



House of Representatives

General Assembly

File No. 603

January Session, 2003

Substitute House Bill No. 6700

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 INVESTIGATIVE PROCEDURES IN CRIMINAL CASES.

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

1 Section 1. (NEW) (*Effective October 1, 2003*) (a) The Chief Court
2 Administrator shall establish an advisory commission to review any
3 criminal or juvenile case involving a wrongful conviction and
4 recommend reforms to lessen the likelihood of a similar wrongful
5 conviction occurring in the future. The advisory commission shall
6 consist of the Chief State's Attorney, the Chief Public Defender and the
7 Victim Advocate, or their designees, a representative from the
8 Connecticut Police Chiefs Association, a representative from the
9 Connecticut Bar Association, and representatives from one or more
10 law schools in this state and one or more institutions of higher
11 education in this state that offer undergraduate programs in criminal
12 justice and forensic science.

13 (b) Whenever a person who has been convicted of a crime is
14 subsequently determined to be innocent of such crime and exonerated,

15 the advisory commission may conduct an investigation to determine
16 the cause or causes of the wrongful conviction. Such investigation shall
17 include, but not be limited to, an examination of the nature and
18 circumstances of the crime, the background, character and history of
19 the defendant, and the manner in which the investigation, evidence
20 collection, prosecution, defense and trial of the case was conducted.
21 Notwithstanding any provision of the general statutes concerning the
22 confidentiality, erasure or destruction of records, the advisory
23 commission shall have access to all police and court records and
24 records of any prosecuting attorney pertaining to the case under
25 investigation. The advisory commission shall not further disclose such
26 records.

27 (c) Upon the conclusion of its investigation, the advisory
28 commission shall report its findings and any recommendations it may
29 have for reforms to lessen the likelihood of similar wrongful
30 convictions occurring in the future to the joint standing committee of
31 the General Assembly on the judiciary, in accordance with the
32 provisions of section 11-4a of the general statutes, and to other
33 interested persons as deemed appropriate including the Chief Court
34 Administrator, the Chief State's Attorney, the Chief Public Defender,
35 the Commissioner of Public Safety and the chief of any local police
36 department involved in the investigation of the case.

37 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) For the purposes of this
38 section and section 3 of this act:

39 (1) "DNA testing" means forensic deoxyribonucleic acid testing; and

40 (2) "Agent" means a person, firm or corporation to whom the state
41 police or a local police department entrusts or delivers evidence to
42 undergo DNA testing.

43 (b) During the term of a person's incarceration resulting from the
44 conviction of a crime, the state police, all local police departments, any
45 agent of the state police or a local police department and any other
46 person to whom biological evidence has been transferred shall

47 preserve all biological evidence acquired during the course of the
48 investigation of such crime.

49 (c) The state police, a local police department, an agent or any
50 person to whom biological evidence has been transferred may be
51 relieved of the obligation to preserve biological evidence as provided
52 in subsection (b) of this section by applying to the court in which the
53 defendant's case was prosecuted for permission to destroy such
54 biological evidence. Upon receipt of the application, the court shall
55 give notice to all defendants charged in connection with the
56 prosecution and shall hold a hearing. After such hearing, the court
57 shall grant the application if it finds that:

58 (1) The Connecticut Supreme Court has decided the defendant's
59 appeal; and

60 (2) The defendant does not seek further preservation of the
61 biological evidence.

62 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) Notwithstanding any
63 other provision of law governing postconviction relief, any person
64 who was convicted of a crime and sentenced to incarceration may, at
65 any time during the term of such incarceration, file a petition with the
66 sentencing court requesting the DNA testing of any evidence that is in
67 the possession or control of the Division of Criminal Justice, any law
68 enforcement agency, any laboratory or the superior court. The
69 petitioner shall state under penalties of perjury that the requested
70 testing is related to the investigation or prosecution that resulted in the
71 petitioner's conviction and that the evidence sought to be tested
72 contains biological evidence.

73 (b) After notice to the prosecutorial official and a hearing, the court
74 shall order DNA testing if it finds that:

75 (1) A reasonable probability exists that the petitioner would not
76 have been prosecuted or convicted if exculpatory results had been
77 obtained through DNA testing;

78 (2) The evidence is still in existence and is capable of being subjected
79 to DNA testing;

80 (3) The evidence, or a specific portion of the evidence identified by
81 the petitioner, was never previously subjected to DNA testing, or the
82 testing requested by the petitioner may resolve an issue that was never
83 previously resolved by previous testing; and

84 (4) The petition before the Superior Court was filed in order to
85 demonstrate the petitioner's innocence and not to delay the
86 administration of justice.

87 (c) After notice to the prosecutorial official and a hearing, the court
88 may order DNA testing if it finds that:

89 (1) A reasonable probability exists that the requested testing will
90 produce DNA results which would have altered the verdict or reduced
91 the petitioner's sentence if the results had been available at the prior
92 proceedings leading to the judgment of conviction;

93 (2) The evidence is still in existence and is capable of being subjected
94 to DNA testing;

95 (3) The evidence, or a specific portion of the evidence identified by
96 the petitioner, was never previously subjected to DNA testing, or the
97 testing requested by the petitioner may resolve an issue that was never
98 previously resolved by previous testing; and

99 (4) The petition before the Superior Court was filed in order to
100 demonstrate the petitioner's innocence and not to delay the
101 administration of justice.

102 (d) The costs of DNA testing ordered pursuant to this section shall
103 be borne by the state or the petitioner, as the court may order in the
104 interests of justice, except that DNA testing shall not be denied because
105 of the inability of the petitioner to pay the costs of such testing.

106 (e) In a proceeding under this section, the petitioner shall have the

107 right to be represented by counsel and, if the petitioner is indigent, the
108 court shall appoint counsel for the petitioner in accordance with
109 section 51-296 of the general statutes.

110 Sec. 4. (NEW) (*Effective October 1, 2003*) A court may impose an
111 appropriate sanction, including criminal contempt, upon any person
112 who has intentionally destroyed evidence in violation of section 2 or 3
113 of this act or a court order to preserve such evidence.

114 Sec. 5. Section 54-47c of the general statutes is repealed and the
115 following is substituted in lieu thereof (*Effective October 1, 2003*):

116 (a) Any judge of the Superior Court, Appellate Court or Supreme
117 Court, the Chief State's Attorney or a state's attorney may make
118 application to a panel of judges for an investigation into the
119 commission of a crime or crimes whenever such applicant has
120 reasonable belief that the administration of justice requires an
121 investigation. [to determine whether or not there is probable cause to
122 believe that a crime or crimes have been committed.]

123 (b) Each application for an investigation into the commission of a
124 crime or crimes shall be made in writing upon oath or affirmation to a
125 panel of judges. Each application shall include the following
126 information: (1) The identity of the applicant and [his] the applicant's
127 authority to make such application; (2) a full and complete statement
128 of the facts and circumstances relied upon by the applicant to justify
129 [his] the applicant's reasonable belief that the [investigation will lead to
130 a finding of probable cause that a crime or crimes have been
131 committed] administration of justice requires the investigation; and (3)
132 a full and complete statement of the facts concerning all previous
133 applications known to the applicant, made to any panel of judges, for
134 investigation of any one or more of the same criminal offenses
135 involving any of the same persons specified in the application,
136 including the action taken by the panel on each such application. The
137 panel of judges may require such additional testimony or
138 documentary evidence in support of facts in the application as it
139 deems necessary. Such additional testimony shall be transcribed.

140 (c) If the application is made by the Chief State's Attorney or a
141 state's attorney, it shall also include (1) a full and complete statement
142 of the status of the investigation and of the evidence collected as of the
143 date of such application, [(2) if other normal investigative procedures
144 have been tried with respect to the alleged crime, a full and complete
145 statement specifying the other normal investigative procedures that
146 have been tried and the reasons such procedures have failed, (3) if
147 other normal investigative procedures have not been tried, a full and
148 complete statement of the reasons such procedures reasonably appear
149 to be unlikely to succeed if tried or be too dangerous to employ, and
150 (4)] and (2) a full and complete statement of the reasons for the
151 applicant's belief that the appointment of an investigatory grand jury
152 and the investigative procedures employed by such investigatory
153 grand jury will [lead to a finding of probable cause that a crime or
154 crimes have been committed] advance the administration of justice.

155 (d) The panel may approve the application and order an
156 investigation into the commission of a crime or crimes if it finds that
157 (1) the administration of justice requires an investigation, [to determine
158 whether or not there is probable cause to believe that a crime or crimes
159 have been committed, (2) if the application was made by the Chief
160 State's Attorney or a state's attorney, other normal investigative
161 procedures with respect to the alleged crime have been tried and have
162 failed or reasonably appear to be unlikely to succeed if tried or be too
163 dangerous to employ, and (3)] and (2) the investigative procedures
164 employed by an investigatory grand jury appear likely to succeed in
165 [determining whether or not there is probable cause to believe that a
166 crime or crimes have been committed] advancing the administration of
167 justice.

168 Sec. 6. Section 54-47d of the general statutes is repealed and the
169 following is substituted in lieu thereof (*Effective October 1, 2003*):

170 (a) If the panel approves the application and orders an investigation
171 into the commission of a crime or crimes, the Chief Court
172 Administrator shall (1) appoint an investigatory grand jury to conduct

173 the investigation, and (2) designate the court location in the judicial
174 district where any motions to quash and any contempt proceedings
175 shall be heard and any findings and records of the investigation shall
176 be filed.

177 (b) Each order authorizing the investigation into the commission of
178 a crime or crimes by the panel shall specify: (1) The date of issuance of
179 the order, (2) the period of time within which the investigation is to be
180 conducted, provided in no event shall the investigation be longer than
181 six months from the date the Chief Court Administrator appoints the
182 investigatory grand jury to conduct the investigation, unless an
183 application for an extension of time is filed and granted pursuant to
184 subsection (c) of this section, [(3) the scope of the investigation, and (4)]
185 and (3) the panel's reasons for finding that [(A)] the administration of
186 justice requires an investigation. [to determine whether or not there is
187 probable cause to believe that a crime or crimes have been committed,
188 (B) if the application was made by the Chief State's Attorney or a
189 state's attorney, other normal investigative procedures with respect to
190 the alleged crime have been tried and have failed or reasonably appear
191 to be unlikely to succeed if tried or be too dangerous to employ, and
192 (C) the investigative procedures employed by the investigatory grand
193 jury appear likely to succeed in determining whether or not there is
194 probable cause to believe that a crime or crimes have been committed.]
195 The panel shall retain a copy of the order and the original application
196 and shall transmit to the investigatory grand jury, appointed pursuant
197 to subsection (a) of this section, the original order and a copy of the
198 application filed with the panel.

199 (c) The investigatory grand jury may make an application to the
200 panel of judges for an extension of time within which to conduct its
201 investigation or for an amendment to the scope of its investigation. The
202 application for extension or amendment shall set forth the reasons for
203 the necessity of such extension or amendment. No more than two
204 extensions or amendments of an order may be granted by the issuing
205 panel. The period of any extension shall be no longer than the panel
206 deems necessary to achieve the purposes for which it was granted and

207 in no event shall any extension be for a period longer than six months.

208 Sec. 7. Section 54-47e of the general statutes is repealed and the
209 following is substituted in lieu thereof (*Effective October 1, 2003*):

210 Any order authorizing the investigation into the commission of a
211 crime or crimes and any application filed with the panel pursuant to
212 section 54-47c, as amended by this act, or subsection (c) of section 54-
213 47d, as amended by this act, shall be sealed. The panel shall submit to
214 the Chief Court Administrator a summary [of the scope] of the
215 investigation [] and any recommendation as to the court location at
216 which any motions to quash and any contempt proceedings are to be
217 heard and the finding and record of the investigation are to be filed.
218 Such summary shall be [public unless the panel determines, by
219 majority vote, that such summary be sealed for purposes of (1)
220 ensuring the public safety of any individual, (2) ensuring that the
221 investigation would not be adversely affected or (3) complying with
222 other provisions of the general statutes or rules of court which prohibit
223 disclosure of such information] sealed unless the panel determines, by
224 a majority vote, that such summary be public. Any investigation by the
225 investigatory grand jury shall be conducted in private, provided the
226 panel, by a majority vote, may order the investigation or any portion
227 thereof to be public when such disclosure or order is deemed by the
228 panel to be in the public interest.

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>

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 \$
Correction, Dept.; Public Safety, Dept.; Judicial Dept.; Criminal Justice, Div.; Pub. Defender Serv. Com.	GF - Cost	Significant	Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

Section 1

The advisory commission established in this section would constitute a workload increase but no additional cost for the agencies involved.

Section 2

This section requires state and local police to preserve biological evidence acquired during the investigation of a crime, later resulting in a conviction, for the full term of the offender's incarceration. While there are approximately 5,000 total admissions per year to the Department of Correction, the number that involve biological evidence is unknown at this time. Passage of the bill would result in the need for additional resources for the purposes of acquiring additional storage space for such evidence.

The number of hearings that would be held in accordance with this section is anticipated to be substantial. Such an increase would require additional staffing and resources for the Judicial Department, Division of Criminal Justice, and Public Defender Services Commission.

Section 3

This section permits any person who is convicted of a crime and incarcerated to petition the court requesting the DNA testing of any evidence in possession or control of the Division of Criminal Justice, law enforcement agencies, or the Superior Court. The fiscal impact related to additional hearings and DNA testing is anticipated to be minimal since few requests are made for post-conviction DNA tests under current law.¹

Section 4

This section provides that the court may impose sanctions on any person who intentionally destroys evidence in violation of section 2 or 3 of the bill or a court order to preserve such evidence. Any impact related to incarceration or imposed fines under this section are anticipated to be minimal.

Sections 5-7

These sections facilitate the application for grand juries by the chief state's attorney or a state's attorney. The Division of Criminal Justice and the Judicial Department would be able to accommodate a potential increase in the number of grand jury investigations and subsequent prosecutions under the bill within anticipated budgetary resources.

¹ There was one request made in FY 02 pursuant to a habeas petition. The cost of testing was \$140. (Note that DNA testing can cost \$2,500 per test.)

OLR Bill Analysis

sHB 6700

**AN ACT CONCERNING INVESTIGATIVE PROCEDURES IN
CRIMINAL CASES**

SUMMARY:

This bill:

1. requires the chief court administrator to establish an advisory commission to review criminal and juvenile cases involving wrongful convictions and to recommend reforms to lessen the likelihood of similar wrongful convictions in the future;
2. requires state and local police, their agents, and others given biological evidence acquired during the investigation of a crime that resulted in a persons conviction to preserve it during the person's imprisonment (with a provision for applying to court to destroy the evidence);
3. allows a prisoner to petition for DNA testing after he finishes the appeal of his conviction under certain circumstances, provides for notice and a court hearing on the petition, and sets criteria when a court may or must order testing;
4. changes the standard for applications for grand jury investigations into crimes to (1) require a reasonable belief that the administration of justice requires the investigation, rather than a reasonable belief that an investigation is needed to determine whether there is probable cause to believe a crime has been committed and (2) remove a requirement, for applications from the chief state's attorney or a state's attorney, that other normal investigative procedures have failed, reasonably appear to be likely to fail, or appear too dangerous to try; and
5. makes other changes to the grand jury procedures.

EFFECTIVE DATE: October 1, 2003

COMMISSION TO REVIEW WRONGFUL CONVICTIONS

The commission consists of (1) the chief state's attorney, chief public defender, and victim advocate, or their designees; (2) a representative from both the Connecticut Police Chiefs Association and the Connecticut Bar Association; and (3) representatives from one or more Connecticut law schools and colleges that offer undergraduate programs in criminal justice and forensic science.

The bill authorizes the commission to investigate when someone convicted of a crime is subsequently found innocent and exonerated to determine the cause of the wrongful conviction. This includes examining (1) the nature and circumstances of the crime; (2) the defendant's background, character, and history; and (3) how the investigation, evidence collection, prosecution, defense, and trial were conducted.

The bill gives the commission access to police, court, and prosecutorial records about the case regardless of any provisions on confidentiality and erasure or destruction of records. It prohibits the commission from further disclosing the records.

The bill requires the commission to report its findings and recommendations to (1) the Judiciary Committee and (2) other appropriate, interested people including the chief court administrator, chief state's attorney, chief public defender, public safety commissioner, and the local police chief involved in the investigation.

PRESERVING DNA EVIDENCE

The bill requires state and local police, their agents (a person, firm, or corporation given evidence for DNA testing), and any other person given biological evidence acquired during an investigation of a crime that resulted in a person's conviction to preserve it while the person is in prison.

It allows someone holding the evidence to apply to the court where the case was prosecuted for permission to destroy the evidence. The court must notify all defendants in the case and hold a hearing. It must grant the application if (1) the Connecticut Supreme Court has decided the defendant's appeal and (2) the defendant does not seek to preserve the evidence.

REQUESTS FOR DNA TESTING AFTER CONVICTION

Regardless of the law on postconviction relief, the bill allows anyone incarcerated for a crime to file a petition with the sentencing court to request DNA testing of evidence that the Division of Criminal Justice, a law enforcement agency, a laboratory, or the Superior Court possesses or controls. The petitioner must state, under penalty of perjury (a class D felony, punishable by one to five years in prison, a fine of up to \$5,000, or both) that the testing is related to the investigation or prosecution that led to the conviction and the evidence contains biological evidence.

The court must order DNA testing if, after notifying the prosecutor and holding a hearing, it finds a reasonable probability that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained by DNA testing. It may order testing if there is a reasonable probability that the testing would produce DNA results that would have altered the verdict or reduced the sentence at the proceedings that led to conviction. In both cases, before ordering testing, the court must also find that:

1. the evidence still exists and can be tested;
2. the evidence or a portion of it was never subjected to DNA testing, or the testing requested may resolve an issue that was not resolved by previous testing; and
3. the petition was filed to demonstrate innocence and not to delay the administration of justice.

The court can order, in the interests of justice, the state or the petitioner to pay the costs of the DNA testing, but it cannot deny testing because the petitioner is unable to pay.

The petitioner has the right to be represented by counsel in these proceedings and can have a public defender appointed for him if he is indigent.

VIOLATING THE DNA PROVISIONS

The bill allows a court to impose an appropriate sanction, including

criminal contempt, on someone who intentionally destroys evidence in violation of the bill's provisions on evidence preservation and DNA testing or in violation of a court order to preserve evidence. Criminal contempt is punishable by up to six months in prison, a fine of up to \$500, or both.

INVESTIGATORY GRAND JURY PROCEDURES

The bill changes the standard for applications for grand jury proceedings. Under current law, Superior, Appellate, or Supreme Court judges, the chief state's attorney, or a state's attorney can apply for a grand jury investigation to a panel of three Superior Court judges specially designated by the chief justice of the Supreme Court.

The bill requires the applicant to have a reasonable belief that the administration of justice requires the investigation, rather than a reasonable belief that justice requires an investigation to determine if there is probable cause to believe a crime has been committed. The bill makes this change to the standard for approving applications. It allows the three-judge panel to approve an application if the administration of justice requires an investigation, and use of the investigative grand jury appears likely to succeed. It removes the requirement that the grand jury be necessary and likely to succeed in determining probable cause to believe that a crime was committed.

The bill deletes a requirement for submissions and approval of applications submitted by the chief state's attorney or a state's attorney, that other normal investigative procedures have failed, reasonably appear to be likely to fail, or appear too dangerous to try.

The bill also deletes requirements that the order issued by the panel approving a grand jury state (1) the scope of the investigation and (2) that the grand jury procedures appear likely to succeed. The bill requires the panel to submit a summary of the investigation, rather than a summary of its scope, to the chief court administrator. It seals this summary unless the panel determines by a majority vote that it should be public. Under current law, the summary is public unless a majority of the panel votes to seal it to (1) ensure an individual's safety, (2) ensure the investigation is not adversely affected, or (3) comply with another law prohibiting disclosure.

BACKGROUND

Subjects of Grand Jury Investigations

A grand jury can investigate (1) state and local government corruption; (2) Medicaid vendor fraud; (3) racketeering activity under state law; (4) election law violations; (5) felonies involving the unlawful use or threatened use of physical force or violence committed with intent to intimidate or coerce civilian populations or a unit of government; and (6) class A, B, or C felonies or unclassified felonies punishable by more than five years imprisonment, for which the chief state's attorney or state's attorney can show that there is no other means of learning if a crime has been committed or the identity of the perpetrator.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 1