



# Senate

General Assembly

**File No. 581**

January Session, 2001

Substitute Senate Bill No. 1161

*Senate, May 3, 2001*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT CONCERNING THE DEATH PENALTY.***

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

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2 repealed and the following is substituted in lieu thereof:

3 (i) The aggravating factors to be considered shall be limited to the  
4 following: (1) The defendant committed the offense during the  
5 commission or attempted commission of, or during the immediate  
6 flight from the commission or attempted commission of, a felony and  
7 [he] the defendant had previously been convicted of the same felony;  
8 or (2) the defendant committed the offense after having been convicted  
9 of two or more state offenses or two or more federal offenses or of one  
10 or more state offenses and one or more federal offenses for each of  
11 which a penalty of more than one year imprisonment may be imposed,  
12 which offenses were committed on different occasions and which  
13 involved the infliction of serious bodily injury upon another person; or  
14 (3) the defendant committed the offense and in such commission

15 knowingly created a grave risk of death to another person in addition  
16 to the victim of the offense; or (4) the defendant committed the offense  
17 in an especially heinous, cruel or depraved manner; or (5) the  
18 defendant procured the commission of the offense by payment, or  
19 promise of payment, of anything of pecuniary value; or (6) the  
20 defendant committed the offense as consideration for the receipt, or in  
21 expectation of the receipt, of anything of pecuniary value; or (7) the  
22 defendant committed the offense with an assault weapon, as defined  
23 in section 53-202a; or (8) the defendant committed the offense set forth  
24 in subdivision (1) of section 53a-54b, as amended by this act, to avoid  
25 arrest for a criminal act or prevent detection of a criminal act or to  
26 hamper or prevent the victim from carrying out any act within the  
27 scope of the victim's official duties or to retaliate against the victim for  
28 the performance of the victim's official duties.

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

31 (h) The court shall not impose the sentence of death on the  
32 defendant if the jury or, if there is no jury, the court finds by a special  
33 verdict, as provided in subsection (e), that at the time of the offense (1)  
34 [he] the defendant was under the age of eighteen years, or (2) the  
35 defendant was a person with mental retardation, as defined in section  
36 1-1g, or [(2) his] (3) the defendant's mental capacity was significantly  
37 impaired or [his] the defendant's ability to conform [his] the  
38 defendant's conduct to the requirements of law was significantly  
39 impaired but not so impaired in either case as to constitute a defense to  
40 prosecution, or [(3) he] (4) the defendant was criminally liable under  
41 sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed  
42 by another, but [his] the defendant's participation in such offense was  
43 relatively minor, although not so minor as to constitute a defense to  
44 prosecution, or [(4) he] (5) the defendant could not reasonably have  
45 foreseen that [his] the defendant's conduct in the course of commission  
46 of the offense of which [he] the defendant was convicted would cause,

47 or would create a grave risk of causing, death to another person.

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

50 A person is guilty of a capital felony who is convicted of any of the  
51 following: (1) Murder of a member of the Division of State Police  
52 within the Department of Public Safety or of any local police  
53 department, a chief inspector or inspector in the Division of Criminal  
54 Justice, a state marshal who is exercising authority granted under any  
55 provision of the general statutes, a judicial marshal in performance of  
56 the duties of a judicial marshal, a constable who performs criminal law  
57 enforcement duties, a special policeman appointed under section 29-  
58 18, an employee of the Department of Correction or a person  
59 providing services on behalf of said department when such employee  
60 or person is acting within the scope of [his] such employee's or  
61 person's employment or duties in a correctional institution or facility  
62 and the actor is confined in such institution or facility, or any fireman,  
63 while such victim was acting within the scope of [his] such victim's  
64 duties; (2) murder committed by a defendant who is hired to commit  
65 the same for pecuniary gain or murder committed by one who is hired  
66 by the defendant to commit the same for pecuniary gain; (3) murder  
67 committed by one who has previously been convicted of intentional  
68 murder or of murder committed in the course of commission of a  
69 felony; (4) murder committed by one who was, at the time of  
70 commission of the murder, under sentence of life imprisonment; (5)  
71 murder by a kidnapper of a kidnapped person during the course of the  
72 kidnapping or before such person is able to return or be returned to  
73 safety; [(6) the illegal sale, for economic gain, of cocaine, heroin or  
74 methadone to a person who dies as a direct result of the use by him of  
75 such cocaine, heroin or methadone; (7)] (6) murder committed in the  
76 course of the commission of sexual assault in the first degree; [(8)] (7)  
77 murder of two or more persons at the same time or in the course of a  
78 single transaction; or [(9)] (8) murder of a person under sixteen years of

79 age.

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

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

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

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

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

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

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

106 (5) An examination of the training and experience of prosecuting

107 officials and defense counsel involved in capital cases at the trial and  
108 appellate and post-conviction levels;

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

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

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

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

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

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

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

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

133 (14) An examination of the emotional and financial effects that the

134 delay between the imposition of the death sentence and the actual  
135 execution of such sentence has on the family of a murder victim.

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

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

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

**OFA Fiscal Note**

**State Impact:** Potential Significant Cost, Potential Significant Savings<sup>1</sup>

**Affected Agencies:** Various Criminal Justice Agencies

**Municipal Impact:** None

**Explanation**

**State Impact:**

The bill could result in significant cost to the state by adding an aggravating factor that a judge or jury considers when deciding to sentence someone to the death penalty. It could also result in significant savings by prohibiting the death penalty for a person with mental retardation and narrowing the scope of the capital felony statute. The net impact is uncertain.

The total cost of death penalty cases are, on average, more costly than other cases due to the complexity and length of litigation involved.<sup>2</sup>

<sup>1</sup> OFA defines significant as exceeding \$100,000.

<sup>2</sup> A study by Duke University in 1993 found that individual death penalty cases cost \$163,000 more on average than first-degree murder cases. The study divided cost into four areas: trials, direct appeal, other post-conviction proceedings and imprisonment and defined numerous cost factors including the cost of the defense, the prosecution, a jury-trial, the large number of motions filed and the length of the penalty phase and direct appeals. The study found that post-conviction hearings are probably the most costly part of death penalty cases, but found that the success rate for additional appeals are higher in capital cases (60-75% success rate), than non-capital cases (7% success rate). Death penalty cases are 45% more costly on direct

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**OLR Bill Analysis**

sSB 1161

***AN ACT CONCERNING THE DEATH PENALTY.***

**SUMMARY:**

This bill:

1. adds as an aggravating factor that the jury or judge considers when deciding whether to sentence a person to the death penalty or life imprisonment without release, that the defendant murdered a law enforcement officer or certain other people in order to (1) avoid arrest for, or prevent detection of, a criminal act, (2) hamper or prevent the victim from carrying out an act within the scope of his official duties, or (3) retaliate against the victim for performing his official duties;
2. prohibits imposing a death sentence on a defendant with mental retardation;
3. creates a Commission on the Death Penalty to study the imposition of the death penalty in Connecticut; and
4. narrows the scope of the capital felony statute by eliminating from the definition of the crime illegally selling cocaine, heroin, or methadone for financial gain to a person who dies as a direct result of using the drug.

EFFECTIVE DATE: July 1, 2001

**AGGRAVATING FACTORS**

By law, after a person is convicted of a capital felony, the judge or jury

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appeal than non-capital cases: According to the Duke University study, an inmate spent an average of 7 years and 4 months on death row prior to execution.

considering whether the court should impose the death penalty must determine, and state in a special verdict, whether aggravating factors outweigh mitigating factors. If the mitigating factors outweigh the aggravating factors or are of equal weight, the court must sentence the defendant to life imprisonment without the possibility of release. If the aggravating factors outweigh mitigating factors, the sentence is death.

Under current law, the only aggravating factors that the judge or jury can consider are that the defendant:

1. committed the offense while committing or attempting to commit a felony, or while fleeing from the commission of, or attempt to commit, a felony, and had previously been convicted of the same felony;
2. had been convicted of at least two state or federal offenses prior to the offense, each of which was committed on different occasions, involved serious bodily injury, and had a maximum penalty of at least one year imprisonment;
3. committed the offense knowingly creating a risk of death to another person in addition to the victim of the offense;
4. committed the offense in an especially heinous, cruel, or depraved manner;
5. procured someone else to commit the offense by paying or promising to pay anything of monetary value;
6. committed the offense in return for payment or the expectation of payment; or
7. committed the offense with an assault weapon.

The bill adds as an aggravating factor that the defendant murdered one of the following people while the victim was acting within the scope of his duties: a police officer, inspector of the Division of Criminal Justice, state marshal exercising his statutory authority, judicial marshal performing his duties, constable who performs law

enforcement duties, special policeman, Department of Correction (DOC) employee or person providing services on behalf of DOC when acting within the scope of his employment in a correctional facility and when the perpetrator is confined to the facility, or firefighter. In addition, for it to be an aggravating factor, the defendant must commit the murder to (1) avoid arrest for or prevent detection of a criminal act, (2) hamper or prevent the victim from carrying out an act within the scope of his official duties, or (3) retaliate against the victim for performing his official duties.

### **DEATH SENTENCE FOR A PERSON WITH MENTAL RETARDATION**

The bill prohibits imposing a death sentence on a defendant if the jury or court (if there is no jury) finds in a special verdict that the defendant at the time of the offense was mentally retarded. Mental retardation is defined as a significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. General intellectual functioning means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration. Significantly sub-average is an intelligence quotient more than two standard deviations below the mean for the test. Adaptive behavior is the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group. Developmental period is the period of time between birth and the 18th birthday.

### **COMMISSION ON THE DEATH PENALTY**

#### ***Members***

The bill creates a nine-member Commission on the Death Penalty consisting of two members appointed by the governor and one member each appointed by the:

1. chief justice,

2. Senate president pro tempore,
3. House speaker,
4. Senate majority leader,
5. House majority leader,
6. Senate minority leader, and
7. House minority leader.

Vacancies are filled by the person who made the original appointment. The governor appoints a chairman from the members.

**Study**

The bill requires the commission's study to include, but not be limited to, an examination of:

1. whether the administration of the death penalty in Connecticut meets constitutional principles and requirements of fairness, justice, equality, and due process;
2. the costs to the state of imposing a death sentence and life imprisonment without the possibility of release and a comparison of their costs;
3. whether there is a disparity in the decision to charge, prosecute, and sentence someone for a capital felony based on the (a) defendant's or victim's race, ethnicity, gender, religion, sexual orientation, age, or socioeconomic status, or (b) judicial district where the offense occurred;
4. the training and experience of prosecutors and defense counsel in capital cases at trial, appellate, and post-conviction levels;
5. the process for appellate and post-conviction review of death sentences;

6. the delay in appellate and post-conviction review of death sentences, the delay between imposing a death sentence and executing the sentence, and the reasons for these delays;
7. procedures for granting a reprieve, stay of execution, or commutation of the death penalty;
8. the extent the governor is authorized to grant a reprieve or stay of execution of the death penalty and whether he should be given that power;
9. safeguards in place or that should be in place to ensure that innocent people are not executed;
10. the extent that victim impact statements (statements prepared by a victim advocate for the court files that can be read in court before imposing a sentence) affect the sentence imposed on a defendant convicted of a capital felony;
11. any studies by other states and the federal government on administering the death penalty; and
12. emotional and financial effects that delay between imposing a death sentence and carrying out the execution have on the family of a murder victim.

The commission must also make recommendations on financial resources needed by the Judicial Branch, Division of Criminal Justice, Division of Public Defender Services, Department of Correction, and Board of Pardons to ensure that there are no unnecessary delays in prosecution, defense, and appeal of capital cases.

The commission must report its findings and recommendations including any recommendations for legislation and appropriations to the General Assembly by January 8, 2003.

## **BACKGROUND**

### ***Capital Felony***

A person convicted of a capital felony can be sentenced to the death penalty or life imprisonment without the possibility of release. A person commits a capital felony if he:

1. murders, while the victim was acting within the scope of his duties, a police officer, inspector of the Division of Criminal Justice, state marshal exercising his statutory authority, judicial marshal performing his duties, constable who performs law enforcement duties, special policeman, DOC employee or person providing services on behalf of DOC when acting within the scope of his employment in a correctional facility and when the perpetrator is confined to the facility, or firefighter;
2. murders for pay or hires someone to murder;
3. murders and was previously convicted of intentional murder or murder while a felony was committed;
4. murders while sentenced to life imprisonment;
5. murders a kidnapped person and is the kidnapper;
6. illegally sells cocaine, heroine, or methadone for financial gain to a person who dies as a direct result of using the drug;
7. murders while committing first-degree sexual assault;
8. murders two or more people at the same time or in the course of a single transaction; or
9. murders a person under age 16.

### ***Prohibitions on Imposing a Death Sentence***

Under current law, four factors automatically bar the death penalty. A defendant cannot receive the death penalty if:

1. he was under age 18 at the time of the crime;

2. his mental capacity or ability to conform his conduct to the requirements of law was significantly impaired at the time of the crime (but not so impaired as to constitute a defense);
3. he was guilty of a capital felony only as an accessory and had relatively minor participation; and
4. he could not reasonably have foreseen that his conduct, in the course of committing the crime he was convicted of, would cause or create a grave risk of causing someone's death.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 30    Nay 8