serve in this capacity.

In the two pending state habeas corpus matters, two attorneys have been appointed to represent the petitioner in each case. In *State v. Sedrick Cobb*, a partner in a major Fairfield county law firm with prior death penalty post-conviction experience and an experienced associate in the same firm are representing the petitioner. In *State v. Daniel Webb*, the principals of a New Haven law firm, both of whom are former Federal public defenders with considerable criminal defense experience, are representing the petitioner. However, there is concern that as the number of death penalty cases to reach the post-conviction stage increases, it will be difficult to sustain such a high experience level amongst those appointed.

Ideally, the attorneys assigned to handle the state habeas corpus proceeding will continue to represent the client in federal post-conviction, as well as before the Board of Pardons. Appointment in the federal proceeding is a matter under the authority of the federal court in accordance with the criteria that exist for appointment in such cases. Presumably representation before the Board of Pardons will be provided in accordance with criteria to be established by the Public Defender Services Commission.

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[25] Jurisdiction over the granting of commutations from the penalty of death in Connecticut is vested exclusively in the Board of Pardons. See §18-26(a), Conn. Gen. Stat.

To ensure that experienced defense counsel are available for post-conviction proceedings on an ongoing basis, consideration should be given to the establishment of a Death Penalty Post-Conviction Unit within the Division of Public Defender Services. (See discussion under Item 12 of Report at pages 67 and 68.) This Unit would be under the supervision and administration of the Chief Public Defender, but would operate separately and independently of the rest of the Division for conflicts of interest purposes.

RECOMMENDATIONS

1. *The State of Connecticut should pursue all federal grant opportunities and maintain adequate state funds, as necessary, for the ongoing training of prosecutors, public defenders, special public defenders, and judges, which are involved in death penalty litigation. A mandated minimum number of hours of training should be required on an annual basis. The Division of Criminal Justice and the Office of the Chief Public Defender should be encouraged to host both statewide and regional training conferences in the area of capital felony litigation and consider the establishment of a minimum number of training hours.*

2. *The State of Connecticut should increase the hourly rates for special public defenders in death penalty cases. A good benchmark is the rate paid to court-appointed attorneys in federal death penalty cases. The Commission finds that without such an increase, the availability of special public defenders will diminish and the quality of available representation will decline. In addition, accommodations are necessary for private attorneys in order to allow them to sustain the remainder of their practice during a lengthy trial. A maximum trial schedule of four days per week would meet this objective.*

3. *A Capital Defense Support Unit should be established within the Office of Chief Public Defender to provide support services to Special Public Defenders comparable to those services available to attorneys within the Capital Defense & Trial Services Unit. Special public defenders that accept appointments in death penalty cases are in need of investigators and mitigation specialists to assist in the preparation of cases for trial. While these services are available to public defenders, there is a shortage of qualified personnel who are available on a private basis to provide comparable services to special public defenders. Such a unit would operate independently of the Capital Defense & Trial Services Unit to protect against conflicts of interest in the representation of co-defendants.*

<u>Item 6:</u> An examination of the process for appellate and post-conviction review of death sentences.

BACKGROUND

A death sentence issued by a Connecticut Superior Court is reviewed in three phases: (1) mandatory review by, and direct appeal to, the Connecticut Supreme Court; (2) state habeas corpus review; and (3) federal habeas corpus review.

FINDINGS

A. Mandatory Review / Direct Appeal Stage

Connecticut State Court Review

When a defendant is sentenced to death, the Connecticut Supreme Court is obligated to review the sentence pursuant to C.G.S. §53a-46b. In addition to this review, a defendant may appeal his conviction and/or sentence to the Connecticut Supreme Court. If a defendant files an appeal (which has always happened in the post-*Furman*[26] era in Connecticut), the mandatory review will be consolidated with the defendant's direct appeal. Conn. Gen. Stat. §53a-46b(c). The Connecticut Supreme Court's review at the mandatory review/direct appeal stage will examine the "legal errors claimed and the validity of the sentence." *Id.*

If the Connecticut Supreme Court vacates the conviction or sentence, it will remand the case to the Superior Court. Under most circumstances, the Connecticut Supreme Court will direct the Superior Court to conduct a new trial, new penalty hearing, or both.[27] If, however, the Connecticut Supreme Court finds that the facts in the case do not justify a death sentence, and subjecting the defendant to another trial will constitute double jeopardy[28], the Supreme Court will direct the Superior Court to impose a verdict of life without the possibility of release.

Proportionality Review

Prior to a change in the law in 1995, Connecticut's appellate review of death sentences included proportionality review, requiring the Supreme Court to affirm the sentence of death unless it determined that "the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant." Sec. 53a-46b (b) (3), C.G.S. This requirement was adopted by the General Assembly in 1980 and was conducted as part of all appeals involving crimes committed prior to its repeal in 1995. The purpose of the requirement was to compare one case to another and assess whether the death penalty is being imposed in a consistent and even-handed manner. In *Gregg v. Georgia*, 428 U.S. 238

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[26] *See* the Introduction's discussion of *Furman*, *supra*.
[27] *State v. Ross* (new penalty hearing); *State v. Breton* (new penalty hearing)
[28] *See State v. Johnson*, 253 Conn. 1, 56 (1999).

(1972), the United States Supreme Court found that it "serves as a check against random or arbitrary imposition of the death penalty and substantially eliminates the possibility that a person will be sentenced to die by the action of an aberrant jury."

However, in 1984 the Supreme Court held in *Pulley v. Harris*, 465 U.S. 37, that proportionality review was not constitutionally required under the Eighth Amendment. Although Connecticut continued to require it for eleven more years, it was repealed as part of Public Act 95-19, which also established a process for weighing aggravating and mitigating factors in order to determine whether a death sentence would be imposed.

Notwithstanding that proportionality review is not constitutionally required, it serves a purpose that is not addressed by other existing forms of review. Without it, no review is undertaken to address the problem of inconsistency from case-to-case in the imposition of the death penalty statewide or to insure that the death penalty is being administered in a fair and even-handed manner. While a more efficient method of proportionality review than Connecticut's previous method is desirable, there are important interests served by requiring proportionality review to be part of Connecticut's appellate review of all death sentences.

United States Supreme Court Review

If the defendant's appeal to the Connecticut Supreme Court is unsuccessful and his conviction is affirmed, the defendant may file a petition for a writ of certiorari with the United States Supreme Court. A certiorari petition essentially asks the United States Supreme Court to review the decision of the Connecticut Supreme Court.

If the United States Supreme Court denies the petition (*i.e.*, chooses not to review the case), or grants the petition, reviews the case, and rules against the defendant, the defendant's direct appeal rights are exhausted. If the United States Supreme Court grants the petition and reverses the ruling of the Connecticut Supreme Court, the defendant may receive a new trial or a new penalty phase hearing in the Superior Court, among other possible relief.

Since *Furman*, only two Connecticut defendants' cases have exhausted their Connecticut direct appeal/mandatory review rights, Sedrick Cobb and Daniel Webb. Their cases are now in the process of state habeas corpus review.

B. State Habeas Corpus Review

If the mandatory review / direct appeal process is concluded adversely to a defendant, the next opportunity for post-conviction review is a state habeas corpus petition. A habeas corpus action is a civil claim in which a defendant alleges that he is being confined in violation of his state or federal constitutional rights. The right to apply for a writ of habeas corpus in Connecticut State courts arises under Article One, Section 12 of the State Constitution and Conn. Gen. Stat. § 52-466. This remedy is available to any convicted person, not just persons sentenced to death.

A "habeas action" examines whether a defendant is being unconstitutionally confined. A common habeas claim alleges that a defendant received ineffective assistance of counsel at trial and is therefore being confined in violation of his right to counsel guaranteed by the Sixth Amendment of the United States Constitution. Other claims include actual innocence, discrimination in sentencing, and other potential constitutional violations. Although the focus of a habeas action (unconstitutional confinement) differs from the focus of a direct appeal (errors in the pre-trial and trial process), the defendant's goal in each action is the reversal or vacatur of the adjudication of guilt or the sentence of death.

A defendant initiates state habeas corpus review by filing a petition in Connecticut Superior Court. There is a special docket in the Superior Court for habeas actions, but habeas petitions arising from death penalty convictions do not take precedence over other habeas petitions. If a defendant's habeas action is unsuccessful at the Superior Court level, the defendant may appeal the Superior Court's ruling to the Connecticut Appellate Court. If the defendant is unsuccessful at the Appellate Court, the defendant may file a petition for certification to the Connecticut Supreme Court. If the petition is granted, the Connecticut Supreme Court will hear the defendant's appeal.

If the appeal to the Connecticut Supreme Court is unsuccessful, the defendant may petition the United States Supreme Court to issue a writ of certiorari and hear the defendant's appeal. If the petition is denied, or if the United States Supreme Court grants the petition, issues a writ, and rules against the defendant, the defendant's state habeas remedies are exhausted. If the United States Supreme Court rules in the defendant's favor (or if any lower court rules in the defendant's favor), the defendant may be entitled to a new trial or penalty phase hearing, among other possible relief.

Since *Furman*, no condemned Connecticut defendant's case has proceeded through state habeas corpus review. While there is no requirement under Connecticut law that a death row inmate file a state habeas petition immediately after an unsuccessful appeal, federal law (discussed next) contains time limits that effectively encourage a defendant to do so.[29]

C. Federal Habeas Corpus Review

Federal habeas corpus review has essentially the same focus as state habeas corpus review, but is conducted in the federal courts. Federal habeas corpus relief is authorized by Article I, Section 9 of the United States Constitution. The process for administration of habeas relief is governed by 28 U.S.C. § 2241, *et seq.*

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[29] Under the federal Anti-Terrorism and Effective Death Penalty Act, a petitioner has one year from the time of the final state court decision on appeal to file a federal habeas. This is tolled by the filing of a state habeas, but all time is aggregated, so it is an inducement to file the state habeas immediately upon issuance of the final decision on direct appeal in order to avoid running of the 1 year period. (E.g., the state habeas petitions in *Cobb* and *Webb* were filed either the same or the next day as the Connecticut Supreme Court denied the direct appeals). The federal time limit has the practical effect of presenting delay in filing a state habeas action.

A defendant initiates a federal habeas corpus proceeding by filing a petition in the United States District Court for the District of Connecticut. Appeals from the District Court are taken to the United States Court of Appeals for the Second Circuit, and then to the United States Supreme Court. Since *Furman*, no condemned Connecticut defendant's case has reached the federal habeas corpus review stage.

D. Appellate Rights on Remand

In any situation where a defendant's case is remanded to a lower court (such as by virtue of a successful direct appeal or habeas action), the defendant will enjoy the same appellate rights from the lower court on remand as he enjoyed when the case was previously at that level. For example, if a defendant prevails on direct appeal, is granted a new trial but is again sentenced to death, the defendant may appeal his second conviction and sentence to the Connecticut Supreme Court on direct appeal, and pursue state habeas and federal habeas remedies thereafter, if necessary.

E. Setting of Execution Date

If a defendant is unsuccessful at the direct appeal, state habeas and federal habeas levels, a date for his execution will be set. At this point, a defendant's only opportunity to have his death sentence set aside will by a pardon or commutation issued by the Board of Pardons pursuant to Conn. Gen. Stat. § 18-26. Because a pardon or commutation is technically not appellate or post-conviction review of a death sentence (and is discussed elsewhere in this report; *see* Item 8), it is not discussed here.

RECOMMENDATIONS

The Commission agreed that the three levels of appellate and post-conviction review afford a defendant ample opportunity to raise any challenges to his adjudication of guilt or sentence of death. Nevertheless, the Commission makes the following recommendation:

1. *To (1) ensure that the death penalty is being administered in a rational, non-arbitrary, and even-handed manner, (2) provide a check on broad prosecutorial discretion, and (3) prevent discrimination from playing a role in the capital decision-making process, Connecticut should reinstate proportionality review of any death sentence to ensure that it is not excessive or disproportionate to the sentence imposed in similar cases. To prevent delays that have occurred previously in proportionality review, an efficient method for proportionality review, to take place contemporaneously, should be specified by statute, including a process for reviewing similar cases by means of summaries and not plenary reviews of the record.*

<u>Item 7:</u> An examination of the delay in attaining appellate and post-conviction review of death sentences, the delay between imposition of the death sentence and the actual execution of such sentence, and the reasons for such delays.

BACKGROUND

The term "delay" can be a neutral or loaded term. What some may view as stalling, others may view as time necessary to present arguments and to deliberate over life and death issues. The Commission has construed Topic 7 of the Death Penalty Act to request an examination of what causes the timing of the various phases of appellate and post-conviction review and whether there is any inordinate or unnecessary delay in this process.

FINDINGS

No one has been executed in Connecticut since 1960. Accordingly, there is no case in the post-*Furman* era in which a definite interval between conviction and "imposition of the death sentence" has been established.

Nevertheless, the pace of post-conviction review can be evaluated by the cases of the seven men on Connecticut's death row, each of whom is engaged in some form of a post-conviction challenge to his death sentence. A chart [see Appendix N] provides a time-line of the legal proceedings involving those on Connecticut's death row. The following is a brief synopsis of the status of the cases of the persons on death row:

> <u>Michael Ross</u>: Dates of offenses: November 1983 and June 1984. Date of first death sentence: July 1987; reversed, July 1994; Date of most recent death sentence: May 2000. Status: Second direct appeal to Connecticut Supreme Court; defendant's brief filed in August 2002, state's brief not yet filed.
>
> <u>Robert Breton</u>: Date of offenses: December 1987. Date of first death sentence: October 1989; reversed, August 1995; Date of most recent death sentence: January 1998. Status: Second direct appeal to Connecticut Supreme Court; defendant's brief filed in January 2001; State's brief filed in September 2002.
>
> <u>Sedrick Cobb</u>: Date of offense: December 1989. Date of Death sentence: September 1991. Status: Conviction affirmed by Connecticut Supreme Court December 1999. State habeas corpus application filed.
>
> <u>Daniel Webb</u>: Date of offense: August 1989. Date of death sentence: September 24, 1991. Status: Conviction affirmed by Connecticut Supreme Court July 1996. State habeas corpus application filed.

Richard Reynolds: Date of offense: December 1992. Date of death sentence: April 1995. Status: Direct appeal to Connecticut Supreme Court fully briefed and argued, awaiting ruling.

Todd Rizzo: Date of offense: September 1997. Date of death sentence: August 1999. Status: Direct appeal to Connecticut Supreme Court fully briefed, oral argument occurred in October 2002, awaiting ruling.

Ivo Colon: Date of offense: July 1998. Date of death sentence: December 2000. Status: Direct appeal to Connecticut Supreme Court. Defendant's brief filed August 2002; State's brief not yet due.

For the seven cases listed above, and the case of Terry Johnson, whose death sentence was reversed by the Connecticut Supreme Court on direct appeal[30], the data reveal the following averages:

- Average interval between date of arrest and first day of first trial (i.e., not trial on remand): 1 year, 264 days (Longest: Ross, 2 years, 280 days; Shortest: Breton, 1 year, 39 days);

- Average interval between filing of notice of appeal and filing of defendant's appellate brief: 2 years, 284 days (Longest: Sedrick Cobb, 5 years, 143 days; Shortest: Breton II, 228 days);

- Average interval between filing of defendant's appellate brief and filing of State's appellate brief (in cases in which State's briefs have been filed): 1 year, 125 days (Longest: Johnson, 2 years, 45 days; Shortest: Webb, 231 days);

- Average interval between filing of State's brief and oral argument (where oral argument has occurred): 292 days (Longest: Johnson, 1 year, 103 days; Shortest: Rizzo, 93 days);

- Average interval between oral argument and Connecticut Supreme Court decision (where decision issued): 216 days (Longest: Cobb, 292 days; Shortest: Johnson, 189 days).

Testimony before the Commission established that delay in death penalty appeals falls into two broad categories: (1) delays that exist in major felony prosecutions in general, or in the court system in general; and (2) delays particular to death penalty litigation.

[30] *State v. Johnson*, 253 Conn. 1 (2000).

A. General Delays

Much of the delay in appellate and post-conviction review of death sentences happens because capital felony prosecutions are big cases. Death penalty cases are a subset of the larger category of major felony cases. While a simple assault trial might last half a day, involve one or two witnesses and one or two exhibits, a major felony case often involves months of pretrial hearings and trial, hundreds of pieces of physical evidence, and dozens of witnesses.[31]

When a major felony conviction is appealed, the Superior Court must prepare a "record" consisting of the evidence submitted to the Superior Court and transcripts of all court proceedings. Given the size of a major felony case, it takes longer to prepare a record in a major felony appeal than in a smaller case. When the record is complete, attorneys for the Defendant and the State, and eventually the courts, have much more information to review than in a simple case. It is expected in major felony appeals that the parties will request briefing schedules that allow for the parties significant time to review the lengthy record and to prepare briefs, causing a more protracted or delayed appellate review than in a simple case. Death penalty cases are like any other major felony case in this regard.

The Commission's review discovered delays in the judicial process that are not death penalty-specific, but occasionally arise in the court system in general, and should be remedied as soon as possible. During the first Michael Ross appeal, a delay was caused by a court reporter's using a unique method of transcription. While this particular scenario is unlikely to recur, delays of this nature are unacceptable in court proceedings in general, and particularly in death penalty litigation where the rights of victims (*see* discussion of Topics 11 and 14 below) and defendants are profoundly affected. In the recommendations for this Topic set forth below, the Commission addresses some of these delays.

B. Death Penalty-Specific Delay

The Commission identified several reasons for actual or potential delay that are unique to death penalty appeals and post-conviction review: (1) given the life-or-death consequences at issue in a death penalty case, defense counsel typically file briefs that address every possible legal or factual error committed by the trial court (the Commission is not opposed to this practice, as discussed below); (2) a death penalty trial involves unique phases that can be the subject of appeal; (3) Connecticut's death penalty jurisprudence is relatively undeveloped compared to that of other states that have had greater numbers of convicted persons whose death sentences have been reviewed on appeal; (4) OCPD and OCSA have limited numbers of people trained in death penalty litigation who can devote time to researching and preparing the necessary briefs; and (5) none of the principal players in a death penalty case (defense counsel, the State and the

[31] As state in the Commission's discussion of Topic 3, neither the Judicial Branch nor the Office of the Chief State's Attorney has compiled any statistics that would shed light on whether capital felony cases consume more time or resources than other major felony cases.

courts) are generally focused upon expediting the appeals process due to the seriousness and complexity of these matters.

Comprehensive Briefing

The Commission reviewed briefs filed by the OCPD and OCSA in the direct appeal of Sedrick Cobb. This briefing, and the Connecticut Supreme Court's decision in the *Cobb* case, provided a helpful illustration of the comprehensive nature of the appellate process in death penalty cases.

A representative of OCPD explained how Cobb's appellate brief, and death penalty briefs in general, are different from an appellate brief in a non-capital case. In an ordinary appeal, a petitioner's brief will typically focus on a few key arguments and omit weak arguments that might dilute stronger ones. In a death penalty appeal, defense counsel will typically address every possible issue that might secure reversal -- even if existing law on the issue is unfavorable. This is because the law might change during the pendency of an appeal, or even after the appeal is concluded. If an issue is not raised in an appellant's brief on direct appeal, a reviewing court (in the direct appellate process or on habeas review) will often deem it to be waived. Given the life-or-death stakes at issue, defense counsel will seek to include every possible issue in a brief in the possibility that it will be the one that secures reversal.

The result of this thoroughness is a long brief that takes a significant amount of time to prepare. In *Cobb*, the OCPD not only challenged the State's seizure of physical and testimonial evidence (types of challenges that would occur in virtually any non-capital major felony appeal), it also made detailed legal challenges to almost every aspect of Connecticut's death penalty statute and how it was applied to Cobb. The OCPD's brief on behalf of Cobb was 287 pages long and cited nearly 300 cases from Connecticut and throughout the United States.

A lengthy brief from the defendant requires a lengthy response from the State. If the State fails to address an issue raised by the defendant, an appellate court might view that omission as a concession by the State that it has no argument to oppose the defendant's argument. In *Cobb*, the State's brief was 288 pages long and cited over 350 cases from Connecticut and throughout the United States. Naturally, this brief also took a significant amount of time to prepare.

When the case is submitted to the Connecticut Supreme Court after oral argument, the Court must review the parties' lengthy briefs as well as the voluminous record. Because the scope of review dictated by a defendant's brief is typically greater in death penalty litigation than in an appeal in a non-death major felony case, death penalty appeals require more work and time on the part of the parties and the Connecticut Supreme Court.

The Commission was very favorably impressed by the thorough manner in which OCPD has represented capital defendants and OCSA has represented the State in capital proceedings, including appeals. As discussed in the Recommendations below, nothing

should be done that would jeopardize this important tradition in Connecticut capital appellate litigation.

Additional Issues for Review

A death penalty prosecution involves proceedings not found in other types of major felony prosecutions, such as death qualification of a jury and the aggravation/mitigation weighing that occurs in the penalty phase hearing. These proceedings may give rise to additional appellate issues not found in other major felonies. In some Connecticut death penalty appeals, however, the number of potential appellate issues has been reduced by a defendant pleading guilty (e.g., Johnson), thereby leaving only penalty phase issues for appeal.

Undeveloped Connecticut Death Penalty Jurisprudence

Connecticut has had far fewer death penalty convictions than most other states with the death penalty. [For a comparison of Connecticut statistics to those of other states, see http://www.clarkprosecutor.org/html/death/dpusa.htm]. As a result, there have been fewer death penalty appeals in Connecticut than elsewhere. Most Connecticut death penalty appeals therefore raise issues never addressed before by the Connecticut Supreme Court. Parties to a Connecticut death penalty appeal must often brief new issues at length, researching and discussing cases from outside of Connecticut to support their arguments. When the Connecticut Supreme Court decides an issue for the first time, it will often have to provide a lengthy explanation for its reasoning. The briefing of new death penalty issues, and the Connecticut Supreme Court's resolution of them, requires additional time and effort.

As Connecticut's death penalty jurisprudence develops and the Connecticut Supreme Court clarifies more legal issues, the entire death penalty litigation process should take less time. For example, in the *Ross* and *Webb* appeals, the parties briefed at length the issue of whether Connecticut's death penalty statute was constitutional. In its rulings in these cases, the Connecticut Supreme Court discussed the parties' arguments at length, eventually finding that Connecticut's death penalty statute was constitutional. In subsequent death penalty appeals, the Connecticut Supreme Court has simply cited to the *Ross* and *Webb* decisions in response to challenges to the constitutionality of Connecticut's death penalty.[32]

It is likely that as Connecticut's death penalty jurisprudence develops, future death penalty appeals will require less time to resolve than past appeals. Nevertheless, some recent changes to Connecticut's death penalty statute will raise new issues for resolution by the Supreme Court.[33]

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[32] Appellate decisions should also streamline the trial process. For example, in *State v. Breton*, 212 Conn. 258 (1989), the court set forth a limiting construction for the "especially cruel" aggravating factor that has been incorporated in jury instructions used in subsequent death penalty sentencing hearings.

[33] In the recent appeal of Todd Rizzo, defense counsel has argued that a recent modification to Connecticut's death penalty statute has impermissibly allowed aggravating factor to be "double-weighed."

Resources

Representatives of both the OCSA and the OCPD stated that their current staffing levels made it difficult for them to proceed any more quickly with death penalty appeals than they currently do. On the State side, death penalty appeals are handled by OCSA's appellate division; there is no separate division dedicated to death penalty appeals. Although OCPD has a Capital Defense Unit, its appeals in death penalty cases are handled by the Legal Services unit, which also handles non-death penalty appeals.

Expediting Proceedings Not a Central Focus

The Commission's review found that the principal players in death penalty appeals (defense counsel, the State, or the Courts) do not generally focus upon expediting the death penalty appeals process.

Defense attorneys are not generally focused upon expediting appeals due to the seriousness and complexity of the issues involved, defense counsel's obligation to provide effective assistance to the accused, and the need for thoroughness in preparing the appellate brief. Defense counsel are also generally not interested in hastening an appellate process that might lead to a defendant's death. Further, the longer a defendant remains on death row, the greater the possibility that a ruling will be handed down by a court that will require reversal of the death sentence.

Many of the State's prosecutorial interests are served by the conviction and confinement of a defendant. During the pendency of a death penalty appeal, the State can be satisfied that a dangerous person can no longer harm the public. While the State is interested in ensuring that a defendant's death sentence is imposed, as Connecticut law requires, it is difficult to divert limited appellate resources from other efforts to ensure that this occurs.

It takes time for the Connecticut Supreme Court to review the arguments presented by the prosecution and defense. It has taken the Connecticut Supreme Court between six and nine months to resolve death penalty cases brought before it.

RECOMMENDATIONS

1. *In death penalty cases, and in criminal litigation in general, technology and resources should be in place to ensure timely preparation of an appellate record. Further review is needed to determine the specific technology requirements and other resources needed to accomplish this goal. The appellate process should not be delayed by administrative inefficiencies.*

2. *Additional resources should be provided to the Judicial Branch, the Division of Criminal Justice and the Division of Public Defender Services for the adjudication of all habeas corpus matters in a timely manner, including death*

penalty cases, and the reduction of backlogs in the habeas docket that cause such delays.

3. *The Commission approves of the current appellate practice in which defendants are allowed to present exhaustively all issues germane to legal errors or the validity of a death sentence. Steps taken to expedite death penalty litigation at the state level should not curtail a defendant's right to present any argument that is warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law, or the establishment of new law.*

Item 8: An examination of procedures for the granting of a reprieve, stay of execution or commutation from the death penalty; and

Item 9: An examination of the extent to which the Governor is authorized to grant a reprieve or stay of execution from the death penalty and whether the Governor should be granted that authority.

BACKGROUND

The Commission received testimony concerning the above items from the Chairman of the Board of Pardons. The Commission was also provided with copies of draft regulations proposed by the Board of Pardons for Commutations of Sentences from the Penalty of Death. Also, received into the record were written comments on the proposed regulation from the Office of the Chief State's Attorney and the Office of the Chief Public Defender.

FINDINGS

In a majority of States with the death penalty, the decision to invoke the powers of clemency resides with the Governor, often with benefit of an advisory group. Clemency power generally encompasses the specific acts of commutation and pardon, and in Connecticut has been interpreted by the courts as being constitutionally vested in the legislature.[34] In determining the origin of clemency power, as it is not expressly provided for in the constitution, the court has drawn upon the historical record of the General Assembly (1837-1883), to provide evidence of the legislative granting of clemency to prisoners at each legislative session.[35] The practice of legislative clemency ended in 1883 when the General Assembly delegated its powers to a Board of Pardons, established by statute.

[34] Palka v. Walker, 198 A. 265 (1938).
[35] Palka, at 266.

The Board of Pardons has statutory jurisdiction and authority over the granting of conditioned or absolute commutations of punishment. The Board may grant pardons of any offense against the state at any time after the imposition and before or after the service of any sentence. Commutations from the penalty of death are statutorily vested in the Board of Pardons.[36]

The Board of Pardons is administratively located within the Department of Corrections. The Board is comprised of five members, appointed by the Governor with the advice and consent of either house of the General Assembly. Pursuant to statute, three members are attorneys, one member must be skilled in one of the social sciences, and one member must be a physician.[37]

At the time of this report, the only other states that have a similar process of granting clemency, i.e., exclusively through an independent board or advisory group, are Georgia and Idaho. States where the Governor has sole authority include Alabama, California, Colorado, Kansas, Kentucky, New Jersey, New Mexico, New York, North Carolina, Oregon, South Carolina, Virginia, Washington and Wyoming. The power to grant clemency in federal cases is vested in the President of the United States.

A. COMMUTATION

A commutation is the reduction of a criminal sentence received by a defendant after a criminal conviction. A commutation is more often used in the context of reducing a term of years on an existing prison sentence, especially when it can be shown that there has been rehabilitation or other change in the necessity to incarcerate an inmate. For the purposes of this report, however, a commutation is examined in the context of the reduction of a sentence of death to a sentence of life imprisonment.

The courts have held, generally, that an inmate does not have a constitutional right to the commutation of a sentence.[38] An inmate is not permitted to argue that a pardon is required in his case because of any practice of the Board of Pardons in a similar case. The Attorney General has opined that pursuant to its power as delegated by the state legislature, only the Board of Pardons may permanently commute a sentence of death.[39] There is currently no established right to judicial review of the denial of commutation.[40]

Consistent with the statutory authority vested in the Board of Pardons and the subsequent case law precedents, the Board has established various state regulations to provide procedural guidance in carrying out its mission. Of particular interest to the Commission are the current proposed amendments to the Board's regulations that will address the Commutations of Sentences from the Penalty of Death.

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[36] Conn. Gen. Stat. Ann § 18-26
[37] Conn.Gen.Stat. Ann § 18-24a
[38] Connecticut Bd. of Pardons v. Dumschat, 452 U.S. 458 (1981).
[39] Op. Atty. Gen. No. 92-020.
[40] McLaughlin v. Bronson, 537A.2d 1004 (1988).

B. PARDONS

A pardon is an act of the State to remove any penalties imposed on a person as a result of a criminal conviction. A pardon removes any record of the conviction and treats the person as if he was innocent of the crime. As in the standards of commutation, a pardon is usually considered only in cases of unusual circumstances, such as complete rehabilitation, actual innocence of the crime convicted, or humanitarian reasons, such as terminal illness.

C. REPRIEVES

A reprieve is the temporary delay in the execution of a criminal sentence. It is not permanent and may be invoked for a specifically limited period of time. The Constitution of the State of Connecticut explicitly empowers the Governor to grant reprieves, excepting cases of impeachment, until no longer than the end of the next session of the General Assembly.[41] The Connecticut Supreme Court has determined that the purpose of a reprieve is only to provide for the assurance that sufficient opportunity is given to the legislature or Board of Pardons to consider clemency.[42] The process through which a reprieve is granted is subject to the adoption of policies and procedures as adopted by the Governor. While there is no provision which prevents the Governor from granting successive reprieves to the same prisoner, the court has held that the underlying purpose of the constitutional provision is "[n]ot to give the Governor power indefinitely to postpone execution in a capital case." [43] The court further emphasizes its aversion to such an unwarranted postponement of the execution of a capital sentence by opining that "We cannot believe that a Governor would so misuse his power as to produce such an unjustifiable result." [44]

D. STAY OF EXECUTION

A stay of execution is a court-ordered delay of the imposition of a capital sentence, usually based on a pending question before a judicial body. The process of issuing a stay of execution is distinguished from a reprieve in that a stay of execution is an order of the court, subject to judicial review, while a reprieve is most often a function of the executive branch. In cases of a capital offense, an automatic stay of execution is imposed during the both the process of appeal and the subsequent consideration of writs of habeas corpus. The practical effect is that the time between actual sentencing and execution of sentence routinely lasts for a period of several years. Due to the present appellate / habeas status of all current death row inmates in Connecticut, all death sentences are stayed.

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[41] Conn. Const. Article 4, §10.
[42] Palka, at 266.
[43] Palka, at 267.
[44] *Id.*

RECOMMENDATIONS

1. *The Commission recommends that no changes be made to the existing procedures for the granting of a reprieve, stay of execution or commutation from the death penalty.*

2. *The Connecticut General Assembly should adopt legislation to require an affirmative vote of a majority of the five members of the Board of Pardons in order to commute a death sentence to a sentence of life imprisonment without the possibility of release.*

3. *The Governor's authority to grant a reprieve or stay of execution should not be changed.*

ITEM 10: An examination of the safeguards that are in place or should be created to ensure that innocent persons are not executed.

BACKGROUND

No information was presented to the Commission to suggest that anyone currently on death row is factually innocent of the crime of which he has been convicted. Nevertheless, experiences in other states throughout the country suggest that Connecticut cannot be complacent, and "best practices" should be the watchword for criminal investigative techniques in this state.

Criminal justice experts agree that some of the factors that contribute to the arrest, conviction, and imposition of the death penalty upon innocent people are lack of DNA testing, ineffective counsel, prosecutorial misconduct, mistaken eyewitness testimony, false confessions and testimony from informants. Elaine Pagliaro, Acting Director of Connecticut's Forensic Science Laboratory, and Attorney Barry Scheck, Cardozo School of Law, provided their expertise on these topics.

Deoxyribonucleic Acid (DNA) Testing

In order to help ensure that innocent people are not convicted and executed for crimes they did not commit, Connecticut must maintain a properly staffed and equipped forensic lab capable of performing sophisticated tests including DNA analysis.

Recently, many state criminal justice systems have taken a new look at science and its ability to exonerate or confirm an inmate's connection to a crime. More specifically, new advances in DNA technology have made it possible to test evidence that was once thought to be too old, small, or damaged to produce reliable results. In addition, these

new methods are more precise than former ones. Quite often, the reexamination of evidence provides new facts in a case. These facts may demonstrate a prisoner's innocence and identify a crime's actual perpetrator.

Deoxyribonucleic acid (DNA) molecules are contained in every cell in the human body. These molecules are the genetic code that is passed on from one's parents. Moreover, they determine each person's physical characteristics. Although most DNA sequences are identical from person to person, there are specific locations that are different (except for identical twins). Scientists study these differences in the sequence and are able to distinguish genetic material left by different individuals.

A forensic scientist can extract DNA from a sample of hair, bone, blood, semen, or any other biological material and determine its sequence. Once the DNA sequence is established, it can be compared to a sample of known origin to see whether or not there is a match. If there is a match, then the DNA evidence can be used to link a suspect to a crime. If not, it can clear him or her of blame. In some cases, because of its exactness, DNA can decisively establish guilt or innocence. In others, it may not do this, but can have probative value to a finder of fact.

FINDINGS

Connecticut's Forensic Science Lab

Evidence Collection

Connecticut's lab has regulations outlining how physical evidence must be collected, packaged, and submitted to the lab. All evidence must be placed in a tamper-evident sealed package and clearly labeled. For complete regulations see the Department of Public Safety's web site (www.state.ct.us./dps/DSS).

Evidence Preservation

In general, biological samples (blood, semen, etc) are frozen indefinitely, and hair and fiber materials are retained at room temperature. The lab can test well-preserved samples that are 20 years old or even older. Nevertheless, materials collected from less serious crimes before 1990 have been destroyed. They were not preserved under the best conditions and if tested would not furnish reliable results.

Testing

In 1990, the Connecticut DNA analysis unit opened. Since its inception, the unit's primary mode of analysis has been Restriction Fragment Length Polymorphism (RFLP) testing. According to Elaine Pagliaro, Acting Director, RFLP provides highly reliable results and is very individualized. The RFLP method allows scientists to determine what percent of the population is likely to have the sequence of DNA under consideration. Then a scientist can use this information to either include, or exclude a suspect.

RFLP has some drawbacks. To ensure accurate results, the sample must be in good condition and contain at least 100,000 cells. Moreover, it is not uncommon for samples to be un-testable because of age, or contamination by environmental factors. Finally, this method of testing may take weeks or months to complete and can be expensive.

In 1996, Connecticut began polymerase chain reaction (PCR) testing. In particular, the method adopted was PCR-based short tandem repeat (STR) testing. STR is faster than RFLP as it takes only one week to extract, quantify, run, and analyze the sample. In addition, STR testing requires a smaller amount of sample than RFLP (only 50 to 100 cells). Moreover, the DNA does not have to be intact because only specific loci (sections) are tested. Finally, PCR based testing can be carried out on the nucleus and/or the mitochondria part of the cell.[1]

In Connecticut, STR testing is done on nuclear and not mitochondria DNA. However, if a scientist determines mitochondria analysis is necessary, the sample is sent to an outside lab. In general, analysis of the mitochondria DNA is performed when either RFLP, or PCR is not possible. Most often, this occurs when the evidence is a tooth, or hair shaft because these contain little nuclear DNA. The lab takes the following precautions to ensure consistency and accuracy in DNA analysis and reporting.

1) At least two scientists must agree on test conclusions before a formal report is issued. They must agree that the analysis shows a "real" peak and not one caused by contamination.

2) A scientist is not aware of his colleague's conclusions, and therefore, is not influenced by them.

3) The DNA sample is tested in thirteen different locations on the genome, contributing to the test's reliability.

Ms. Pagliaro says that acts or omissions of the lab are not likely to contribute to a wrongful conviction because:

1) the forensic lab is accredited and performs quality work;
2) at least two scientists review all the evidence and a number of people review final conclusions;
3) the lab operates in a professional manner and discloses all information about testing;
4) if a person is arrested, and DNA testing excludes him, the lab immediately notifies the prosecutor assigned to the case; and,

[1] The development of STR testing has given scientist the ability to analyze samples thought to be un-testable. This new ability to retest evidence, and provide additional facts, has led to the exoneration of many innocent people.

5) scientists are very conservative in what they are willing to report based on any findings.

The Connecticut lab is accredited. To receive accreditation, individuals from other laboratories inspect the premises. The inspection requires a thorough review of the procedures used for handling evidence, DNA testing, security, protocol validation, and documentation of results, proficiency, and quality assurance.

Access to Evidence
Ms. Pagliaro says that Connecticut is unlike most states in that prosecutors and public defenders have easy access to evidence. Attorneys can request access in the absence of court proceedings and a letter from the court is not required.

"Forensic Fraud"
Connecticut's lab is fortunate in that Dr. Henry Lee, world-renowned forensic expert, has set its high standards. The lab has an excellent reputation and a good record. The state must ensure that this continues. Forensic labs in some other states have been shut down because evidence was mishandled and reporting was in error.

Post-Conviction Testing
In Connecticut, the accused can request DNA testing at any time, even after his conviction. This policy of allowing a request at any time is an important factor to ensure that innocent people are not executed.

Ineffective Counsel
One reason for wrongful conviction is ineffective counsel. In death penalty cases, most defendants are indigent and rely on the public defender system for legal representation. Many times public defenders (and private attorneys) are inexperienced in death penalty cases. These cases require specialized skills, and knowledge of death penalty law. In addition, public defenders have large caseloads, which leave them with no time to learn this new law. Moreover, they do not have the resources needed to investigate these cases thoroughly. These factors can increase the chances of ineffective counsel and a person being wrongly convicted.

In Connecticut, The Capital Defense & Trial Services Unit of the Office of the Chief Public Defender is responsible for providing representation in death penalty cases. The specialized unit has received national recognition for its high quality of representation of those charged with a capital felony.

Discovery Issues
It is not uncommon for a dispute to arise when a defense counsel contends that the state failed to disclose material required to be disclosed, and the state contends that such material actually was disclosed, or was not required to be disclosed. In response to this problem, some jurisdictions have adopted full open-file discovery policies. Open-file discovery requires that all documents, information, and materials kept by the prosecution be available to the defense.

In Connecticut, state's attorneys have prosecutorial authority in their districts, including the power to charge a defendant with capital felony. In addition, they have the authority to either allow, or deny access to their files. Judith Rossi, Executive Assistant State's Attorney, says that in Connecticut most prosecutors do have an open file policy because they want to be sure that innocent persons are not charged, convicted, and sentenced. However, an open file policy is not standard procedure in all districts, and the definition of open-file discovery varies by judicial district.

Eyewitness Testimony
Often, eyewitness testimony is inaccurate and contributes to wrongful convictions. A recent study of 74 U.S cases revealed that eyewitness testimony was the main reason for 84% of wrongful convictions (Barry Scheck's testimony). In these cases, the chief evidence the prosecution offered linking the suspect to the crime was the testimony of an eyewitness who identified the suspect from a lineup or photo spread. Experts argue that misidentification is especially problematic when the eyewitness is the victim. Victims are often traumatized and their perceptions and recollections become distorted.

Police methods may actually encourage an eyewitness to identify the wrong individual. For example, a lineup may include several people who look like the suspect making it very difficult for the witness to differentiate among them. In other cases, the lineup consists of only one person that fits the suspect's description and this leads the eyewitness to identify the "similar" person and ignore the others. It can also bias the identification process when the police officer conducting the procedure knows who the actual suspect is. It is best when the officer does not know, and therefore, won't influence the eyewitness's choice. Some of these same issues may arise in photospreads. The better approach is to have suspects in lineups or a photo spread presented sequentially.

False Confessions
In general, it is difficult for people to believe that someone would falsely confess to a crime. However, it is clear from the research that people sometimes confess to crimes they did not commit. False confessions sometimes occur because: 1) An individual's mental capacity may be impaired. 2) A juvenile may confess more easily under pressure. 3) The police deceive a suspect by convincing him that he committed the crime while under the influence of alcohol or drugs.

A growing number of experts suggest videotaping all formal interrogations. Sheck believes that videotaping will allow juries, judges, prosecutors, and defense attorneys to know exactly what went on during questioning. Finally, taping is relatively inexpensive and protects police against allegations of misconduct.

Informants

In general, people who are incarcerated with the defendant often have an incentive to tell a lie. That is, investigators often offer them special deals in return for their testimony. They may receive a reduction in their sentence or some other gain. Scheck suggests that guidelines be passed that prevent an informant's testimony from being the deciding factor of a person's guilt. He says extrinsic evidence should support the testimony and the character of the informant should be considered as well. Finally, he says that judges should presume that this evidence is unreliable and that prosecutors need to show otherwise before presenting it to a jury.

Federal Legislation

The Innocence Protection Act is an effort to lower the risk of wrongful conviction in death penalty cases. Although this legislation contains several provisions, it focuses on an offender's access to post conviction DNA testing, preservation of biological materials, and improvements in legal representation. In most states, inmates are not guaranteed these things. Finally, some states have passed legislation that models the federal proposal (for example, Rhode Island).

Briefly, the federal legislation authorizes:

1) offenders to request post-conviction DNA testing.
2) money for post-conviction DNA testing and preservation.
3) grants to ensure competent legal services in capital cases.

RECOMMENDATIONS

1. *Questioning in a police facility of people suspected of murder should be recorded. Videotaping is recommended. If that is not practical, audiotaping should be used.*

2. *Grant and other funding should be provided to police agencies to pay for electronic recording equipment and associated expenses.*

3. *Police departments should adopt witness identification procedures designed to eliminate false identifications. For example:*

    - *An eyewitness ought to be told that the suspect may not be in the line up, thus eliminating pressure on the witness to identify one of the people.*

- *Line-ups and photo-spreads ought to be done sequentially. That is, each person or photo should be shown to the witness one at a time. The witness would inform the investigator whether or not the person is the suspect.*

- *The investigator conducting the line-up or photo spread should be "blind" or unaware of whom the likely suspect is.*

4. *Prior to trial, the judge must hold a hearing to decide the reliability of, and admissibility in a capital felony case, of the testimony of a witness who is testifying to admissions the defendant allegedly made to an in-custody informant.*

5. *In capital felony cases, during the course of a criminal investigation, and continuing until any sentence is carried out, all biological and other evidence must be preserved. In addition, testing must be available to a defendant. If a defendant cannot afford testing, the state must pay. Moreover, defendants should have the right to counsel for purpose of pursing DNA testing and subsequent court procedures for obtaining a new trial. Connecticut may want to model Rhode Island's post conviction remedy act, which provides defendants with these rights.*

6. *A uniform procedure for open-file discovery to the defense in all death penalty cases should be set forth in the Practice Book, including a mechanism for creating a joint inventory of the items disclosed and a formal record of their disclosure.*

<u>Item 11:</u> An examination of the extent to which the victim impact statement authorized by section 53a-46d of the general statutes affects the sentence imposed upon a defendant convicted of a capital felony.

BACKGROUND

Section 53a-46d of the Connecticut General Statutes outlines the process for providing a victim impact statement in court, prior to the imposition of a sentence for a crime punishable by death. It states: "*A victim impact statement prepared by a victim advocate to be placed in court files in accordance with subdivision (2) of section 54-220 may be read in court prior to the imposition of a sentence upon a defendant found guilty of a crime punishable by death*." The Commission has been directed by Public Act 01-151 to examine the extent to which a victim impact statement affects the sentence imposed upon a defendant convicted of a capital felony.

FINDINGS

To better understand and respond to this issue, several guests were invited to speak before the Commission and present their perspectives on the effect that a victim impact statement may have on the sentence imposed on a defendant convicted of a capital felony. Commission members heard from representatives of the Judicial Branch/Office of Victim Services (OVS), Survivors of Homicide, the Office of the Victim Advocate, and the Honorable Thomas Miano, Judge of the Superior Court. Judge Miano has presided in three death penalty cases and has substantial experience in the area of death penalty jurisprudence.

A. NON-CAPITAL FELONY CASES

In Connecticut, victim impact statements are handled differently in capital felony cases then they are in other cases. In cases that do not involve capital felony charges, victims of crime are given the opportunity, at sentencing hearings, to inform the court of the impact that a particular crime has had on them. In some cases, a victim may be interviewed for a pre-sentence report, which is prepared by court staff and reviewed by the court prior to the sentencing hearing. In other cases, victims may submit written impact statements to the court, or may also appear before the court to verbally deliver a personal statement. Victims have the option of choosing all three of these approaches, as well. The court will consider the information provided by the victim, along with information provided by the prosecutor and defense counsel, *prior to* determining the appropriate sentence.

B. CAPITAL FELONY CASES

In the case of a capital felony prosecution, the process is different. The penalty phase of a capital felony case, regardless of whether it is before a three-judge panel or a jury, is an evidentiary hearing that does not allow for the inclusion of victim impact statements as is done in non-evidentiary sentencing hearings (such as in cases that are not capital felonies).

Section 53a-46a of the Connecticut General Statutes, outlines the penalty phase for capital felony cases. After a defendant has been convicted of a capital felony (by verdict or guilty plea), the judge or judges who presided at the trial, or before whom the guilty plea was entered, are required to conduct a separate hearing to determine any mitigating or aggravating factors. The jury is then required to return a special verdict setting forth its findings as to the existence of any mitigating or aggravating factors. The combination of findings in the jury's special verdict will determine whether the court is required to sentence the defendant to death or to life imprisonment without the possibility of release.

Victims in Connecticut have a constitutional right to make a statement to the court at sentencing, and the Commission strongly believes that victim impact statements are and should be a critical part of the criminal justice process. In many cases, victims' friends and relatives want the accused to hear and understand the impact that the crime has had on them. The opportunity to speak at sentencing allows victims to share thoughts and feelings that would not be allowed at the time of trial. The victim impact statement can also make many in the court, including court personnel, the judge, the public and the media, aware of the victim's perspective. The opportunity to speak on the day of sentencing makes their statement and their perception of their loved one a part of the permanent record of the court.

All of those who spoke before the Commission agreed that victim impact statements should be presented in court. However, there was disagreement as to when that should occur in capital felony cases and whether it should affect a defendant's sentence. Representatives from the victim advocacy community felt strongly that victim impact statements should be a factor in determining capital felony sentences, and should be made before the jury during the penalty phase. For victims to have confidence in the criminal justice system, the system must be responsive to their needs and those of their families. A victim's inability to provide impact statements during the penalty phase limits, in the victim's view, the information before the court or jury at a time when proper punishment of the accused is being considered. From the victim advocacy perspective, this greatly limits the impact that a victim's voice may have in capital felony proceedings.

Representatives from the victim advocacy community who spoke before the Commission pointed to the United State Supreme Court's decision in *Payne v. Tennessee*[45], which held that the Eighth Amendment does not erect a *per se* bar prohibiting a capital sentencing jury from considering victim impact evidence. The Court ruled that, within the constitutional limitations defined by the Supreme Court, states may "enjoy their traditional latitude to prescribe the method by which those who commit murder shall be punished."[46] Within this context, states may develop new procedures and new remedies to meet newly perceived needs. The Court stated that "victim impact evidence is simply another form or method of informing the sentencing authority about the specific harm caused by the crime in question, evidence of a general type long considered by sentencing authorities." As a result, states could provide juries with victim impact evidence in order for them to meaningfully assess the defendant's moral culpability and blameworthiness. The Court reasoned that in the majority of cases, victim impact evidence serves entirely legitimate purposes, and stated that "in the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief."

A Connecticut Superior Court judge, Thomas Miano, who has presided over three death penalty trials, expressed the opinion that the criminal justice process does not and should not allow victim impact statements to influence the sentence imposed by the court in capital felony cases. Judge Miano explained that the *Payne* ruling was very narrow and

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[45] Payne v. Tennessee, 501 U.S. 808 (1991).
[46] *Id.*

merely held that victim impact evidence is not per se a violation of the Eighth Amendment. In Judge Miano's opinion, states' attempts since *Payne* to introduce victim impact evidence into the penalty phase hearing have represented a marked departure from America's death penalty jurisprudence.

Judge Miano reasoned that while the victim impact statement is extremely important, it should not infringe upon or affect the special verdict findings of the trier of fact, whether that is a jury, or a three-judge panel. The penalty phase following a conviction for the crime of capital felony is the only time or occasion in American death penalty jurisprudence where the trier of fact decides the punishment. As a result, the penalty phase hearing is limited to evidence relevant to the establishment of aggravating and/or mitigating factors. Judge Miano stated that a victim impact statement does not fall within the meaning of aggravating or mitigating factors and, as a result, is not relevant to the penalty phase hearing. He explained that Connecticut's death penalty statute, and the penalty phase hearing it creates, are designed so that a decision to sentence a defendant to death must be based on carefully reasoned deliberations. Judge Miano stated before the Commission, "The admission of victim impact evidence, particularly if it involves statements by bereaved family members, greatly increases the risk that the sentencing decision will be made based on passion, whim or prejudice rather than deliberation. These are not acceptable bases for decisions anywhere in our criminal justice system, but especially not in capital sentencing trials, in which it is constitutionally required that jury discretion be sufficiently guided to ensure that its decision is not based on such factors."[47]

In Judge Miano's view, it is difficult to interpret the language of C.G.S. Section 53a-46d, to mean that victim impact statements are to be read during the penalty phase hearing of a capital felony case. The language in the statute is simple and direct: "*A victim impact statement prepared by a victim advocate to be placed in court files in accordance with subdivision (2) of section 54-220 may be read in court prior to the imposition of a sentence upon a defendant found guilty of a crime punishable by death*." The fact that the statement is to be prepared in writing by the victim advocate and placed in the court's file indicates that it is not intended to be evidentiary in nature. In addition, the words "*may* be read in court" give the court discretion in deciding whether the victim impact statement will be read prior to imposition of a sentence. Judge Miano explained to the Commission that the phrase, "imposition of sentence" is a "legal phrase of art with specific meaning in our criminal law," and that it is a well established rule that in a criminal case, the imposition of sentence is the final judgment of the court. Under C.G.S. Section 53a-46a(f), the jury does not impose the death penalty. Instead, the jury makes specific findings on aggravating factors and mitigating factors, from which, the imposition of the death penalty, or a sentence of life without the possibility of release, follows. The pronouncement of the sentence by the court is the imposition of the sentence on the defendant. As a result, C.G.S. Section 53a-46d can be interpreted to mean that a victim impact statement may be read, at the discretion of the court, following the fact-finding in the penalty phase of a capital felony proceeding, and prior to the imposition of a sentence by the court.

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[47] Remarks of the Honorable Thomas Miano, delivered to the Commission on the Death Penalty, February 7, 2002.

Connecticut's law, in Judge Miano's view, does not allow a victim's impact statement to have any impact on the sentence imposed upon a defendant convicted of a capital felony.

Judge Miano's view is the prevailing interpretation of Section 53a-46d. Answering the General Assembly's question, the victim impact statement authorized by that statute has no effect on the sentenced imposed in a capital case.

RECOMMENDATIONS

1. *In addition to the constitutional right of victims (including survivors of homicide) to present a live statement in court, the Commission recommends that C.G.S. Section 53a-46d be modified to require that the victim impact statement also be read in open court after the sentencing authority has reached its penalty determination, but before that determination is imposed by the presiding judge in open court. This is a departure from the current statute, which provides for placement in the court file of a written "victim impact statement" that "may" be read prior to imposition of the sentence.*

2. *The trial courts interpret C.G.S. Section 53a-46d in a manner in which the victim impact statement is not introduced during the penalty phase of the trial and therefore it has no effect upon the sentence in a capital case.*

3. *To ensure fairness to victims and to prevent the creation of false expectations, procedures should be created by the Office of Victim Services to make sure that victims are informed that under the trial courts' interpretation of C.G.S. Section 53a-46b described above, the victim impact statement will not affect the sentence imposed.*

Item 12: A recommendation regarding the financial resources required by the Judicial Branch, Division Criminal Justice, Division of Public Defender Services, Department of Correction and the Board of Pardons to ensure that there is no unnecessary delay in the prosecution, defense and appeal of capital cases.

BACKGROUND

To determine the financial resources required by the Judicial Branch, Division of Criminal Justice, Division of Public Defender, Department of Correction, and the Board of Pardons, representatives of each agency were invited to make a presentation to the Death Penalty Commission at the April 6, 2002 Meeting.

FINDINGS

The costs incurred by the various agencies involved in death penalty litigation have been discussed in connection with Item 2, above. Information related to additional resources needed for the future is discussed here.

Neither the Department of Correction nor the Board of Pardons requested any additional resources for purposes of capital litigation.

Both the OCSA and OCPD stated that they are moving as quickly as they can with death penalty litigation. Without additional resources, these agencies cannot move any faster without sacrificing the quality of their work.

In the past, the OCSA has requested state funding to add six prosecutors and support staff to prosecute habeas corpus proceedings in death penalty cases. As indicated in the written testimony provided by the OCSA, there are factors in death penalty cases that increase the cost to their agency over a period of time, but only a controlled study could identify those costs precisely.

The OCPD has a special unit devoted to handling death penalty cases. The Capital Defense and Trial Service Unit is composed of 6 staff attorneys, 3 investigators, 2 mitigation specialists, 1 paralegal and 1 secretary. This unit keeps track of all expenses associated with defending death penalty cases. Significant costs for DPSD include the cost of transcripts; time and expenses associated with gathering background information of defendant; lengthy preparation time needed by legal staff; actual trial time; and time for researching information regarding the filing of motions associated with death penalty cases.

In a presentation before the Commission, the OCPD requested additional state resources to support an Appeal Stage Unit comprised of two additional appellate lawyers, one paralegal, two secretaries or clerks, additional office space, and a computerized database of Connecticut death penalty law. The database would require the services of an additional attorney to help design the database and maintain it on a permanent basis.

The Chief Public Defender has also recommended that an Independent Post-Conviction Office be created, to help eliminate unnecessary delay in state death penalty habeas corpus proceedings. The unit would be composed of attorneys, paralegals, investigators, mitigation specialists, and clerical staff, similar to the existing Capital Defense and Trial Services Unit. The Unit would cost an estimated $350,000 per year.

Finally, there are several delays at the Post-Conviction Stage of a death penalty case that might be described as "unnecessary," including delays in appointing counsel, time to close pleadings and prepare for trial, time to obtain transcripts, and the general backlog of cases on Connecticut's habeas docket. If additional judges were assigned to the habeas corpus proceedings, all cases, including death penalty cases, might move along more quickly.

RECOMMENDATIONS

The Commission recognizes and considers valid the needs identified by the Office of the Chief State's Attorney and the Office of the Chief Public Defender listed below.

1. *The Division of Criminal Justice requests funding for additional prosecutors and support staff to prosecute appellate and habeas corpus proceedings in death penalty cases, in order to eliminate unnecessary delay in post conviction proceedings.*

2. *The Division of Public Defender Services requests two additional appellate lawyers, one paralegal and two secretaries or clerks. Additional office space, a computerized database for Connecticut death penalty law, and an attorney to design and maintain the database on a permanent basis are also requested.*

3. *Additional resources should be provided to the Judicial Branch, the Division of Criminal Justice and the Division of Public Defender Services for the adjudication of all habeas corpus matters in a timely manner, including death penalty cases, and the reduction of backlogs in the habeas docket that cause such delays.*

4. *The Division of Public Defender Services requests an independent Post-Conviction Office staffed by attorneys, paralegals, investigators, mitigation specialists and clerical staff, in order to eliminate unnecessary delay in the assignment of counsel, preparation and trial of state death penalty post-conviction proceedings.*

<u>Item 13:</u> An examination and review of any studies by other states and the federal government on the administration of the death penalty.

BACKGROUND

The Commission construed "studies . . . on the administration of the death penalty" to include evaluative studies of a state's administration of the death penalty, and to exclude merely descriptive reports of a state's death row or its death penalty. Descriptive reports, which are often prepared by a state's department of corrections, tend to lack analysis that would be helpful to the Commission's responsibilities under Public Act 01-151. The Commission has construed "other states" to mean an another state's legislature, governor, court system, attorney general, or public defender, or persons or committees appointed by such entities. The Commission's review under this topic has excluded court decisions.

The Commission has reviewed the studies listed below, as well as other studies and articles cited throughout this report. Listed by jurisdiction, the studies reviewed by the

Commission for Topic 13 include the following (with Internet links provided where available):

Arizona **Capital Case Commission Interim Report** (2001)
Prepared by Arizona Attorney General
[http://www.attorneygeneral.state.az.us/law_enforcement/IntRpt.html]

Illinois **Report of Governor's Commission on Capital Punishment**
[http://www.idoc.state.il.us/ccp]

Kentucky **Activities, Findings & Recommendations (Interim Report)** (July 2001)
Prepared by Capital Litigation Committee of Kentucky Justice Council, pursuant to K.R.S. § 15A.040
[http://www.constitutionproject.org/dpi/Ky.Criminal.Jutice.Council.pdf]

Maryland **Report of the Governor's Commission on the Death Penalty** (4/27/94)
Commissioned by Maryland Governor
[http://www.sailor.lib.md.us/md/docs/death_pen]

Nebraska **The Disposition of Nebraska Capital and Non-Capital Homicide Cases (1973-1999): A Legal and Empirical Analysis** (10/11/02)
Commissioned by Nebraska Legislature
[http://www.nol.org/home/crimecom/homicide/homicide.htm]

New Jersey **Report to the Supreme Court: Systemic Proportionality Review Project** (6/1/2001)
Report to New Jersey Supreme Court
[http://www.judiciary.state.nj.us/baime/baimereport.pdf]

Nevada **Legislative Commission, Death Penalty and Related DNA Testing**
[http://leg.state.nv.us/71st/Interim/Studies/DeathPenalty]

New York **Capital Punishment in New York State: Statistics from Six Years of Representation** (2001)
Prepared by New York Capital Defender Office
[http://www.nycdo.org/6yr.html]

N. Carolina **Legislative Research Commission, Capital Punishment: Mentally Retarded and Race Basis, Report of General Assembly**
[http://www.ncga.state.nc.us/legislativestudies/ngcastudyreport%5f/capital punishme/default.htm]

Ohio **The Attorney General's Report on Death Penalty Appeals** (updated annually, last update 2000)
Prepared by Ohio Attorney General
[http://www.ag.state.oh.us/capcrime/report.htm]

Virginia **Review of Virginia's System of Capital Punishment** [January, 2002]
Prepared by the Joint Legislative Audit and Review Commission of the Virginia General Assembly
[http://ljarc.state.va.us/reports/rpt274.pdf]

Federal **Capital Punishment** (updated annually from 1993, latest report 2000)
United States Department of Justice
[http://www.ojp.usdoj.gov/bjs/abstract/cp00.htm]
Survey of the Federal Death Penalty System (2001)
United States Department of Justice
[http://www.usdoj.gov/dag/pubdoc/dpsurvey.html]

Item 14: An examination of the emotional and financial effects that the delay between the imposition of the death sentence and the actual execution of such sentence has on the family of a murder victim.

BACKGROUND

Grief, depression, and anger are just some of the inevitable emotions that a family endures following the murder of a loved one. The Commission heard testimony from representatives of the Judicial Branch/Office of Victim Services (OVS), Survivors of Homicide, the Office of the Victim Advocate, and the Honorable Thomas Miano, Judge of the Superior Court. In addition, interviews were conducted with other individuals who have had a family member that was murdered. The common message heard from all who offered testimony was that once the murder took place, there is never a way to recover wholeness or closure. Most of the family members of victims of capital offenses who addressed this Commission and who were interviewed for this report said that their initial hope was that the judicial system would help to bring a sense of justice and healing into their lives. However, they found the opposite to be true. Once the judicial process began, the overwhelming feeling among those families was that the judicial process added to their distress and anxiety. Most of those who testified before the Commission said that their trust in the criminal justice system was damaged when sentences rendered by juries were not implemented in a fair, timely, and certain manner.

FINDINGS

Helen Williams, whose son Walter Williams was murdered 10 years ago while working as a Waterbury police officer, testified that the emotional effects of his murder linger on to this very day. There is not one day that goes by, according to Ms.Williams, in which she is not haunted by his murder. She has recurring nightmares, waking up every night at the very hour that her son was killed. Ms. Williams reported that her grandchildren, Walter's children, are still in counseling and that the murder of their father has had a

devastating impact on their lives. Ms. Williams also spoke of the financial costs that she has endured: keeping up with all the appeals; traveling expenses; and loss of money due to taking off from work. Ms. Williams spoke about how difficult it is to live with the fact that her son's murderer received the death penalty but still, ten years later, is trying to appeal his case.

Lawrence and Shirley Bostrom, whose daughter was murdered by her husband in Pennsylvania, have expressed how brutal the appeal process is. They spoke about the need to constantly have to reschedule their plans so that they could attend the many hearings that took place following their daughter's murder. The Bostroms spent significant funds and took time away from their regular lives to attend the proceedings.

Antoinette Bosco, whose son and daughter-in-law were murdered, expressed how "handcuffed" one feels after the murder of a loved one. One loses one's freedom and is tied to the murderer and the process of "justice" that follows the murder. "The longer the process takes," she said, "the longer you remain in this bad place. Your psyche is eroded. If you don't let go, you live with that person forever." It should be noted that she is against the death penalty.

Reverend Walter Everett, a Hartford religious leader whose son, Scott, was murdered in 1987 offered his perspective as a victim. Reverend Everett described how reconciliation with his son's murderer provided him with more peace than, he believes, would be provided by an execution of his son's murderer. He opposes the death penalty, and is a member of Murder Victims' Families for Reconciliation, which submitted a pamphlet "Not in Our Name" to the Commission. He testified that closure is a process, not an event, and that imposition of death does not bring closure.

All of the families who have testified have expressed the sentiment that peace and closure never come to a family that has experienced a murder of a loved one. What most families look for is a way of closing an unfathomable chapter of their lives and moving on in a positive vein.

While the rights of the victims and their frustration with the process need to be heard and answered, the rights of the convicted must not be jeopardized. Society has a responsibility to support and assist victims of crimes in receiving the help they need to heal from the tragedies they have suffered, but the rights of victims must not come at the loss of defendants' rights to dignity, fair treatment, and due process.

The major objections expressed by the victims' families are as follows:

1. The trial and appeal process take too long to the point of losing faith in the system and making a mockery of it.
2. A dreadful emotional toll is exacted, especially when a death sentence is handed down but never carried out. In the eyes, minds and hearts of the many families of victims, it is as though the offender has never been punished at all.

3. The financial burden is significant. The appeals process is very lengthy. Following the case requires traveling to the various hearings and taking time off from work, and this creates a real financial hardship for most families.
4. The need to see an end to the process in order for healing to begin has been expressed widely by the families of victims. They claim that there is no way to get on with life without a decisive conclusion, determining the fate of the offender.

RECOMMENDATIONS:

The Commission makes recommendations that address the delays in adjudicating capital felony murder cases elsewhere in this report.

Appendices

APPENDIX A.

Substitute Senate Bill No. 1161

Public Act No. 01-151

AN ACT CONCERNING THE DEATH PENALTY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (i) of section 53a-46a of the general statutes is repealed and the following is substituted in lieu thereof:

(i) The aggravating factors to be considered shall be limited to the following: (1) The defendant committed the offense during the commission or attempted commission of, or during the immediate flight from the commission or attempted commission of, a felony and **[**he**]** <u>the defendant</u> had previously been convicted of the same felony; or (2) the defendant committed the offense after having been convicted of two or more state offenses or two or more federal offenses or of one or more state offenses and one or more federal offenses for each of which a penalty of more than one year imprisonment may be imposed, which offenses were committed on different occasions and which involved the infliction of serious bodily injury upon another person; or (3) the defendant committed the offense and in such commission knowingly created a grave risk of death to another person in addition to the victim of the offense; or (4) the defendant committed the offense in an especially heinous, cruel or depraved manner; or (5) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value; or (6) the

defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value; or (7) the defendant committed the offense with an assault weapon, as defined in section 53-202a; or (8) the defendant committed the offense set forth in subdivision (1) of section 53a-54b, as amended by this act, to avoid arrest for a criminal act or prevent detection of a criminal act or to hamper or prevent the victim from carrying out any act within the scope of the victim's official duties or to retaliate against the victim for the performance of the victim's official duties.

Sec. 2. Subsection (h) of section 53a-46a of the general statutes is repealed and the following is substituted in lieu thereof:

(h) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict, as provided in subsection (e), that at the time of the offense (1) [he] the defendant was under the age of eighteen years, or (2) the defendant was a person with mental retardation, as defined in section 1-1g, or [(2) his] (3) the defendant's mental capacity was significantly impaired or [his] the defendant's ability to conform [his] the defendant's conduct to the requirements of law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution, or [(3) he] (4) the defendant was criminally liable under sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed by another, but [his] the defendant's participation in such offense was relatively minor, although not so minor as to constitute a defense to prosecution, or [(4) he] (5) the defendant could not reasonably have foreseen that [his] the defendant's conduct in the course of commission of the offense of which [he] the defendant was convicted would cause, or would create a grave risk of causing, death to another person.

Sec. 3. Section 53a-54b of the general statutes is repealed and the following is substituted in lieu thereof:

A person is guilty of a capital felony who is convicted of any of the following: (1) Murder of a member of the Division of State Police within the Department of Public Safety or of any local police department, a chief inspector or inspector in the Division of Criminal Justice, a state marshal who is exercising authority granted under any provision of the general statutes, a judicial marshal in performance of the duties of a judicial marshal, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, a conservation officer or special conservation officer appointed by the Commissioner of Environmental Protection under the provisions of section 26-5, an employee of the Department of Correction or a person providing services on behalf of said department when such employee or person is acting within the scope of **[**his**]** such employee's or person's employment or duties in a correctional institution or facility and the actor is confined in such institution or facility, or any fireman, while such victim was acting within the scope of **[**his**]** such victim's duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or of murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; **[**(6) the illegal sale, for economic gain, of cocaine, heroin or methadone to a person who dies as a direct result of the use by him of such cocaine, heroin or methadone; (7)**]** (6) murder committed in the course of the commission of sexual assault in the first degree; **[**(8)**]** (7) murder of two or more persons at the same time or in the course of a single transaction; or **[**(9)**]** (8) murder of a person under sixteen years of age.

Sec. 4. (a) There is established a Commission on the Death Penalty to study the imposition of the death penalty in this state.

(b) The commission shall be comprised of nine members appointed as follows: The Governor shall appoint two members, the Chief Justice shall appoint one member and the president pro tempore of the Senate, the speaker of the House of Representatives, the majority leader of the Senate, the majority leader of the House of Representatives, the minority leader of the Senate and the minority leader of the House of Representatives shall each appoint one member. Any vacancy on the commission shall be filled by the appointing authority having the power to make the original appointment. The Governor shall appoint a chairperson from among the membership.

(c) The study shall include, but not be limited to:

(1) An examination of whether the administration of the death penalty in this state comports with constitutional principles and requirements of fairness, justice, equality and due process;

(2) An examination and comparison of the financial costs to the state of imposing a death sentence and of imposing a sentence to life imprisonment without the possibility of release;

(3) An examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based on the race, ethnicity, gender, religion, sexual orientation, age or socioeconomic status of the defendant or the victim;

(4) An examination of whether there is any disparity in the decision to charge, prosecute and sentence a person for a capital felony based on the judicial district in which the offense occurred;

(5) An examination of the training and experience of prosecuting officials and defense counsel involved in capital cases at the trial and

appellate and post-conviction levels;

(6) An examination of the process for appellate and post-conviction review of death sentences;

(7) An examination of the delay in attaining appellate and post-conviction review of death sentences, the delay between imposition of the death sentence and the actual execution of such sentence, and the reasons for such delays;

(8) An examination of procedures for the granting of a reprieve, stay of execution or commutation from the death penalty;

(9) An examination of the extent to which the Governor is authorized to grant a reprieve or stay of execution from the death penalty and whether the Governor should be granted that authority;

(10) An examination of safeguards that are currently in place or that should be put in place to ensure that innocent persons are not executed;

(11) An examination of the extent to which the victim impact statement authorized by section 53a-46d of the general statutes affects the sentence imposed upon a defendant convicted of a capital felony;

(12) A recommendation regarding the financial resources required by the Judicial Branch, Division of Criminal Justice, Division of Public Defender Services, Department of Correction and Board of Pardons to ensure that there is no unnecessary delay in the prosecution, defense and appeal of capital cases;

(13) An examination and review of any studies by other states and the federal government on the administration of the death penalty; and

(14) An examination of the emotional and financial effects that the delay between the imposition of the death sentence and the actual

execution of such sentence has on the family of a murder victim.

(d) Not later than January 8, 2003, the commission shall report its findings and recommendations, including any recommendations for legislation and appropriations, to the General Assembly in accordance with the provisions of section 11-4a of the general statutes.

Sec. 5. This act shall take effect July 1, 2001.

Approved July 6, 2001

APPENDIX B.

Division of Public Defender Services

COSTS OF DEFENSE OF CAPITAL FELONY PROSECUTIONS (TRIAL AND DIRECT APPEAL)

		TRIAL	APPEAL	TOTAL COST (TO DATE)	
SENTENCED TO DEATH AFTER TRIAL & PENALTY HEARING:					
Breton	(87-02)	202,142	137,190	339,332	
Cobb	(89-00)	45,199	112,178	157,377	
Colon	(98-02)	197,784	89,518	287,302	
Reynolds	(92-01)	273,751	135,603	409,354	
Rizzo	(97-01)	218,153	72,611	290,764	
Ross	(84-01)	655,965	417,957	1,073,922	
Webb	(89-01)	73,699	28,171	101,870	
TOTAL COST		**1,666,693**	**993,228**	**2,659,921**	**Average cost per case $380,000**
SENTENCED TO LIFE IMPRISONMENT WITHOUT RELEASE AFTER TRIAL & PENALTY HEARING:					
Correa	(91-97)	135,789	45,543	181,332	
Day	(90-97)	57,451	28,089	85,540	
Dehaney	(95-01)	371,350	(Appeal Pending)	371,350	
Gibbs	(93-98)	252,364	10,965	263,329	
Griffin	(94-00)	165,176	21,539	186,715	
Hafford	(91-00)	232,843	6,340	239,183	
Johnson, Terry	(91-00)	173,606	146,974	320,580	
King, Kevin	(93-98)	147,115	16,692	163,807	
Lapointe	(89-96)	94,056	51,233	145,289	
Marrero	(94-00)	210,818	(Appeal Pending)	210,818	
Ortiz, Angel	(95-99)	121,327	16,154	137,481	
Peeler, Russell	(99-01)	286,615	(Appeal Pending)	286,615	
Roseboro	(89-90)	38,706		38,706	
TOTAL COST		**2,287,216**	**343,529**	**2,630,745**	Average cost per case $202,365
SENTENCED TO LIFE IMPRISONMENT WITHOUT RELEASE AFTER TRIAL (NO PENALTY HEARING):					
Ferguson	(95-98)	228,528	90,513	319,041	
Fernandez	(95-01)	59,339	346	59,685	
Gaines	(97-01)	20,308	4,545	24,853	
Higgins	(98-01)	33,020	4,488 (Appeal pending)	37,508	
Hinton	(89-91)	N/A	10,991	10,991	
Ramos	(96-00)	90,123	(Appeal pending)	90,123	
Shipman	(97-00)	15,750	488	16,238	
TOTAL COST		**447,068**	**111,371**	**558,439**	Average cost per case $79,777
SENTENCED TO LIFE IMPRISONMENT WITHOUT RELEASE AFTER GUILTY PLEA:					
Campmire	(97-02)	188,204		188,204	(Three months trial before plea)
Camacho	(93-98)	175,452		175,452	
Barletta	(99-99)	16,282		16,282	
Rodriquez	(94-97)	284,905		284,905	(Six months trial before plea)
Hernandez	(92-96)	139,335		139,335	
Pickles	(97-99)	148,436		148,436	
TOTAL COST		**952,614**	**-**	**952,614**	Average cost per case $158,769

Average cost per case of all life imprisonment cases: $159,300

(3/5/02)

APPENDIX C.

CAPITAL CASE EXPENDITURE ANALYSIS

Division of Public Defender Services

1992-93 THROUGH 2000-1

	Total Agency Expenditures Incl.Federal Funds	Total Capital Case Expenditures	% of Capital Case/ Agency Expend.	# of Cases	# of SPD Cases	% of Capital Cases / Caseload
92-93	14,610,553	789,000	5.4%	18	2	0.017%
93-94	15,966,960	864,046	5.4%	19	1	0.019%
94-95	16,918,869	861,134	5.1%	19	N/A	0.022%
95-96	18,523,370	908,535	4.9%	21	5	0.025%
96-97	20,814,611	1,432,069	6.9%	33	9	0.040%
97-98	23,096,382	1,654,881	7.2%	39	15	0.050%
98-99	25,095,150	1,510,787	6.0%	36	15	0.040%
99-00	30,833,667	1,859,493	6.0%	51	19	0.060%
00-01	32,997,028	1,969,620	6.0%	38	17	0.050%
01-02	35,730,878 (Appropriation)					
02-03	36,020,011 (Appropriation)					

CAPITAL CASE EXPENDITURE ANALYSIS

Division of Public Defender Services

1992-93 THROUGH 2000-01

Breakdown of Total Capital Case Expenditures

	Total Capital Case Expenditures	CD and TSU Unit Cost	Appellate Salary Cost	Experts Cost	SPD Non - Contractual Cost	Transcripts Cost	Miscellaneous Operating Cost
92-93	789,000	440,000	N/A	N/A	N/A	N/A	N/A
93-94	864,046	508,125	192,904	75,888	68,605	11,087	7,437
94-95	861,134	491,842	182,027	100,002	61,715	16,754	8,794
95-96	908,535	614,300	153,700	71,445	28,202	16,454	24,434
96-97	1,432,069	816,163	232,258	149,195	175,664	25,583	33,206
97-98	1,654,881	1,035,117	241,263	187,194	136,106	22,938	32,263 *
98-99	1,510,787	1,023,026	142,868	112,758	170,872	16,730	44,533 *
99-00	1,859,493	1,082,017	112,000	164,806	399,450	29,995	71,225 *
00-01	1,969,620	1,069,077	216,895	122,330	473,334	49,032	38,952 *
01-02							
02-03							

****Includes Race Study**

2/8/02

APPENDIX D.

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
1. **John McGann**	New London 10-119095	W W	Hire(2)	R. Casale	Verdict of Guilty, (PT) Capital Felony Three Judge Panel	Life Imprisonment, 11/17/82	199 Conn. 163 (1986) Capital Felony judgment vacated; Judgment for Murder directed. See also, State v. Hope, 203 Conn. 420
2. **Daniel Stuart**	Ansonia/ Milford CR5M-19988	W W	Kidnap(5)	R. Casale	Verdict of Guilty; Motion for New Trial Granted; Verdict of Not Guilty on Retrial		
3. **Earl Arnold**	Waterbury CR4-103671	B W	Kidnap(5)	A. McWhirter	Verdict of Guilty	70 years, 6/14/84	201 Conn. 276 (1986) No error.
4. **Steven Wood**	Hartford HD-48720	W W(4)	Multiple(8)	J. Shortall G. Smyth	Verdict of Guilty (PT)	120 years, 11/16/84	208 Conn. 125 (1988) Error in part; Judgment directed.
5. **Kevin Usry**	Hartford 49317	B W	Sexual(7)	G. Smyth P. Culligan	Verdict of Guilty (PT)	60 years, 5/6/85	205 Conn. 298 (1987) Error in part; Judgment directed.
6. **Michael Joly**	Hartford 47997	W W	Kidnap(5)	M. Whelton K. Connors	Verdict of Not Guilty to Capital Felony(1st Trial);Hung jury (2nd Trial);Guilty Murder(3rd Trial)	60 years, 10/27/88	219 Conn. 234 (1991) Affirmed.
7. **Hector Gonzalez**	Fairfield 30028	H H(2)	Multiple(8)	E. Teitell	Verdict of Guilty	Agg. Factor dismissed 70 years, 1/10/86	206 Conn. 213 (1988) No error.
8. **Jos. Shillinsky**	Hartford 50469	W W	Hire(2)	E. Riccio P. Culligan	Plea of Guilty to Murder	25 years, 2/3/86	
9. **Jerry Daniels**	New London CR21-20169	W W(2)	Multiple(8)	J. Ruane F. DeCaprio	Verdict of Guilty (PT) 3 Judge Panel Penalty Jury Trial, Yes-Aggrvtn; Hung-Mitig.	120 years, 3/27/86 Imposed by the Trial Court with no 2nd Penalty Trial	207 Conn. 374 (1988) No error. 209 Conn 225 (1988) Sentence reduced to 60 years on Federal Habeas; 120 years reinstated by 2nd Circuit.
10. **William Schroff**	New Haven CR6-259789	W W	Kidnap(5)	S. Hankins G. Smyth	Plea of Nolo Contendere to Murder	60 years, 6/26/86	206 Conn. 182 (1988)
11. **Eugene Powell**	Fairfield 29765	B W	Police(1)	G. Smyth L. Hopkins	Indictment for Capital Felony Dismissed. Verdict of Not Guilty to Manslaughter 1°	2/9/87	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
12.	**Michael Ross**	New London CR84-0020300	W W	Sexual(7) Kidnap(5)	F. DeCaprio P. Scillieri	Verdict of Guilty (PT)	Sentenced to Death, 7/6/87	230 Conn. 183 (1994) No error re Guilty verdicts. Error in penalty hearing. New penalty trial on all death sentences. 237 Conn. 332 (1996); See also, 251 Conn. 579 (1999) Appeal pending 5/18/00
					B. Butler K. Goodrow	New Trial 2/22/2000	Sentenced to Death, 5/12/00	Appeal Pending
13.	**Michael Ross**	New London CR84-0020355	W W	Kidnap(5) (2 counts)	F. DeCaprio P. Scillieri	Verdict of Guilty	Sentenced to Death (2), 7/6/87	230 Conn. 183. (1994) No error re Guilty verdicts. Error in penalty hearing. New penalty trial on all death sentences.
					B. Butler K. Goodrow	New Trial 2/22/2000	Sentenced to Death, 5/12/00	
14.	**Michael Ross**	New London CR84-0020356	W W	Sexual(7) Kidnap(5)	F. DeCaprio P. Scillieri	Verdict of Guilty	Sentenced to Death, 7/6/87	230 Conn. 183. (1994) No error re guilty verdicts. Error in penalty hearing. New penalty trial on all death sentences.
					B. Butler K. Goodrow	New Trial 2/22/00	Sentenced to Death, 5/12/00	
15.	**Michael Ross**	Windham CR11-49329	W W	Kidnap(5) Sexual(7)	F. DeCaprio P. Scillieri	Plea of Guilty to Murder	60 years,12/13/85	
16.	**Michael Ross**	Windham CR11-49330	W W	Sexual(7)	F. DeCaprio P. Scillieri	Plea of Guilty to Murder	60 years, consec.; TES 120 years., 12/13/85	
17.	**Wilmer Paradise**	Hartford 49836	W W	Kidnap(5)	C. Guiliano	Verdict of Guilty	25 years to Life, 9/3/87	213 Conn. 388 (1990) No error.
18.	**Israel Rivera**	Hartford 52971	H W	Narcotics(6)	R. Kelly M. Connor	Plea of Guilty to Manslaughter 1st	20 Years, esa 12 years 3 years Probation, 9/16/87	
19.	**Brian Ellis**	Hartford 48352	W W	Kidnap(5)	G. Klein	Plea of Guilty to Kidnapping 2°	4 1/2 years to 9 years, 9/23/87	
20.	**Dvd. Worthington**	Hartford 49835	W W	Kidnap(5)	J. Schoenhorn	Plea of Guilty to Kidnapping 2°	5 1/2 to 11 years, concurrent, 9/28/87	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
21.	**John Restburgs**	Danbury CR3-61641a	W W	Narcotics(6)	R. Field	Plea of Guilty to Possession of Narcotics	7 years, esa 15 Months, 5 years Probation, 5/13/88	
22.	**Gary Castonguay I & II**	Hartford 42509	W W	Police(1)	T.Clifford/M.Sheldon	Verdict of Guilty; C.G.S. Sec.53a-46a ruled unconstitutional by Trial Court	25 years to life; 10/15/81	194 Conn. 416 (1984) Error; New Trial Note-State did not appeal Trial Court's Conn. 416 ruling re Sec.53a-46a.
					R. Kelly R. Gold	Retrial; Verdict of Guilty	25 years to life, 8/25/88	218 Conn. 486 (1991) Affirmed.
23.	**Willie Scruggs**	Stamford/ Norwalk JDSN 2230	B B	Hire(2)	G. Smyth M. Radler	Plea of Guilty to Conspiracy to Commit Murder, After Mistrial	9 years, 8/14/88	
24.	**Rbt.Greatheart**	Fairfield 32203	B B	Multiple(8)	F. DeCaprio W. Holden	Plea of Guilty to Murder (3 counts)	60 years, 11/18/88, 3x Concurrent	
25.	**Thomas Hoyesen**	Ansonia/ Milford CR5-66329	W W	Police(1)	G. Smyth D. Egan	Plea of Guilty to Capital Felony	LWOPR, 6/10/88	
26.	**Mark Chicano**	Hartford CR87-0066621	W W	Multiple(8)	G. Smyth S. Storey	Verdict of Not Guilty to Capital Felony; Guilty to Felony Murder (3 counts) 3 judge panel	180 years, 1/19/89	216 Conn. 699 (1990) Reversed in Part, Remanded for Modification of sentence
27.	**Wilmer Rocker**	Hartford 53703	B W	Narcotics(6)	F. DeCaprio/S. Storey S. Brown	Plea of Guilty to Sale of of Narcotics	9 years, esa 4 ½ years 4 years Probation, 3/2/89	
28.	**Pat. Campbell**	Stamford/ Norwalk JDSN 2341	W W(2)	Multiple(8)	R. Kelly M. Radler	Plea of Guilty to Murder: (2 counts)	45 years, 7/13/90	224 Conn. 168 (1992) Affirmed.
29.	**Francis Gaffney**	Fairfield 32838	W W	Kidnap(5)	F. DeCaprio W. Holden	Plea of Guilty to Murder; Kidnapping 1°	60 years, 6/2/89	
30.	**David Toupin**	Fairfield 32839	W W	Kidnap(5)	J. Ruane	Plea of Guilty to Murder; Kidnapping 1°	60 years, 6/2/89	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
31.	**Eric Steiger**	Hartford HD-53426A	W W(3)	Multiple(8)	F. Mac Buckley	Verdict of Guilty (PT) 3 Judge Panel	LWOPR, 8/10/89	218 Conn. 349 (1991) Affirmed.
32.	**Bryan Patterson**	Hartford	W W(3)	Multiple(8)	H. Keefe	Plea of Guilty to Manslaughter 2° (2 counts)	5 years, 6/14/91	213 Conn. 708 (1990) Error, further proceedings.
33.	**Andrew Patterson**	Hartford 53430	W W(3)	Multiple(8)	R. Brown	Plea of Guilty to Manslaughter 1°	20 years, 8/31/89	
34.	**Robert Breton I & II**	Waterbury CR87-0147941	WW W(2)	Multiple(8)	R. Kelly A. McWhirter	Verdict of Guilty (PT)	Sentenced Death, 10/7/89	235 Conn. 206 (1995). Conviction affirmed. Death sentence vacated. Remanded for new penalty phase trial. 212 Conn. 258 (1989)
					B. Butler A. McWhirter	Remanded **P**enalty **T**rial-Court, 4/23/97 Agg-Yes, Mitig-No 3 Judge Panel	Sentenced to Death 1/9/98	Pending; oral argument 9/9/02; Awaiting decision
35.	**Winston Watkins**	Fairfield 33543 JD	B B(2) (Jamaican)	Multiple(8)	J. Olayos	Verdict of Guilty	LWOPR, 3/16/90	229 Conn. 125. (1994) Reversed, remanded for new probable cause hearing. Case nolled June '94.
36.	**Roy White**	Fairfield CR88-0025735	B B(2) (Jamaican)	Multiple(8)	P. Culligan W. Holden	Verdict of Guilty	LWOPR, 3/16/90	229 Conn. 125. (1994) Reversed, remanded for new probable cause hearing. Case nolled June '94.
37.	**Raymond Ludden**	Hartford CR89-0361453	W W	Prior Murder(4)	F. DeCaprio S. Moran	Plea of Guilty to Murder	60 years, 1/10/92 concurrent	
*38.	**Michael Constantoupolis**	Fairfield 34214	W ?	Multiple(8)	J. Ganim	Plea of Guilty to Murder; Manslaughter 1° Degree	35 years, 11/13/90	
39.	**Rich. LaPointe**	Hartford CR89-0107933	W W	Sexual(7)	P. Culligan C. Cosgrove	Verdict of Guilty (PT)	LWOPR, 9/8/92	237 Conn. 694 (1996) Affirmed 67 Conn. App. 674 1/22/02 Denial of habeas corpus affirmed

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
40.	**Derek Roseboro**	Ansonia/ Milford CR5-81771	B W(3)	Multiple(8)	P. Culligan D. Egan	Finding of Guilty (PT) (3 Judge Panel)	LWPOR, 12/19/90	221 Conn. 430 (1992) Affirmed.
41.	**Daniel Webb**	Hartford CR89-0371150	B W	Kidnap(5)	F. DeCaprio R. Gold	Verdict of Guilty (PT)	Sentenced to Death, 9/12/91	238 Conn. 389 (1996) Affirmed. 252 Conn. 128 (2000) Lethal Injection Affirmed
42.	**Chas. McClendon**	Hartford CR89-0372775	B W&H?	Multiple(8)	F. DeCaprio	Verdict of Guilty Felony S. Storey	130 years, 8/11/88 Murder (2 counts) Jury	45 Conn. App. 658 (1997) 248 Conn. 572 (1999) Affirmed.
43.	**Jorge Ortiz**	Fairfield CR89-042582	H W(2)	Multiple(8)	S. Storey R. Gold	Plea of Guilty to Felony Murder(2 counts)	30 years including 5 other files, 2/28/92	
44.	**Emmanuel Ford**	New Haven CR6-311432	B B	For Hire(2)	G. Smyth	Plea of Guilty to Murder	50 years, esa 36 years, 5 years Probation, 1/25/91 1/25/91	
45.	**Sedrick Cobb**	Waterbury CR89-175454	B W	Sexual(7) Kidnap(5)	G. Smyth A. McWhirter	Verdict of Guilty (PT) 3 Judge Panel	Sentenced to Death, 9/24/91	234 Conn. 735 (1995) Motion to expand Proportionality Review denied, 3-3 vote. 251 Conn. 285 (1999) Affirmed
*46.	**Ronnie Hinton**	Hartford CR89-374116	B B(2)	Multiple(8)	S. Moran	Verdict of Guilty	LWOPR, 5/2/91, Not prosecuted for DP	227 Conn. 301 (1993) Affirmed, Capital Felony.
47.	**Jason Day**	Fairfield CR90-0052444	B B(4)	Multiple(8)	P. Culligan W. Holden	Verdict of Guilty (PT) 10/91	LWOPR, 10/21/91 Trial Court granted Judgement of Acquittal on Aggravating Factor HCD	233 Conn. 813 (1995)Affirmed.
48.	**Raul Gonzalez**	Hartford CR90-384650	H H	Hire(2)	M. Graham	Dismissed 10/23/90		
49.	**Joseph Miller**	Fairfield CR90-052759	W W(2)	Multiple(8)	R. Gold W. Holden	Plea of Nolo Arson Murder (2 counts)	Life esa after 40 years, 5 yrs Probation, 12/18/92	
50.	**Car. Maldonado**	New Haven CR6-338625	H W	Sexual(7)	S. Storey B. Merkin	Plea of Guilty Murder, Alford Plea, Sexual Assault 1°	60 years & 20 years Concurrent	
51.	**Celestino Mercado**	New Haven 339923	H B	Hire(2)	F. Mandanici	Plea of Guilty to Murder (2 counts)	60 years, 11/20/92	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
52.	**Melvin Jones I & II**	New Haven CR6-333512	B W	Prior Murder(3)	S. Storey/B. Carlow (Standby)	Verdict of Guilty-Jury Not prosecuted for Death Penalty	LWOPR	234 Conn. 324 (1995) Reversed, New Trial.
					J. Williams/N. Pattis	Verdict of Guilty II-Jury	LWOPR	50 Conn. App. 338 (1998) Affirmed.
53.	**Eric Amado**	Fairfield CR93-0083508	B B(2)	Multiple(8)	R. Gulash	Verdict of Guilty-Jury Not Prosecuted for Death Capital Felony, Murder, Felony Murder	LWOPR, 12/10/93	42 Conn.App. 348 (1996) 242 C 906 (1997) rev'd and remanded to Appellate Court for further review 50 CA 607 (1998) convictions rev'd as to 2 cts Mur. 2 cts Cap.Felony 254 Conn. 184 (2000) 50 CA 607 reversed in part, original convictions for capital felony and murder affirmed
54.	**David Bailey**	Fairfield CR90-0057505	B B(2)	Multiple(8)	W. Holden	Plea of Guilty Attempted Robbery 9/93	13 years	
55.	**John Wideman**	Fairfield CR91-0059933	B B(2)	Multiple(8)	B. Butler	Plea of Guilty Attempted Robbery	10 years consec. to present sentence, 9/93	38 Conn.App. 581 (1995) cert.denied, 235 Conn. 907
56.	**Anthony Small**	Fairfield CR94-0694504	B B(2)	Multiple(8)	L. Hopkins	Verdict of Guilty-Jury 3/29/95	Felony Murder (2 counts) TES 45 years	242 Conn. 93 (1997) Capital Felony conviction reversed. Remanded for resentencing on Felony Murder.
57.	**Jesus Correa**	Hartford CR91-0406234	H H(2)	Multiple(8)	R. Gold S. Brown	Verdict of Guilty (8/93) (PT)Life Verdict (1/94)	LWOPR, 3/15/94	241 Conn. 322 (1997)Affirmed
58.	**Terry Johnson**	Windham CR91-0076220	W W	Police(1)	P. Culligan R. Canning	Plea of Guilty (PT) Three Judge Panel Penalty Phase-Jury	Jury Verdict - Sentenced to Death, 6/10/93	253 Conn. 1 (2000) May 2, 2000 Reversed LWOP imposed State's Motion for Reconsideration Denied 254 Conn. 909 (2000)
59.	**Duane Johnson**	Windham CR91-76196	W W	Police(1)	A. Meisler	Verdict of Guilty	Not prosecuted for Death Penalty 60 years-see appeal, 11/14/97	241 Conn. 702 (1997) Capital Felony conviction reversed; Remanded for sentencing On Felony Murder, Burglary 1st
60.	**Chris. Hafford**	Hartford CR91-0084381	W W	Sexual(7)	B. Butler K. Goodrow	Verdict of Guilty-Court Finding of Mitigation (PT) Three Judge Panel	LWOPR, 10/4/96	252 Conn. 274 (2000) Affirmed.
61.	**Jodie Watts**	Tolland CR91-46515	W W	Narcotics(6)	P. Armentano	Plea of Guilty Manslaughter 2°	8 years esa 4 years, 3 years Probation	
62.	**Jose Berrios**	Hartford CR91-0412647	H H	Kidnap(5)	J. McKay S. Moran	Plea of Guilty Felony Murder	35 years, 8/6/93	
63.	**Sammy Ortiz**	Hartford CR91-0412648	H H	Kidnap(5)	F. Mac Buckley	Plea of Guilty Felony Murder	25 years, 10/22/93	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
64.	**Dennis Hodge**	New Haven CR7-146988	B W(2)	Multiple(8)	R. Gold T. Ullmann	Not Guilty Capital, Guilty Murder & Manslaughter 1° & weapon possession(Not prosecuted for Death Penalty)	85 years, 3/17/95	248 Conn. 207 (1999) Affirmed. Federal Habeas pending decision
65.	**David Gibbs**	Hartford CR93-0089935	B BB	Multiple(8)	J. McKay M. Isko	Verdict of Guilty-Jury 4/6/98	LWOPR, 5/1/98 -State declined to seek Death Penalty	254 Conn. 578 (2000) Affirmed
66.	**Rich. Reynolds**	Waterbury CR92-0211910	B W	Police Officer(1)	J. McKay P. Culligan	Verdict of Guilty 9/28/94 Three Judge Panel (PT)	Sentence of Death, 4/13/95, Jury Verdict	Pending oral argument 2001, awaiting decision
67.	**Kevin King**	Hartford CR92-0137614	W W	Sexual(7)	R. Gold K. Simon	Verdict of Guilty-Jury 4/10/96 Life Verdict 5/96	LWOPR, 7/17/96	249 Conn. 645 (1999) Affirmed.
68.	**Eddy Hernandez**	New Haven CR6-364645	H H(3)	Multiple(8)	R. Gold B. Butler	Plea of Guilty Capital Felony State Declined to Seek Death	LWOPR, 2/28/96	
69.	**Michael Stokes**	Milford CR5-954291	B HW	Multiple(8)	S. Storey D. Egan/B. Butler	Plead Guilty Murder (2 counts)	55 years, 5/16/95	
70.	**John Camacho**	Hartford CR93-0133527	H H(4)	Multiple(8)	R. Gold K. Simon	Plea of Guilty all counts	LWOPR plus 20 years, 5/29/98 State declined to seek Death	
71.	**Janet Griffin**	Middletown CR93-0126985	W W(2)	Multiple(8)	J. McKay R. Kelly	Verdict of Guilty-Jury (PT)	LWOPR, 6/17/96	251 Conn. 671 (1999)Affirmed.
72.	**Gordon Fruen**	Middletown CR94-0128595	W W(2)	Multiple(8)	W. Grady A. Sprechter(SPD'S)	Verdict of Guilty 2 counts Manslaughter 1°- Jury Non-Death Penalty	30 years, 7/15/97 15 years each count consecutive	Pending
73.	**Jean Colinet**	Fairfield CR94-0094737	Haitian W	Hire(2)	B. Butler W. Holden	Plea of Guilty Murder	35 years, 9/8/95	
74.	**Julio Rodriguez**	Hartford CR94-456268	H W	Kidnap(5) Sexual(7)	M. Courtney J. Watson	Guilty Plea Capital Felony	LWOPR, 5/2/97	
75.	**Andre Cinicola**	New Haven CR94-0406339	BxW BB	Multiple(8)	D. Dakers	Pled Guilty to Murder (2 counts)	50 years and 50 years concurrent, 7/24/98	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
76.	**Maurice Billie**	New Haven CR94-0402410	B BB	Multiple(8)	R. Silverstein	Verdict of Not Guilty Capital Felony – Jury; Guilty to Manslaughter 1° (2 counts), Use Firearm, Pistol Without Permit	TES: 45 Years, 8/18/95	47 Conn.App. 678, Reversed in part; Judgement Directed 250 Conn. 172 (1999) Affirmed.
77.	**Kevan Dantzler**	New London	B WWBB	Multiple(8)	J. Moniz	Judgment of Acquittal, 11/09/95		
78.	**Miguel Beltran**	Fairfield CR95-010264	H H(2)	Multiple(8)	J. Demirjian	Verdict of Guilty Capital Felony - Jury Non-Death Penalty	LWOPR, 12/6/96	246 Conn. 268 (1998) Affirmed.
79.	**Frank Caravello**	Hartford CR95-0096636	W W	Narcotics(6)	M. Isko	Verdict of Not Guilty Capital Felony, Not Guilty Sale, Hung Jury- Possession Jury – Non Death Penalty	3 years jail execution suspended 3 years probation - 7/31/98	
80.	**Geof. Ferguson**	Danbury CR95-0092767	W W(5)	Multiple(8)	R. Field	Guilty all counts -Jury Non-Death Penalty	LWOPR, 6/11/98	260 Conn. 339 (2002) Affirmed
81.	**Joseph Fernandez**	Fairfield CR95-107632	B B(2)	Multiple(8)	J. Demirjian B. Butler	Verdict of Guilty Capital Felony – Jury Non-Death Penalty	LWOPR, 10/11/96	52 Conn.App. 599 (1999) Capital Felony Conviction Affirmed.
82.	**Julio Marrero**	Hartford CR95-0153929	H H(2)	Multiple(8) Kidnap(5)	B. Butler M. Zeldes	Verdict of Guilty Capital Felony – Jury (PT)	LWOPR, 4/21/97 Jury hung on penalty, Court imposed Life Sentence	252 Conn. 533 (2000) See State v. Ortiz Affirmed sub nom. See State v. Ortiz
83.	**Angel Ortiz**	Hartford CR95-4158621	H H(2)	Multiple(8) Kidnap(5)	M. Graham K. Randolph	Verdict of Guilty Capital Felony - Jury State terminated **P**enalty **T**rial	LWOPR,4/21/97	252 Conn. 533 (2000) Affirmed
84.	**Tim. Solek**	Fairfield CR95-0108074	W W	Sexual (7)	J. Ruane M. Fitzpatrick	Jury Verdict- Not Guilty Capital Felony, Guilty Murder & Sexual Assault 2° 11/20/98	55 years, 5/7/99	See, 242 Conn. 409 (1997) . Supreme Court reversed Trial Court's Dismissal of Capital Felony count. Conviction on appeal. 258 Conn. 941 (2001) Affirmed
85.	**Joseph Fremut**	New London CR95-0228700	W W	Hire(2)	SPD J. Ruane SPD B. McIntyre	**DISPOSED – DEFENDANT DECEASED ON 2/13/02**		
86.	**Mark Despres**	New London CR95-228699	W W	Hire(2)	M. Fitzpatrick B. Lorenson	Pending-Plea of Guilty Murder	12/6/02, pending defendant's testimony at co-defendant's trial.	
87.	**Heiman Clein**	New London	W W	Hire(2)	R. Axelrod	Pending-Plea of Guilty Murder	12/6/02, pending defendant's	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
	CR96-230423					testimony at co-defendant’s trial.	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
88.	**Jorge Ramos**	Hartford CR96-0486536	H H(2)	Multiple(8)	F. DeCaprio	Jury Verdict-Guilty Capital Felony, Murder (2 counts), Assault 1°, Discharge Firearm - 2/8/00 Not prosecuted for death penalty	LWOPR + 110 yrs cc 5/3/00 Sentence Review Pending	261 Conn. 156 Affirmed (2002)
89.	**German Montanez**	Hartford CR96-0486765	H H(2)	Multiple(8)	K. Randolph	Non Death Penalty Manslaughter 1°-Firearm (2 cts) Asslt 1/discharge firearm 4/19/00	25 yrs, 25 yrs cc, 6 yrs cc 10 years non-suspendable	71 Conn. App. 246 (2002) Judgment Reversed and case remanded for new trial
*90.	**Cesar Ambert**	Hartford CR94-455075	H H	Sexual(7)	M. Isko	Plea of Guilty Murder, Risk of Injury, Sexual Assault 1st	60 years, 5/13/97	

10/1/95 - NEW LAW TOOK EFFECT - ALL CASES ELOW PROSECUTED UNDER NEW LAW

91.	**Errol Dehaney**	Hartford CR95-0481648	J B(3)	Multiple(8) Under 16(9)-2cts	M. Courtney J. Hutcoe	Jury Verdict Guilty Capital Felony	LWOPR, 12/8/99	261 Conn. 336 (2002) Affirmed
92.	**Rob. Jenkins**	Hartford CR96-484350	B B	Under 16(9)	R. Gold J. Watson	Jury Verdict-Not Guilty Capital Felony, Guilty Manslaughter 1°, R.O.I.	20 yrs +, 10 yrs = 30 5/5/00 Sentence Review Pending	73 Conn App. 150 (2002) Affirmed in part, reversed on Manslaughter 1 and remanded for new trial
93.	**James Downing**	New Haven CR96-0424096	B B	Under 16(9)	T. Ullman	Verdict of Guilty Capital Felony, 11/6/98 Not prosecuted for death penalty	60 years, 11/16/98 Sentence Review Pending	68 Conn. App. 388 (2002) Affirmed
94.	**McWar.St.Julien**	Fairfield CR96-118588	Hait. B	Kidnap(5)	J. Mursky	Plea of Guilty Conspiracy Kidnapping 2°	12 years esa 5 years, 3/13/98	
95.	**Franz Cator**	Fairfield CR96-118578	Hait. B	Kidnap(5)	K. Randolph	Judgement of Acquittal Capital Felony - Verdict of Guilty Kidnapping 2°, Conspiracy Kidnapping 2°, Murder (2 counts), Felony Murder, Comm. Of Felony With Firearm (2 counts)-Jury Non-Death Penalty	55 years esa 50 years, 5 years Probation, 10/21/97	256 Conn. 785 (2001) Affirmed murder, felony murder, kidnapping 2; judgment reversed in part-case remanded to trial court
96.	**Sammy St. Victor**	Fairfield CR96-118590	Hait. B	Kidnap(5)	W. Schipul	Verdict of Not Guilty Capital Felony, Guilty Conspiracy Kidnapping 1° - Jury 9/97 Non-Death Penalty	20 years esa 15 years, 10/1/97	
97.	**Kenya Best**	Waterbury CR96-0253834	B B	Under 16(9)	R. Gold A. McWhirter	Verdict of Guilty Reckless Manslaughter 1°	20 years, 8/20/98	Affirmed 56 Conn.App.742(2000) Cert.Den. 253 Conn. 902 (2000)
98.	**Thor Colter**	New London CR96-0065583	W B	Under 16(9)	B. Sturman	Plea of Guilty Manslaughter 1°	20 years, 10/21/97	

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

Case Name	J.D.	Race Def.	Race Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
99. **Sherail Cooper**	Hartford CR97-0503047	B	B	Under 16(9)	P. Culligan K. Simon	Plea of Guilty Manslaughter 1°, Risk of Injury 9/15/97	30 years agreed, 12/12/97 Trl Court denied Motion to Withdraw Plea	55 Conn. App. 95 (1999) Affirmed. 251 Conn. 922 (1999)
100. **Norman Gaines**	Fairfield CR97-0127601	B	?	Multiple(8)	Megan Ann McLoughiln,SPD	Jury Verdict-Guilty Capital Felony, Guilty Murder Not prosecuted for death penalty	LWOPR, 20 years cc - 1/21/00	257 Conn. 695 (2001) Afirmed.
101. **Roger Jones**	Hartford CR96-0090075	B	WW	Multiple(8)	L. Hopkins	Jury Verdict-Guilty Murder(2 cts) Murder Comm. Of Felony(2 cts) Mnsltr 1°, Consp Burg 1, Consp. Burg 1, Larceny 1 Consp. Larceny 1-5/24/01	108 years - 10/19/01	Appeal Pending ?
102. **Vaughn Walker**	Hartford CR96-0090077	B	WW	Multiple(8)	K. Goodrow F. DeCaprio	Pled Guilty to Felony Murder, Burg 1°-Deadly Weapon-10/13/00	80 years, 12/8/00	
103. **Ron. Marcellus**	Fairfield CR97-012722	B	BB	Multiple(8)	D. Galucci	Verdict of Not Guilty to Capital Felony, Jury 10/21/98	Acquittal per Kelly at Atty Galluci's Office	
104. **Alfredo Marty**	Waterbury CR96-0253955	H	H/mix	Under 16(9)	J. Walkely K. Randolph	Jury Verdict-Not Guilty to Capital Felony, Not Guilty To Murder, Guilty to Manslaughter 1°	20 years, 10/8/99	
105. **Somen Shipman**	Fairfield CR97-0127444	B	?	Multiple(8)	L. Hopkins	Jury Verdict-Guilty Capital Felony-2/10/99 Not prosecuted for death penalty	LWOPR,4/28/00	Appeal Pending ?
106. **Daryll Tinsley**	Hartford CR96-0498229	B	?	Under 16(9)	G. Klein	Verdict of Guilty Manslaughter 1°, Risk of Injury - Jury Non-Death Penalty	30 years, 2/6/98	59 Conn. App. 4 (2000) Affirmed 254 Conn. 938 (2000) cert. denied
107. **Kevin Whitworth**	New London CR97-0236229	W	W	Kidnapping(5) Sexual(7)	T.R. Paulding	Plea of Guilty to Capital Felony and Sexual Assault 1°	LWOPR +20 years consecutive, 2/5/99	
108. **Reynaldo Arroyo**	Hartford CR97-0169383	H	H(2)	Multiple(8)	J. Forrest	Verdict of Not Guilty	3/16/99	
109. **Ricardo Arroyo**	Hartford CR97-0169517	H	H(2)	Multiple(8)	F. DeCaprio	Jury Verdict of Guilty to Murder, Guilty to Consp. To Commit Murder	10 years execution suspended 4 years probation, 9/27/99	Appeal Pending ?

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
110. **James Cummings**	Hartford CR97-0169381	B H(2)	Multiple(8)	M. Levy	Verdict of Not Guilty of Capital Felony - Guilty of Murder (2 counts), Att. Murder (2 counts), Consp. To Com Murder, Assault 1°	3/16/99 180 years concurrent (60 years,60 years cc, 10 years cc 10 years cc, 20 years cc, 20 years cc)	67 Conn. App. 734, (2002) Convictions reversed, Remanded for New Trial
111. **Daniel Dorce**	Hartford CR97-0169552	B H(2)	Multiple(8)	A.Chapman	Non-Death Penalty Pled Guilty to Conspiracy To Commit Murder	10 years jail e/s after 27 months 4 years probation 9/27/99	
112. **Maurice Flanagan**	Hartford CR97-0169518	B H(2)	Multiple(8)	H. Woodard	Verdict of Not Guilty to Capital Felony - Guilty of Murder (2 counts), Murder, Assault 1°, Att. Murder(2 counts) Conspiracy To Commit Murder	TES 140 years-5/14/99 60 years concurrent with other cases, 60 years cc with first count, 10 years cc, 10 years cc, 20 years cc, 20 years cc	67 Conn. App. 734, (2002) Convictions reversed, Remanded for New Trial
113. **Larry Gadlin**	Hartford CR97-0169516	B H(2)	Multiple(8)	E. Morrissy	Verdict of Not Guilty	3/16/99	
114. **Aramy Rivera**	Hartford CR97-0171509	H H(2)	Multiple(8)	W. Gerace	Dispo Without Trial Non-Death Penalty	Nolled-1/14/00	
115. **Fernando Rivera**	Hartford CR97-0169382	H H(2)	Multiple(8)	J. Frankling	Dispo Without Trial-Guilty To Conspiracy to Commit Murder-Non-Death Penalty	20 years, e/s after 10 years, 5 years probation 1/3/00	
116. **Juan Santiago**	Hartford CR97-0171240	H H(2)	Multiple(8)	McMahon Law Offices	Verdict of Not Guilty of Capital Felony - Guilty of Murder (2 counts), Att. Murder (2 counts), Consp. To Commit Murder, Assault 1° 3/16/99	TES: 180 years-5/14/99 60 yeas, 60 years cc, 10 years cc, 10 years cc, 20 years cc, 20 years cc	67 Conn. App. 734, (2002) Convictions reversed, Remanded for New Trial
117. **Scott Pickles**	New London CR97-0238970	W W(3)	Multiple(8) Under 16(9)	B. Butler B. Sturman	Pled Guilty to Capital Felony (3 counts)	LWOPR - 10/27/99	
118. **William Silver**	Waterbury CR97-0260474	W W	Narcotics(6)	N. Pattis	Pled Guilty to Manslaughter 2°	10 years - 2/22/99	
119. **Todd Rizzo**	Waterbury CR97-0262883	W W	Under 16(9)	R. Gold T. Nalband	Guilty Plea -Jury Verdict-Death 6/23/99	Sentenced to Death 8/13/99	Appeal Pending, oral argument 10/29/02 awaiting decision
120. **Damian Thomas**	New Haven CR98-0462866	B BB	Multiple(8)	A. Ghiroli	Jury Verdict of Guilty to Felony Murder (4 counts), carrying Pistol without Permit	TES: 120 years-5/28/99 60 years, 60 years cc, 60 years cc, 60 years cc with 3rd count cc with 1st and 2nd count, 5 years cc	62 Conn. App. 356 (2001) Reversed in part, judgment directed.

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

	Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
121.	**Andres Sosa/aka Ivan Rodriguez**	New Britain CR98-0173465	H HH	Multiple(8)	B. Butler K. Simon	Pled guilty to Murder (2 cts) 4/6/01	42 years - 5/31/01	
122.	**Mark Campmire**	Hartford CR97-0093862	W W	Kidnap(5)	M. Courtney F. DeCaprio	Pled guilty to Capital Felony, Kdnap 1°, Robbery 1°, Assault 1° 11/28/01	LWOP, 25 Years cc, 20 years cc, 20 years cc - 1/25/02	
123.	**Nicole Coleman**	Hartford CR98-0160298	B B	Under 16(9)	J. Watson	Non Death Penalty Pled Guilty Manslaughter 1° ROI, Alford Doctrine	15 years, 10 cc 6/27/00	
124.	**Dineen Deleo**	Waterbury CR98-0266836	W W	Under 16(9)	L. Crone	Plea of Guilty to Manslaughter 1°	12 years - 1/31/00	
125.	**Richard Lafleur**	Hartford CR97-0159488	W W	Under 16(9)	R. Meehan	Dispo Without Trial Guilty Manslaughter 1°, Assault 1°, R.O.I.-1/31/00	25 years, 2/25/00	
126.	**Peter Johnson**	Fairfield CR97-0135375	B B	Kidnap(5)	M. Fitzpatrick, SPD	Jury Verdict-Acquitted on all charges 3/2/01	Acquittal	
127.	**Sheldon Higgins**	Hartford CR98-0522849	B B	Under 16(9)	M. Isko	Non Death Penalty Guilty Capital Felony, Assault 1° (3 Cts) 6/13/00 Jury Verdict	LWOPR, 20 yrs cc, 10 yrs cc, 5 yrs cc 9/8/00	Pending Appeal
128.	**Jos.Pranckus III**	Hartford CR98-0162568	W WW	Multiple(8)	K. Barrs	Not Guilty Capital Felony Guilty Manslaughter 1° (2cts) July 7, 2000	40 years - 8/28/00	Pending Appeal
129.	**Deborah Thompson**	Litchfield CR98-0095928	W W	Under 16(9)	H. Santos/H. Seeley	Guilty Plea-Manslaughter 1°, Risk of Injury	18 yrs esa 8 yrs July 14, 2000	
130.	**Chasity West**	Hartford CR98-0109471	B B	Under 16(9)	H. Santos/H. Seeley	Jury Verdict-Guilty Capital Felony - 7/13/01	LWOPR + 70 Years-9/27/01	Appeal pending
131.	**Ivo Colon**	Waterbury CR98-0270986	H H	Under 16(9)	M. Courtney J. Hutcoe	Jury Verdict Guilty Capital & Murder - 10/6/00	Sentenced to Death 12/5/00	Appeal pending
132.	**Jose Torres**	Windham CR98-0102538	H H	Under 16(9) Kidnap (5)	P.Culligan M. Shapera	Jury Verdict Guilty Capital Felony and Murder-3/4/02 State withdrew death 1/4/02	LOWPR - 3/11/02	Appeal pending
133.	**Rbt Courchesne**	Waterbury CR98-0273002	W BB	Multiple(8) Under 16(9)	R. Gold D. Harrigan	3 judge panel-Guilty Capital Felony (2 Cts) and Murder (2 Cts)-9/17/01	Pending penalty phase	Interlocutory Appeal Pending oral argument 4/02, awaiting decision

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

Case Name	J.D.	Race Def.	Race Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
134. **Alex Sostre**	Hartford CR99-0165989	H	W	Police(1)	K. Goodrow M. Isko	On Trial		Interlocutory Appeal - 3/12/02 Supreme Court Decision Affirmed-7/30/02 261 Conn. 111 (2002)
135. **John Barletta**	Danbury CR99-0105510	W	W	Prior Murder(3)	P. Culligan R. Field	Plea of Guilty Capital Felony; Plea of Guilty Murder, 8/31/99	LWOPR 8/31/99	
136. **Adrian Peeler**	Waterbury CR99-0148397-0	B	BJ/B	Multiple(8) Under 16(9)	P. Culligan B. Koffsky	Change of Venue from Fairfield Jury Verdict-Guilty to Consp. To Murder-3/2/01	20 years consecutive to Federal time of 35 years 4/27/01	
137. **Russell Peeler**	Fairfield CR99-0148396	B	BJ/B	Multiple(8) Under 16(9)	J. Walkely, SPD W. Koch, SPD	Jury Verdict-Guilty Capital Felony - Penalty Phase Jury Deadlock	LWOPR 6/30/00	Appeal Pending
138. **Quincy Roberts**	Hartford CR99-053155	B	B	Under 16(9)	K. Barrs	Pled to Manslaughter 1° Alford Doctrine-Non-Death Penalty	18 years, 10 yrs cc 6/21/00	
139. **Beth Carpenter**	New London CR99-250705	W	W	Hire (2)	H. Keefe, SPD H. T.Knight, SPD	Non-Death Penalty(6/8/99) Jury verdict guilty capital felony And murder - 4/12/02	LWOPR 8/2/02	Appeal Pending
140. **Carl Johnson**	Hartford CR99-0170353	B	W	Kidnap (5)	R. Gold J. Watson	Guilty Plea to Capital Felony - 3/28/02	LWOPR-Alford Doctrine 4/19/02	
*141. **Jamaal Coltherst**	Hartford CR99-0170354	B	W	Kidnap (5)	D. O'Brien,SPD	Jury Verdict Guilty Capital Felony - 12/28/00 Not prosecuted for death penalty	Life + 71 years 3/16/01	Appeal Pending
142. **Abin Britton**	New London CR99-0248998	B	W	Kidnap (5)	K. Goodrow A. Sprecher	Pending		
143. **Gregory Pierre**	New London CR99-0250807	B	W	Kidnap (5)	J. Donovan, SPD W. Koch, SPD	Jury Verdict-Guilty Felony Murder, Mslghtr 1°, Robbery 1°, Kdnp 1° (2 cts) - 10/15/01	85 years 11/16/01	Appeal Pending
144. **Jeffrey Smith**	New London CR99-0250704	B	W	Kidnap (5)	J. Ruane, SPD B. McIntyre, SPD	Pending		
145. **Garry Garner**	Fairfield CR99-0154258	B	BJ/B	Multiple (8) Under 16 (9)	J. Ruane, SPD	Non-Death Penalty-Jury Verdict Guilty Capital Felony, 2 Cts Murder, 1 Count Consp. Com Murder - 12/18/01	LWOP, 20 years cc 2/1/02	Appeal Pending
146. **Reggie Gonsalves**	New Britain CR00-0009411	H	H	Under 16 (9)	K. Simon R. Gold	Pled Guilty Manslaughter 1° 10/17/00	17 Years 1/17/01	
147. **Anthony Brunetti**	Milford CR00-0039652	W	W	Sexual (7)	Pvt. V. Castignoli	Non-Death Penalty Jury Verdict Guilty Murder 3/11/02	60 years 6/27/02	Appeal Pending

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

Case Name	J.D.	Race Def.-Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
148. **Jessie Campbell**	Hartford CR00-0545101	B B	Multiple (8)	R. Gold D. Smith	Pending		
149. **Gregory McArthur**	Hartford CR00-0545117	B W	Kidnap (5)	M. DeCaprio	On Trial- Non-Death Penalty		
150. **Mark Pascual**	Hartford CR00-0105083	W W	Hire (2)	M. Courtney L. Sosa	Pending		
151. **Eduardo Santiago**	Hartford CR00-0105095	W W	Hire (2)	J. Franckling, SPD K. Randolph, SPD	Pending		
152. **Matthew Tyrell**	Hartford CR00-0105094	W W	Hire (2)	M. Levy, SPD A. Grogins, SPD	Pled guilty to Accessory to Capital Felony (53a-8) And Conspiracy to Commit Murder 11/15/02	Pending 11/15/02	
153. **Jonathan Mills**	New Haven CR00-0132873	W W(3)	Multiple (8) Under 16 (9)	B. Butler T. Ullmann	Pending		
*154. **Mark Edwards**	Fairfield CR01-0165653	B Syrian(2)	Multiple (8)	J. Bruckman	Pending-Non-Death Penalty		
155. **Sharmane Rose**	Hartford CR01-0547972	B	Kidnap (5)	W. Hussey, SPD	Pled guilty Mnslghtr 1, Rob 1 4/24/02	30 years jail/E/S after 13 5 years probation-8/9/02	
156. **Epifanio Ayala**	Danielson CR01-0113760	H H	Kidnap (5)	K. Randolph, SPD J. Donovan, SPD	Pending		
157. **Geovanni Ayuso**	Danielson CR01-0113759	H H	Kidnap (5)	M. Sheehan, SPD R. Reeve, SPD	Pending		
158. **Ariel Delgado**	Danielson CR01-0113758	H H	Kidnap (5)	K. Goodrow M. Hauslaib, SPD	Pending		
*159. **Ramone Rodriguez**	Danielson CR01-0113761	H H	Kidnap (5)	M. Davis	Pending-Non-Death Penalty		
160. **Robert Godfrey**	Hartford CR01-0180963	W W	Sexual (7)	B. Butler F. DeCaprio	Pending		
161. **Luis Galarza**	Bridgeport CR01-0174546	H HH	Multiple (8)	Pvt. G. Mastronardi	Pending-Non-Death Penalty		
162. **Paul Brown**	Windham CR02-0084500	W W	Under 16 (9)	P. Culligan R. Canning	Pending		
163. **Erik Henry**	New Britain CR96-0497046-0	B WWWW	Multiple (8)	M. Courtney B. Butler	4/3/02 Capital Felony reinstituted at 2nd PCH Pending		
164. **Robert Angle**	New London KNL-CR02-0085165	W H	Under 16 (9)	B. Sturman	Pending-Non Death Penalty		
165. **Deaneric Dupas**	Litchfield L18W-CR02-0109261-S	W W	Kidnap (5) Sex Assault (7) Under 16 (9)	M. Courtney C. Cosgrove	Pending		

LIST OF CAPITAL FELONY CASES PROSECUTED UNDER §53a-54b IN CONNECTICUT SINCE OCTOBER 1973

Case Name	J.D.	Race Def.	Race Vic	Subsection	Defense Attorney	Disposition	Sentence/Date	Appeal
166. **Alan Walter**	Litchfield L18W-CR02-0109262-S	W	W	Kidnap (5) Sex Assault (7) Under 16 (9)	SPD			

*Under 18 years of age
PT= Penalty Trial

Revised 10/29/02 pjc
10/2912/02 dag

APPENDIX E.

CONVICTIONS OF CAPITAL FELONY §53a-54b STATEWIDE SINCE OCTOBER 1973

	Docket #	Case Name	J.D.	Subsection	53a-46a Hearing	If No Hearing, Reason	Sentence for Cap. Felony. Total Effective Sentence	Appeal of Sentence
1.	10-119095	**State v. John McGann**	New London	Hire (2)	Yes		Life Imprisonment/120 yrs. 11/17/82	199 Conn. 163 (1986) Capital Felony judgment vacated; Judgment for Murder directed. See also, State v. Hope, 203 Conn. 420 (1987)
2.	CR5M-19988	**State v. Daniel Stuart**	Ansonia/Milford	Kidnap (5)			Motion for New Trial Granted; Verdict of Not Guilty on Retrial	
3.	CR4-103671	**State v. Earl Arnold**	Waterbury	Kidnap Murder(5)	No	53A-46A(g)(1)(under 18)	Life Imprisonment/70 yrs. 6/14/84	No error 201 Conn. 276 (1986)
4.	48720	**State v. Steven Wood**	Hartford	Multiple Murder(8)	Yes		Life Imprisonment/120 yrs. 11/16/84	Error in part. Sentence Affirmed Judgment directed 208 Conn. 125 (1988)
5.	49317	**State v. Kevin Usry**	Hartford	Sexual Assault(7)	Yes		Life Imprisonment/60 yrs. 5/6/85	State's appeal withdrawn; 205 Conn. 298 (1987), Error in part. No change in eff. sentence.
6.	30028	**State v. Hector Gonzalez**	Fairfield	Multiple Murder(8)	No	Aggravating factors dismissed prior to trial	Life imprisonment/70 yrs. 1/10/86	206 Conn. 213 (1988) No error
7.	CR21-20169	**State v. Jerry Daniels**	New London	Multiple Murder(8)	Yes		Life Imprisonment/120 yrs. 3/27/86	207 Conn. 374 (1988) No error.209 Conn.225(1988) Sentence reduced to 60 years on Federal Habeas; 120 years Reinstated by 2nd Circuit.
8.	CR84-20300 CR84-20355 CR84-20356	**State v. Michael Ross I**	New London	Sexual Assault(7) Kidnap (5)	Yes		Death 7/6/87	230 Conn. 183. (1994) No error re guilty verdicts. Error in penalty hearing. New penalty trial on all death sentences.
9.	CR84-20300 CR84-20355 CR84-20356	**State v. Michael Ross II**	New London	Sexual Assault (7)	Yes		Death 5/12/00	Appeal Pending
10.	49836	**State v. Wilmer Paradise**	Hartford	Kidnap Murder(5)	No	State agreed not to seek death sentence in return for waiver of Probable Cause Hearing	25 yrs. to life 9/3/87	No error. 213 Conn. 388 (1990)
11.	CR5-66329	**State v. T. Hoyesen**	Ansonia/ Milford	Police Officer (1)	No	State stipulated to existence of a mitigating factor, 53a-46a(g)(2)	Life without possibility of release 6/10/88	N/A
12.	53426	**State v. Eric Steiger**	Hartford	Multiple Murder(8)	Yes		Life without possibility of release 8/10/89	Affirmed 218 Conn. 349 (1991)
13.	42509	**State v. Gary Castonguay I**	Hartford	Police Officer(1)	No	Court ruled the death penalty statute was unconstitutional	25 years to life 8/25/81	Error; New Trial 194 Conn. 416 (1984)
14.	42509	**State v. Gary Castonguay II**	Hartford	Police Officer (1)	No	Court ruled that the death penalty barred on retrial	25 years to life 8/25/88	218 Conn. 486 (1991) Aff.

CONVICTIONS OF CAPITAL FELONY §53a-54b STATEWIDE SINCE OCTOBER 1973

	Docket #	Case Name	J.D.	Subsection	53a-46a Hearing	If No Hearing, Reason	Sentence for Cap. Felony. Total Effective Sentence	Appeal of Sentence
15.	CR87-0147941	**State v. Robert Breton I**	Waterbury	Multiple Murder(8)	Yes		Death 10/7/89	235 Conn. 206 (1995) Conviction aff'r'd Death sentence vac'd. Remanded for new penalty phase trial.
16.	CR87-0147941	**State V. Robert Breton II**	Waterbury	Multiple (8)	Yes		Death 1/9/98	Pending, oral argument 9/9/02, awaiting decision
17.	33543	**State v. Winston Watkins**	Fairfield	Multiple Murder(8)	No	State declined to proceed with penalty hearing	Life without possibility of release 3/16/90	229 Conn. 125. (1994) Reversed, remanded for new probable cause hearing. Case Nolled June '94.
18.	33581	**State v. Roy White**	Fairfield	Multiple Murder(8)	No	State declined to proceed with penalty hearing	Life without possibility of release 3/16/90	229 Conn. 125. (1994) Reversed, remanded for new probable cause hearing. Case nolled June '94.
19.	CR5-81771	**State v. Derek Roseboro**	Milford	Multiple Murder(8)	Yes		Life without possibility of release 12/19/90	221 Conn. 430 (1992) Affirmed
20.	CR89-374116	**State v. Ronnie Hinton**	Hartford	Multiple Murder(8)	No	53a-45a(g)(1)	Life without possibility of release 5/2/91	227 Conn. 301 (1993) Affirmed
21.	CR89-371150	**State v. Daniel Webb**	Hartford	Kidnap Murder(5)	Yes		Death 9/12/91	238 Conn. 389 (1996) Affirmed 252 Conn. 128 (2000) Lethal Injection Affirmed
22.	CR89-175454	**State v. Sedrick Cobb**	Waterbury	Kidnap Murder(5) Sexual (7)	Yes		Death 9/24/91	234 Conn. 735 (1995) Motion to expand Proportionality Review denied, 3-3 vote. 251 Conn. 285 (1999)
23.	CR90-52444	**State v. Jason Day**	Fairfield	Multiple Murder(8)	Yes		Life without possibility of release 10/21/91	233 Conn. 813 (1995) Affirmed
24.	CR89-107933	**State v. Richard Lapointe**	Hartford	Sexual(7)	Yes		Life without possibility of release 9/8/92	237 Conn. 694 (1996) Affirmed Denial of Habeas Corpus Affirmed 67 Conn. App. 674 1/22/02
25.	CR6-333512	**State v. Melvin Jones I**	New Haven	Prior Murder(3)	No	Not prosecuted for dp	Life without possibility of release	234 Conn. 324 (1995) Reversed, New Trial
26.	CR6-333512	**State v. Melvin Jones II**	New Haven	Prior Murder (3)			Life without possibility of release	50 Conn. App. 338 (1998) Affirmed
27.	CR91-76220	**State v. Terry Johnson**	Windham	Police Officer(1)	Yes		Death 6/10/93	253 Conn. 1 (2000) Reversed LWOP Imposed 5/2/00 State’s Motion for Reconsideration Denied 254 Conn. 909 (2000)

CONVICTIONS OF CAPITAL FELONY §53a-54b STATEWIDE SINCE OCTOBER 1973

	Docket #	Case Name	J.D.	Subsection	53a-46a Hearing	If No Hearing, Reason	Sentence for Cap. Felony. Total Effective Sentence	Appeal of Sentence
28.	CR93-0083508	**State v. Eric Amado**	Fairfield	Multiple (8)	No	Not prosecuted for dp	Life without possibility Of release 12/10/93	42 Conn. App. 348 (1996) 242 C 906 (1997) rev'd and remanded To Appellate Court for further review 50 CA 607 (1998) Convictions rev'd as to 2 cts Mur. 2 cts. Cap. Fel. 254 Conn. 184 (2000); 50 CA 607 reversed in part; original convictions for capital felony and murder affirmed
29.	CR91-0406234	**State v. Jesus Correa**	Hartford	Multiple(8)	Yes		Life without possibility of release, 3/15/94	241 Conn. 322 (1997) 6/10/97 Aff.
30.	CR91-76196	**State v. Duane Johnson**	Windham	Police Officer(1)	No	Not prosecuted for dp	Life without possibility of release, 6/8/94	241 Conn. 702 (1997) 7/97 Cap Fel. Conv. Rev. Remanded for sentencing on Fel Murder, Burg 1
31.	CR4-211910	**State v. Richard Reynolds**	Waterbury	Police Officer(1)	Yes		Death, 4/13/95	Pending; oral argument 2001; awaiting decision
32.	CR6-364645	**State v. Eddy N. Hernandez**	New Haven	Multiple (8)	No	By plea	Life without possibility of release, 2/28/96	
33.	CR93-0126985	**State v. Janet Griffin**	Middletown	Multiple (8)	Yes		Life without possibility of release, 6/17/96	251 Conn. 671 (1999) Affirmed.
34.	CR92-0137614	**State v. Kevin King**	Hartford	Sexual Assault (7)	Yes		Life without possibility Of release, 7/17/96	249 Conn. 645 (1999) 7/27/99 Aff.
35.	CR91-0084381	**State v. Chris Hafford**	Hartford	Sexual Assault (7)	Yes		Life without possibility of release, 10/4/96	252 Conn. 274 (2000) 3/17/00 Affirmed
36.	CR95-107632	**State v. Joseph Fernandez**	Fairfield	Multiple (8)	No	Not prosecuted for dp	Life without possibility of release, 10/11/96 - Non DP	52 Conn. App. 599 (1999) 4/6/99 Affirmed.
37.	CR95-010264	**State v. Miguel Beltran**	Fairfield	Multiple (8)	No	Not prosecuted for dp	Life without possibility of release, 12/6/96	246 Conn. 268 (1998) 7/11/98, Affirmed.
38.	CR95-0153929	**State v. Julio Marrero**	Hartford	Multiple (8) Kidnap (5)	Yes		Jury hung on penalty, Court Imposed LWOP 4/21/97	252 Conn. 533 (2000) Affirmed sub nom 3/17/2000 see State v. Ortiz
39.	CR95-4158621	**State v. Angel Ortiz**	Hartford	Multiple (8) Kidnap (5)	No	State declined to proceed with penalty hearing	Life without possibility of release, 4/21/97	252 Conn. 533 (2000) Affirmed 3/17/2000
40.	CR94-456268	**State v. Julio Rodriguez**	Hartford	Kidnap (5) Sexual Assault (7)	No	Guilty plea agreement	Life without possibility of release, 5/2/97	
41.	CR93-0089935	**State v. David Gibbs**	Hartford	Multiple (8)	No	State declined to proceed with penalty hearing	Life without possibility of release, 5/1/98	254 Conn. 578 (2000) 8/19/00 Affirmed.

CONVICTIONS OF CAPITAL FELONY §53a-54b STATEWIDE SINCE OCTOBER 1973

	Docket #	Case Name	J.D.	Subsection	53a-46a Hearing	If No Hearing, Reason	Sentence for Cap. Felony. Total Effective Sentence	Appeal of Sentence
42.	CR93-0133527	**State v. John Camacho**	Hartford	Multiple(8)	No	By plea	Life without possibility of release + 20 years 5/29/98	
43.	CR95-0092767	**State v. Geoffrey Ferguson**	Danbury	Multiple (8)	No	Not prosecuted for dp	Life without possibility of release, 6/11/98	260 Conn. 339 (2002) Affirmed 5/28/02
44.	CR96-0424096	**State v. James Downing**	New Haven	Under 16 (9)	No	Not prosecuted for dp	60 years, 11/16/98 Affirmed Sentence review pending	68 Conn. App. 388 (2002)
45.	CR97-0236229	**State v. Kevin Whitworth**	New London	Kidnapping (5) Sexual Assault (7)	No	Guilty plea, State declined to proceed with penalty hearing	Life without possibility of release + 20 years consecutive 2/5/99	
46.	CR97-0262883	**State v. Todd Rizzo**	Waterbury	Under 16 (9)	Yes		Death, 8/13/99	Pending oral argument 10/29/02 awaiting decision
47.	CR99-0105510	**State v. John Barletta**	Danbury	Prior Murder (3)	No	Guilty plea agreement	Life without the possibility of release, 8/31/99	
48.	CR97-0238970	**State v. Scott Pickles**	New London	Multiple (8) Under 16 (9)	No	Guilty plea, State declined to proceed with penalty hearing	Life without possibility of release, 10/27/99	
49.	CR95-0481648	**State v. Errol Dehaney**	Hartford	Multiple (8) Under 16 (9) 2 cts.	No	State declined to proceed with penalty hearing	Life without possibility of release, 12/8/99	261 Conn. 336 (2002) Affirmed
50.	CR97-0127601	**State v. Norman Gaines**	Fairfield	Multiple (8)	No.	Not prosecuted for dp	Life without possibility of release + 20 years cc, 1/21/00	
51.	CR97-0127444	**State v. Somen Shipman**	Fairfield	Multiple (8)	No	Not prosecuted for dp	Life without possibility of release, 4/28/00	Appeal Pending (?)
52.	CR96-0486536	**State v. Jorge Ramos**	Hartford	Multiple (8)	No	Not prosecuted for dp	Life without possibility of release + 110 years cc 5/3/00 Sentence review pending	261 Conn. 156 Affirmed (2002)
53.	CR99-0148396	**State v. Russell Peeler**	Fairfield	Multiple (8) Under 16 (9)	Yes		6/30/00-Penalty Phase-Jury Deadlock Court impose Life without the possibility of release	Appeal pending
54.	CR98-0522849	**State v. Sheldon Higgins**	Hartford	Under 16 (9)	No	Not prosecuted for dp	Life without the possibility of release, 20 yrs cc, 10 yrs cc, 5 yrs cc, 9/8/00 – Non DP	Appeal Pending (?)
55.	CR98-0270986	**State v. Ivo Colon**	Waterbury	Under 16 (9)	Yes		Death, 12/5/00	Appeal Pending
56.	CR99-0170354	**State v. Jamaal Coltherst**	Hartford	Kidnap (5)	No	Under 18 Not prosecuted for dp	Life without the possibility of release + 71 years, 3/16/01	Appeal Pending
57.	CR98-0109471	**State v. Chasity West**	Hartford	Under 16 (9)	Yes		Life without the possibility of release + 70 years, 9/27/01	Appeal Pending

CONVICTIONS OF CAPITAL FELONY §53a-54b STATEWIDE SINCE OCTOBER 1973

	Docket #	Case Name	J.D.	Subsection	53a-46a Hearing	If No Hearing, Reason	Sentence for Cap. Felony. Total Effective Sentence	Appeal of Sentence
58.	CR99-0154258	**State v. Garry Garner**	Fairfield	Multiple (8)	No	Not prosecuted for dp	Life without the possibility of release + 20 years, 2/1/02	Appeal Pending
59.	CR97-0093862	**State v. Mark Campmire**	Hartford	Kidnapping (5)	No	Guilty plea agreement	Life without the possibility of release + 25 years cc, 20 years cc, 20 years cc - 1/25/02	
60.	CR98-0273002	**State v. Robert Courchesne**	Waterbury	Multiple (8) Under 16 (9)	Convicted of capital felony. Chief Justice interlocutory appeal pending re penalty hearing.			Oral argument 4/2002 Awaiting decision
61.	CR98-0102538-T	State v. Jose Torres	Windham	53a-54b(9)(5)	No	Not prosecuted for dp	Life without the possibility of release 3/11/02	Appeal Pending
62.	CR99-0170353-T	State v. Carl Johnson	Hartford	53a-54b(5)	No	Guilty plea agreement under Alford Doctrine	Life without the possibility of release 4/19/02	
63.	CR99-0250705-T	State v. Beth Carpenter	New London	53a-54b(2)		Extradition from Ireland Not prosecuted for dp	Life without the possibility of release 8/2/02	Appeal Pending
64.	CR00-0105094-T	State v. Matthew Tyrell	Hartford	53a-54b(2)	No	Pled guilty to 53a-8 Accessory To Capital Felony Under Alford Doctrine	Pending	

Revised 10/29/02

APPENDIX F.

HEARINGS ON IMPOSITION OF DEATH PENALTY CONDUCTED STATEWIDE UNDER §53a-46a, C.G.S. SINCE OCTOBER 1973

	Docket No.	Case Name	J.D.	Conviction (53a-54b)	Defense Attorney	Election	Agg. Fac. Found	Mitigat. Fac. Found	Sentence/Date	Appeal of Sentence
1.	CR10-119095	**State v. John McGann**	New London	For Hire (2)	R. Casale	3 Judges	None	None	Life Imprisonment, 11/17/82	199 Conn. 163 (1986) Capital Felony Judgment vacated; Judgment for Murder directed. See also, State v. Hope, 203 Conn. 420
2.	48720	**State v. Steven Wood**	Hartford	Multiple Murder (8)	J. Shortall/G. Smyth	Jury	53a-46a(h)(4)	53a-46a(g)(2)	Life Imprisonment, 11/16/84	Error in part. Judgment directed. 208 Conn. 125 (1988)
3.	49317	**State v. Kevin Usry**	Hartford	Sexual Assault (7)	G. Smyth/P. Culligan	Jury	53a-46a(h)(4)	No verdict. Jury divided 7-5	Life Imprisonment, 5/6/85	State withdrew appeal.Defendant's appeal-error in part; Judgment directed against. 205 Conn. 298 (1987)
4.	CR21-20169	**State v. Jerry Daniels**	New London	Multiple Murder (8)	J. Ruane/F. DeCaprio	Jury	53a-46a(h)(4)	No verdict. Jury divided 6-6	Life Imprisonment 3/27/86	207 Conn. 374 (1988) No error. 209 Conn. 225 Sentence reduced to 60 years on Federal Habeas; 120 years reinstated By 2nd Circuit.
5.	CR21-20300 CR21-20355 CR21-20356	**State v. Michael Ross I**	New London	Sexual Assault (7) Kidnap Murder (5)	F. DeCaprio/P. Scillieri	Jury	53a-46a(h)(4)	None	Death, 7/6/87	230 Conn. 183. (1994) No error re guilty verdicts. Error in penalty hearing. New penalty trial on all death sentences.
6.	CR21-20300 CR21-20355 CR21-20356	**State v. Michael Ross II**	New London	Kidnap Murder (5) Sexual Assault (7)	K. Goodrow/B. Butler	Jury	53a-46a(h)(4)	None	Death, 5/12/00	Appeal pending
7.	53426	**State v. Eric Steiger**	Hartford	Multiple Murder (8)	F. Mac Buckley	3 Judges	53a-46a(h)(3); 53a-46a(h)(4)	53a-46a(g)(2), One Judge dissenting.	Life Imprisonment, 8/10/89	No error. Affirmed 218 Conn. 349 (1991)
8.	CR87-0147941	**State v. Robert Breton I**	Waterbury	Multiple Murder (8)	R. Kelly/A. McWhirter	Jury	53a-46a(h)(4)	None	Death, 10/7/89	Conviction affirmed. Death sentence vacated. Remanded for new penalty phase trial. 235 Conn. 206 (1995)
9.	CR87-0147941	**State v. Robert Breton II**	Waterbury	Multiple Murder (8)	B. Butler/A. McWhirter	3 Judges	53a-46a(h)(4)	None	Death, 1/9/98	Pending; oral argument 9/9/02; Awaiting decision
10.	CR5-81771	**State v. Derek Roseboro**	Milford	Multiple Murder (8)	P. Culligan/D. Egan	3 Judges	53a-46a(h)(4)	Non-statutory	Life without possi-bility of Release 12/19/90.	No error. Affirmed. 221 Conn. 430 (1992)
11.	CR89-371150	**State v. Daniel Webb**	Hartford	Kidnap Murder (5)	M.F. DeCaprio/R. Gold	Jury	53a-46a(h)(1); 57a-46a(h)(4)	None	Death, 9/12/91	238 Conn. 389 (1996) Affirmed. 252 Conn. 128 (2000) Lethal injection Affirmed

HEARINGS ON IMPOSITION OF DEATH PENALTY CONDUCTED STATEWIDE UNDER §53a-46a, C.G.S. SINCE OCTOBER 1973

	Docket No.	Case Name	J.D.	Conviction (53a-54b)	Defense Attorney	Election	Special Verdicts: Agg. Fac. Found	Special Verdicts: Mitigat. Fac. Found	Sentence/Date	Appeal of Sentence
12.	CR4-175454	**State v. Sedrick Cobb**	Waterbury	Kidnap Murder (5) Sexual Assault (7)	G. Smyth/A. McWhirter	3 Judges	53a-46a(h)(4)	None	Death, 9/24/91	234 Conn. 735 (1995) Motion to expand Proportionality Review denied, 3-3 vote 251 Conn. 285 (1999) Affirmed
13.	CR90-52444	**State v. Jason Day**	Fairfield	Multiple(8)	P. Culligan/W. Holden	Jury	None - Motion for Life Sentence granted by court after conclusion of state's evidence on agg. factor.		Life without possi-bility of release 10/21/91	233 Conn. 813 (1995) Affirmed
14.	CR89-107933	**State v. Richard Lapointe**	Hartford	Sexual(7)	P. Culligan/C. Cosgrove	Jury	53a-46a(h)(3)	General mitigating verdict returned-yes	Life w/o possi-bility of release 9/8/92	237 Conn. 694 (1996) Aff. Denial of Habeas Corpus Affirmed 67 Conn. App. 674 1/22/02
15.	CR91-76220	**State v. Terry Johnson**	Windham	Police Officer(1)	P. Culligan/R. Canning	Jury	53a-46a(h)(4)	None	Death 6/10/93	253 Conn. 1 (2000) Rev. LWOP imposed State's Motion for Reconsideration Denied; 254 Conn. 909 (2000)
16.	CR91-0406234	**State v. Jesus Correa**	Hartford	Multiple(8)	R. Gold/S. Brown	Jury	53a-46a(h)(6)	General mitigating verdict returned-yes	Life w/o possi-bility of release 3/15/94	241 Conn. 322 (1997) Affirmed
17.	CR92-211910	**State v. Richard Reynolds**	Waterbury (Tr. to Middlesex)	Police Officer (1)	P. Culligan/J. McKay	Jury	53a-46a(h)(1); 53a-46a(h)(4)	None	Death, 4/13/95	Pending; oral argument 2001, awaiting decision
18.	CR93-0126985	**State v. Janet Griffin**	Hartford	Multiple (8)	J. McKay/R. Kelly	Jury	53a-46a(h)(4)	General mitigating verdict returned-yes	Life w/o possibility of release 6/17/96	251 Conn. 671 (1999) Affirmed
19.	CR92-0137614	**State v. Kevin King**	Hartford	Sexual Assault (7)	R. Gold/K. Simon	Jury	53a-46a(h)(4)	General mitigating Verdict returned-yes	Life w/o possi-bility of release 7/17/96	249 Conn. 645 (1999) Affirmed
20.	CR91-0084381	**State v. Chris.Hafford**	Hartford	Sexual (7)	B. Butler/K. Goodrow	3 Judges	53a-46a(h)(4)	General mitigating verdict returned-yes	Life w/o possi-bility of release 10/4/96	252 Conn. 274 (2000) Affirmed
21.	CR95-0153929	**State v. Julio Marrero**	Hartford	Multiple (8) Kidnap (5)	B. Butler/M. Zeldes	Jury	53a-46a(h)(4)	11 Jurors for Life 1 Juror For Death Judge Imposes Life Under State v. Daniels	Jury hung on penalty, Court Imposed LWOP 4/21/97	252 Conn. 533 (2000) Affirmed sub nom see State v. Ortiz
22.	CR97-0262883	**State v. Todd Rizzo**	Waterbury	Under 16 (9)	R. Gold/T. Nalband	Jury	53a-46a(i)(4)	None	Death, 8/13/99	Appeal Pending, oral argument 10/29/02, awaiting decision

HEARINGS ON IMPOSITION OF DEATH PENALTY CONDUCTED STATEWIDE UNDER §53a-46a, C.G.S. SINCE OCTOBER 1973

Docket No.	Case Name	J.D.	Conviction (53a-54b)	Defense Attorney	Election	Special Verdicts Agg. Fac. Found	Special Verdicts Mitigat. Fac. Found	Sentence/Date	Appeal of Sentence

HEARINGS ON IMPOSITION OF DEATH PENALTY CONDUCTED STATEWIDE UNDER §53a-46a, C.G.S. SINCE OCTOBER 1973

	Docket No.	Case Name	J.D.	Conviction (53a-54b)	Defense Attorney	Election	Special Verdicts: Agg. Fac. Found	Special Verdicts: Mitigat. Fac. Found	Sentence/Date	Appeal of Sentence
23.	CR99-0148396	**State v. Russell Peeler**	Fairfield	Multiple (8) Under 16 (9)	J. Walkely/W. Koch	Jury	On Child Murder Ct the jury found Unspecified Aggravating factor* On Multiple murder Count the jury hung On aggravation.	On Child Murder the jury rejected: 53a-46a(h)(3)** 53a-46a(h)(4)** and hung at weighing step. Some jurors Found unspecified Nonstatutory factor On child murder	6/30/00-Penalty Phase Jury Deadlock,Court Impose Life without The possibility of release.	Appeal Pending

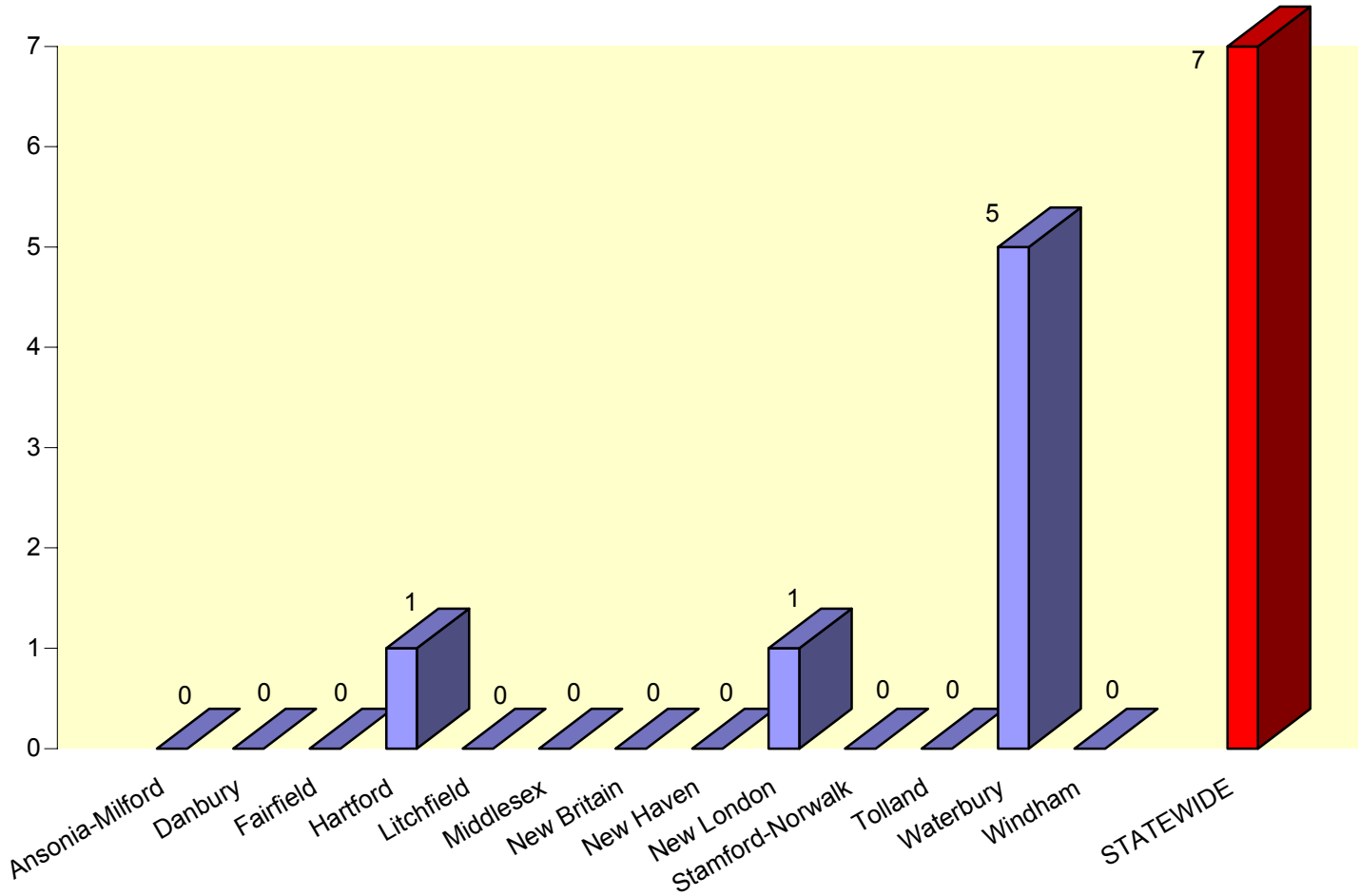
* (Judge did not allow jury to articulate aggravating factor or mitigating factor. Between the two counts there were seven aggravating factors.)
** 53a-46a(h)(3)-Defendant convicted as an accomplice and had minor involvement
** 53a-46a(h)(4)-Grave risk aggravator-defendant didn't - could not have reasonably foreseen that a grave risk of death was created
(They rejected the 2 statutory mitigating factors on the child murder count. On the double homicide count they never considered them because they hung on aggravation.)
*** There may be no valid finding that these 2 statutory mitigants did not exist because the Court told the jury they had to be unanimous as to which one was proven. The defendant claim as a nonstatutory factor that he was an accomplice and foreman said afterwards to press that this is why they hung.

24.	CR98-0270986	**State v. Ivo Colon**	Waterbury	Under 16 (9)	M. Courtney/J. Hutcoe	Jury	53a-46a(i)(4)	General mitigating verdict returned-no	Death, 12/5/00	Appeal Pending
25.	CR98-0109471	**State v. Chasity West**	Hartford	Under 16 (9)	H. Santos/H. Seeley	Jury	53a-46a(i)(4)	General mitigating verdict returned-yes	Life w/o possibility of release + 70 years 9/27/01	Appeal Pending

Revised 10/29/02

APPENDIX J.

NUMBER OF DEATH SENTENCES
BY JUDICIAL DISTRICT
SINCE OCTOBER 1, 1973



Prepared by Ronald Gold
June 3, 2002

APPENDIX K.

Policy Concerning Two Lawyers Appointed to Each Case in Which the State Seeks the Death Penalty

It is the policy of the Public Defender Services Commission that two lawyers be appointed to represent any defendant charged with a capital felony when the state intends to seek the death penalty and that both lawyers should appear with and participate in the representation of the defendant at all contested pretrial proceedings, all voir dire proceedings, and all trial proceedings, unless such appearance by both lawyers is waived by the defendant after consultation with counsel.

Approved by Public Defender Services Commission, April 16, 2002

APPENDIX L.

TO: PUBLIC DEFENDERS

FROM: GERARD M. SMYTH, CHIEF PUBLIC DEFENDER

DATE: 10/04/95

RE: QUALIFICATIONS OF ATTORNEYS TO BE APPOINTED AS SPECIAL PUBLIC DEFENDERS IN CAPITAL FELONY CASES

Although the need to appoint special public defenders in capital felony cases arises infrequently, please be aware that the Commission recently adopted new regulations which will control the appointment of such special public defenders. It is the policy of the Commission to approve the proposed appointments of special public defenders in capital cases so it is important that the attorneys you select have the required trial experience. The Commission will use a specific set of qualifications, which are set out below, to determine the appointments of capital special public defenders. By combining the requirement of significant prior trial experience with the requirement of education and training in the defense of capital felony cases, these qualification requirements are intended to ensure that only competent, experienced and dedicated attorneys are appointed as special public defenders in capital felony conflict cases.

Qualifications

Attorneys who are appointed as **lead counsel** in capital cases should be attorneys who satisfy the following criteria:

1. Are experienced and active trial practitioners with at least seven years litigation experience in the field of criminal defense; and

2. Have prior experience as lead or sole counsel in no fewer than nine criminal jury trials of serious and complex cases which were tried to verdict or hung jury. If the attorney has experience as lead or co-counsel in a capital case that was tried through the sentencing phase then seven, not nine, prior jury trials are required. Of the nine jury trials which were tried to completion, the attorney should have been lead or sole counsel in at least three cases in which the charge was murder or felony murder; or alternatively, of the nine

jury trials, at least one was a murder or felony murder trial and an additional five were felony jury trials of C degree felonies or greater; for attorneys with prior capital felony trial experience one additional felony trial of the seven felony trials was for murder or felony murder; or six were felony jury and court trials of C degree felonies or greater; and

3. Are familiar with and experienced in the utilization of expert witnesses and evidence, including, but not limited to, psychiatric and forensic evidence; and

4. Have completed a certified training program in the litigation of capital felony defense; or agree to read and study capital felony defense trial training and mitigation preparation and presentation materials compiled by and provided by the Trial Services Unit of the Office of the Chief Public Defender.

5. Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

Attorneys who are appointed as **co-counsel** in capital cases should be attorneys who qualify as lead counsel or meet the following criteria:

1. Are experienced and active trial practitioners with at least four years litigation experience in the field of criminal defense; and

2. Have prior experience as lead counsel or co-counsel in no fewer than four criminal jury trials of class C or greater felony cases which were tried to verdict or hung jury, and at least one trial in which the charge was murder or felony murder; or have participated as lead or co-counsel in one prior capital felony jury trial tried to completion through the sentencing phase; and

3. Have completed a certified training program in the litigation of capital felony defense; or agree to read and study capital felony defense trial training and mitigation preparation and presentation materials compiled by and provided by the Trial Services Unit of the Office of the Chief Public Defender.

4. Have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to capital cases.

An attorney who does not meet these requirements may be appointed as co-counsel if the attorney demonstrates to the Commission that he or she can provide competent representation.

The Commission may consider the following:

a. Experience in the trial of criminal cases;
b. Specialized post-graduate training in jury trials;
c. Specialized training in the defense of persons accused of capital crimes;
d. Any other relevant considerations.

APPENDIX M.

PUBLIC DEFENDER SERVICES COMMISSION

Standards For The Appointment Of Special Public Defenders In Habeas Corpus Cases

Attorneys who are appointed as a special public defender in a habeas corpus matter should be attorneys who satisfy the following criteria:

1. Are experienced and active practitioners with at least two years trial or appellate experience in the field of criminal defense;

2. Have prior experience in the representation of habeas petitioners or prior experience as lead or sole counsel in no fewer than two jury or court trials or two appeals;

3. Are familiar with the civil rules of procedure which govern habeas corpus and the applicable standard for the effective assistance of counsel in criminal matters;

4. Are familiar with and experienced in the utilization of expert witnesses and evidence; and,

5. Have specialized training in the representation of clients in habeas corpus matters, agree to read and study training materials provided by the Habeas Corpus Unit of the Office of Chief Public Defender, or have demonstrated the necessary proficiency and commitment which exemplify the quality of representation appropriate to habeas corpus cases.

The Chief Public Defender may consider any other comparable relevant experience or qualifications that demonstrate an ability to adequately represent clients in habeas corpus matters. Such qualifications or experience may be substituted in lieu of any of the criteria set forth above.

Adopted June 15, 1999

APPENDIX N. Time Sequence – Death Penalty Appeals

Defendant	Date of Offense	Arrest Date	PC Hearing	Trial	Verdict	Sentencing	Appeal Filed	Defendant's Brief filed	State's Brief filed	Argument	Decision
Michael Ross	11/16/83 4/22/84 6/13/84	6/16/84	9/4/94	3/23/87	6/26/87	7/6/87	11/1/87	5/15/92	5/3/93	2/15/94	7/26/94 230C183
Michael Ross (on remand)				4/5/99 thru 6/14/99 1/7/00 thru	4/6/00	5/12/00	6/1/00	8/23/02			
Robert Breton	12/13/87		1/28/88	1/20/89 thru 4/11/89 penalty 9/6/89 thru	10/3/89	10/27/89	11/1/90	5/7/93	6/30/94	2/7/95	8/22/95 235C206
Robert Breton (on remand)				4/9/97 thru 4/23/97 10/6/97 thru 10/24/97	1/9/98	1/26/98	5/22/00	1/5/01	9/9/02		
Sedrick Cobb	12/16/89	12/19/89	1/29/90	5/28/91	8/13/91	9/24/91	10/1/91	2/19/97	5/14/98	2/18/99	12/7/99 251C285
Daniel Webb	8/24/89			5/16/91 thru	7/25/91	9/12/91	11/8/91	7/25/94	3/13/95	12/1/95	7/30/96 238C389
Terry Johnson	6/5/91	6/7/91	9/23/91	1/19/93 thru	5/24/93	6/10/93	6/30/93	5/31/96	7/15/98	10/26/99	5/2/00 253C1
Richard Reynolds	12/18/92		2/3/93	9/7/94 thru	3/29/95	4/13/95	4/18/95	8/14/98	7/25/00	9/28/01	
Todd Rizzo	9/30/97	10/2/97	11/5/97	4/6/99 thru	6/23/99	8/13/99	9/16/99	8/13/01	7/29/02	10/30/02	
Ivo Colon	7/17/98	7/18/98	9/3/98	6/6/00 thru	10/16/00	12/5/00	12/12/00	8/1/02			

Trial = jury selection through penalty phase verdict