



House of Representatives

General Assembly

File No. 601

January Session, 2003

Substitute House Bill No. 6612

House of Representatives, April 30, 2003

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT COMMISSION ON THE DEATH PENALTY.

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

1 Section 1. (NEW) (*Effective October 1, 2003*) The Chief Public
2 Defender, the Chief State's Attorney and the Chief Court
3 Administrator, or their designees, shall develop and implement a plan
4 for the collection and maintenance of information on all homicide
5 cases that could be charged and prosecuted as capital felonies,
6 notwithstanding that any such homicide case is not charged,
7 prosecuted or disposed of as a capital felony. Such information shall
8 include, but not be limited to: (1) Information on the race, ethnicity,
9 gender, religion, sexual orientation, age and socioeconomic status of
10 the defendant or defendants and the victim or victims, (2) information
11 on the geographic area where the offense occurred and where the
12 offense was prosecuted, (3) the nature and circumstances of the
13 offense, (4) the offense or offenses for which the defendant was
14 charged, (5) the offense or offenses for which the defendant was

15 prosecuted, (6) if the case was tried by a jury, the race, ethnicity and
16 gender of the persons who served on the jury and the persons who
17 were excused from serving on the jury, (7) the offense or offenses for
18 which the defendant was convicted or acquitted, (8) the sentence
19 sought by the prosecution, and (9) if the defendant was convicted,
20 whether such conviction was the result of a trial or a plea, and the
21 sentence imposed.

22 Sec. 2. (NEW) (*Effective October 1, 2003*) Prior to deciding whether or
23 not to seek the imposition of the sentence of death in accordance with
24 section 53a-46a of the general statutes upon a defendant charged with
25 the commission of a capital felony, a state's attorney shall consult with
26 the Chief State's Attorney and the other state's attorneys at a monthly
27 meeting of the Division of Criminal Justice Advisory Board held
28 pursuant to section 51-279a of the general statutes.

29 Sec. 3. (NEW) (*Effective October 1, 2003*) The Office of the Chief
30 Public Defender shall establish an annual training program for public
31 defenders and special assistant public defenders who represent
32 defendants charged with the commission of a crime punishable by
33 death.

34 Sec. 4. (NEW) (*Effective October 1, 2003*) The Office of the Chief
35 State's Attorney shall establish an annual training program for
36 prosecutors who represent the state in cases in which a defendant is
37 charged with the commission of a crime punishable by death.

38 Sec. 5. Section 18-27 of the general statutes is repealed and the
39 following is substituted in lieu thereof (*Effective October 1, 2003*):

40 [Said board] The Board of Pardons shall hold a session when and
41 where occasion requires. [Four-fifths] At least four of the members of
42 said board shall concur in order to make their judgment operative,
43 except that at least three of the members shall concur in order to
44 commute the penalty of death to life imprisonment without the
45 possibility of release. Said board shall appoint a secretary trained in
46 the law and fix by rule the mode of procedure before it and the manner

47 in which its judgment shall be carried into effect.

48 Sec. 6. (NEW) (*Effective October 1, 2003*) Not later than January 1,
49 2005, the Office of the Chief's State's Attorney, in consultation with the
50 Police Officer Standards and Training Council and the Connecticut
51 Police Chiefs Association, shall issue guidelines that constitute a best
52 practice for eyewitness identification procedures involving the use of
53 photographic and live lineups. Such guidelines may include the
54 following provisions:

55 (1) When practicable, the person conducting the identification
56 procedure shall be a person who is not aware of which person in the
57 photo lineup or live lineup is suspected as the perpetrator of the
58 offense;

59 (2) The photo lineup and live lineup identification procedures shall
60 be conducted in sequence so that the eyewitness is shown each
61 photograph or each person one at a time rather than viewing the
62 photographs or the persons simultaneously;

63 (3) The eyewitness shall be instructed prior to the identification
64 procedure:

65 (A) That the perpetrator may not be among the persons in the photo
66 lineup or the live lineup;

67 (B) That the eyewitness should not feel compelled to make an
68 identification;

69 (C) That each photograph or person will be viewed one at a time;

70 (D) That the photographs or persons will be displayed in random
71 order;

72 (E) That the eyewitness should take as much time as needed in
73 making a decision about each photograph or person before moving to
74 the next one; and

75 (F) That all photographs or persons will be shown to the eyewitness,

76 even if an identification is made before all have been viewed;

77 (4) The photo lineup or live lineup shall be composed so that the
78 fillers generally fit the description of the person suspected as the
79 perpetrator and, in the case of a photo lineup, so that the photograph
80 of the person suspected as the perpetrator resembles his or her
81 appearance at the time of the offense and does not unduly stand out;

82 (5) If the eyewitness has previously viewed a photo lineup or live
83 lineup in connection with the identification of another person
84 suspected of involvement in the offense, the fillers in the lineup in
85 which the person suspected as the perpetrator participates shall be
86 different from the fillers used in any prior lineups;

87 (6) At least five fillers shall be included in the photo lineup and at
88 least four fillers shall be included in the live lineup, in addition to the
89 person suspected as the perpetrator;

90 (7) In a photo lineup, no writings or information concerning any
91 previous arrest of the person suspected as the perpetrator shall be
92 visible to the eyewitness;

93 (8) In a live lineup, any identification actions, such as speaking or
94 making gestures or other movements, shall be performed by all lineup
95 participants;

96 (9) In a live lineup, all lineup participants shall be out of the view of
97 the eyewitness at the beginning of the identification procedure;

98 (10) The person suspected as the perpetrator shall be the only
99 suspected perpetrator included in the identification procedure;

100 (11) Nothing shall be said to the eyewitness regarding the position
101 in the photo lineup or the live lineup of the person suspected as the
102 perpetrator, except as otherwise provided in subparagraph (D) of
103 subdivision (3) of this section;

104 (12) Nothing shall be said to the eyewitness that might influence the

105 eyewitness's selection of the person suspected as the perpetrator;

106 (13) If the eyewitness identifies a person as the perpetrator, the
107 eyewitness shall not be provided any information concerning such
108 person prior to obtaining the eyewitness's statement that he or she is
109 certain of the selection; and

110 (14) A written record of the identification procedure shall be made
111 that includes the following information:

112 (A) All identification and nonidentification results obtained during
113 the identification procedure, signed by the eyewitness, including the
114 eyewitness's own words regarding how certain he or she is of the
115 selection;

116 (B) The names of all persons present at the identification procedure;

117 (C) The date and time of the identification procedure;

118 (D) The order in which the photographs or persons were displayed
119 to the eyewitness;

120 (E) In a photo lineup, the photographs themselves;

121 (F) In a photo lineup, identification information and the sources of
122 all photographs used; and

123 (G) In a live lineup, identification information on all persons who
124 participated in the lineup.

125 Sec. 7. (NEW) (*Effective October 1, 2003*) (a) For the purposes of this
126 section, "informant" means a person who was incarcerated or
127 otherwise detained at the same time as the defendant.

128 (b) Whenever, in the prosecution of a defendant for the commission
129 of a crime punishable by death, the prosecutorial official intends to
130 introduce evidence of incriminating statements made by the defendant
131 to an informant, the official shall, prior to commencement of trial,
132 timely disclose such intent to the defendant and the court.

133 (c) The court shall, prior to commencement of trial, conduct an
134 evidentiary hearing to determine whether the testimony of the
135 informant is reliable, unless the defendant waives such hearing. The
136 prosecutorial official shall have the burden of showing by a
137 preponderance of the evidence that the testimony of the informant is
138 reliable.

139 (d) In determining whether the testimony of the informant is
140 reliable, the court shall consider:

141 (1) The complete criminal history of the informant;

142 (2) Any deal, promise, inducement or benefit that any prosecutorial
143 official or law enforcement official, or any agent of such official, has
144 made or will make in the future to the informant;

145 (3) The statements made by the defendant;

146 (4) The time and place of the statements, the time and place of their
147 disclosure to law enforcement officials and the names of all persons
148 who were present when the statements were made;

149 (5) Whether at any time the informant recanted that testimony or
150 statement and, if so, the time and place of the recantment, the nature of
151 the recantment and the names of the persons who were present at the
152 recantment;

153 (6) Other cases, of which the prosecutorial official is aware, in which
154 the informant testified against an individual or offered a statement
155 against an individual, and whether the informant received any deal,
156 promise, inducement or benefit in exchange for or subsequent to that
157 testimony or statement; and

158 (7) Any other information relevant to the informant's credibility.

159 Sec. 8. Section 53a-46d of the general statutes is repealed and the
160 following is substituted in lieu thereof (*Effective October 1, 2003*):

161 [A] If a defendant is convicted of or pleads guilty to a capital felony,

162 a victim impact statement prepared by a victim advocate to be placed
 163 in court files in accordance with subdivision (2) of subsection (a) of
 164 section 54-220 [may] shall be read in court [prior to imposition of
 165 sentence upon a defendant found guilty of a crime punishable by
 166 death] during the sentencing hearing conducted in accordance with
 167 subsection (b) of section 53a-46a.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>

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:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Criminal Justice, Div.	GF - Cost	Approximately 50,000	Approximately 50,000
Judicial Dept.; Pub. Defender Serv. Com.; Criminal Justice, Div.; Pardons, Bd. of; Police Officer Std. & Training Council	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill would require the state to spend about \$50,000 annually during the 2004-2005 Biennium to provide special training for state prosecutors. There would be no state cost to train public defenders until FY 08 since \$20,000 in federal funds have been allocated from the Byrne grant to provide death penalty defense training. It is anticipated that other provisions in the bill could be accommodated within the anticipated budgetary resources of the respective agencies.

OLR Bill Analysis

sHB 6612

AN ACT ADOPTING THE RECOMMENDATIONS OF THE CONNECTICUT COMMISSION ON THE DEATH PENALTY**SUMMARY:**

This bill:

1. reduces, from four to three, the number of members of the Board of Pardons who must agree to commute a death sentence to life imprisonment without the possibility of release;
2. requires the chief public defender, chief state's attorney, and chief court administrator (or their designees) to collect information about all homicide cases that could be charged and prosecuted as capital felonies;
3. requires a state's attorney to consult with the chief state's attorney and the other state's attorneys at a monthly meeting of the Division of Criminal Justice Advisory Board before deciding whether to seek a death sentence in a penalty hearing on a defendant charged with a capital felony;
4. requires the Office of the Chief Public Defender and the Office of the Chief State's Attorney to each establish annual training programs for public defenders and special assistant public defenders who represent defendants and prosecutors who represent the state, respectively, in cases with capital felony charges;
5. requires, by January 1, 2005, the Office of the Chief State's Attorney to consult with the Police Officer Standards and Training Council and the Connecticut Police Chiefs Association to adopt guidelines for a best practices for eyewitness identification procedures with the use of photographic and live lineups, and the bill provides examples of such practices;
6. requires a prosecutor in a capital felony prosecution to timely

disclose, to the defendant and court before the trial starts, his intent to introduce evidence of the defendant's incriminating statements to an informant who was incarcerated or otherwise detained at the same time as the defendant (unless the defendant waives it, the bill requires the court to hold a hearing to decide whether the testimony is reliable); and

7. requires the victim impact statement prepared by a victim advocate and placed in court files to be read during the sentencing hearing held after conviction to decide whether to impose the death penalty or life imprisonment without the possibility of release (under current law the statement can be read in court before imposing a sentence on a defendant convicted of a capital felony).

EFFECTIVE DATE: October 1, 2003

COLLECTING INFORMATION

The bill requires the chief public defender, chief state's attorney, and chief court administrator (or their designees) to develop and implement a plan to collect and maintain information about all homicide cases that could be charged and prosecuted as capital felonies, even if they are not charged, prosecuted, or disposed of as capital felonies. They must collect information on:

1. the race, ethnicity, gender, religion, sexual orientation, age, and socioeconomic status of the defendant and victim;
2. the geographic area where the offense occurred and where it is prosecuted;
3. the nature and circumstances of the offense;
4. the offense or offenses the defendant was charged with, prosecuted for, and convicted or acquitted of;
5. the race, ethnicity, and gender of the members of the jury and those excused from serving as jurors, if the case was tried by a jury;
6. the sentence the prosecution sought; and
7. if convicted, whether the conviction resulted from a trial or a plea,

and the sentence imposed.

EYEWITNESS IDENTIFICATION

By January 1, 2005, the bill requires the Office of the Chief State's Attorney to consult with the Police Officer Standards and Training Council and the Connecticut Police Chiefs Association to adopt guidelines for best practices for eyewitness identification procedures for photographic and live lineups.

The guidelines can include the following provisions.

1. When practicable, the person conducting the identification procedure must be someone who is not aware which person is the suspect.
2. Lineup procedures must be conducted in sequence so the eyewitness is shown each photograph or person one at a time instead of simultaneously.
3. The eyewitness must be instructed before the procedure that (a) the perpetrator may not be in the lineup, (b) the eyewitness should not feel compelled to make an identification, (c) each photo or person will be viewed one at a time in random order, (d) the eyewitness should take as much time as needed to make a decision about each photo or person before moving on, and (f) all photos and people will be shown even if an identification is made before all are viewed.
4. The fillers (non-suspects) in the lineup will generally fit the description of the suspect and, in a photo lineup, the photo of the suspect will resemble his appearance at the time of the offense and not unduly stand out.
5. If the eyewitness has already viewed a lineup to identify another suspect, the fillers in the lineup in which the suspect participates must be different from the fillers in prior lineups.
6. In addition to the suspect, there must be at least five fillers in a photo lineup and four in a live lineup.
7. In a photo lineup, there cannot be any writings or information

- about a suspect's previous arrests visible to the eyewitness.
8. In a live lineup, any actions such as speaking, gestures, or movements must be performed by all participants.
 9. In a live lineup, all participants must be out of the eyewitness' view at the start of the procedure.
 10. The suspect must be the only suspect in the procedure.
 11. Nothing can be said about the suspect's position in the lineup except that the order is random.
 12. Nothing can be said that might influence the eyewitness' selection of the suspect.
 13. If the eyewitness identifies someone, he must not be given any information about that person before the eyewitness states that he is certain of the selection.
 14. There must be a written record of the procedure including (a) all results from the procedure signed by the eyewitness with his own words about how certain he is of the selection; (b) the names of all people present at the procedure; (c) the date and time of the procedure; (d) the order that photos or people were displayed; (e) the photos in a photo lineup, identifying information, and the sources of the photos used; and (f) in a live lineup, identification information on all people who participated in the lineup.

INFORMANTS

The bill requires prosecutors in capital felony prosecutions to timely disclose, to the defendant and court before the trial starts, his intent to introduce evidence of the defendant's incriminating statements to an informant who was incarcerated or otherwise detained at the same time as the defendant. Unless the defendant waives it, the court must hold an evidentiary hearing before trial to decide whether the testimony is reliable. The prosecutor must show by a preponderance of the evidence that the informant is reliable.

The bill requires the court to consider:

1. the informant's complete criminal history;
2. any deal, promise, inducement, or benefit a prosecutor, law enforcement official, or their agent made or will make to the informant;
3. the defendant's statements, and when and where they were made, and when and where they were disclosed to law enforcement, and the names of people present when the statements were made;
4. whether the informant ever recanted that testimony or statement, when and where that occurred, the nature of it, and people present at that time;
5. other cases the prosecutors know where the informant testified against someone or offered a statement against someone and whether the informant received a deal, promise, inducement, or benefit in exchange for or after the testimony or statement; and
6. any other relevant information on the informant's credibility.

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 when 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, conservation or special conservation officer appointed by the environmental protection commissioner, 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;
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. murders while committing first-degree sexual assault;
7. murders two or more people at the same time or in the course of a single transaction; or
8. murders a person under age 16.

Criminal Justice Advisory Board

The Criminal Justice Advisory Board consists of the chief state’s attorney and the state’s attorney for each judicial district, or their designees, and it meets at least once a month to advise on statewide prosecutorial standards and guidelines and other policy matters, including peer review and resolution of conflicts.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 23 Nay 14