



General Assembly

January Session, 2003

***Raised Bill No. 6700***

LCO No. 4783

Referred to Committee on Judiciary

Introduced by:  
(JUD)

***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) For the purposes of  
2 this section:

3 (1) "Electronic recording" means a complete and authentic electronic  
4 recording created by motion picture, videotape, audiotape or digital  
5 media; and

6 (2) "Interrogation" means interrogation conducted in a police  
7 station, courthouse, correctional facility, community correctional  
8 center or detention facility.

9 (b) Unless an electronic recording is made of the entire interrogation  
10 of a person suspected of the commission of a class A or B felony,  
11 including the advisement of such person that such person has the right  
12 to counsel, that such person has the right to have counsel appointed  
13 for him or her if he or she is unable to afford counsel, that such person  
14 has the right to refuse to make any statement and that any statement

15 that such person makes may be introduced in evidence against such  
16 person, any oral, written or sign language statement of such person  
17 made during the interrogation shall be presumed inadmissible as  
18 evidence against such person in a criminal proceeding.

19 (c) The state may rebut the presumption of inadmissibility under  
20 subsection (b) of this section by introducing clear and convincing  
21 evidence that: (1) The statement was both voluntary and reliable, and  
22 (2) law enforcement officers had good cause to not electronically  
23 record the entire interrogation. For the purposes of this subsection,  
24 "good cause" includes, but is not limited to: (A) The person refused to  
25 have the interrogation electronically recorded, provided such refusal  
26 itself was electronically recorded, (B) the equipment used to  
27 electronically record the interrogation failed, or (C) the electronic  
28 recording of the interrogation was not feasible.

29 (d) Notwithstanding the provisions of subsection (b) of this section,  
30 an oral, written or sign language statement of a person made as a  
31 result of an interrogation is admissible as evidence against the person  
32 in a criminal proceeding in this state if:

33 (1) The statement was obtained in another state and was obtained in  
34 compliance with the laws of that state or this state; or

35 (2) The statement was obtained by a federal law enforcement officer  
36 in this state or another state and was obtained in compliance with the  
37 laws of the United States.

38 (e) Any electronic recording made of the interrogation of a person  
39 pursuant to this section shall be preserved until such time as (1) any  
40 conviction of such person for any offense relating to the interrogation  
41 is final and all direct and habeas corpus appeals are exhausted, or (2)  
42 the prosecution of any offense relating to the interrogation is barred by  
43 law.

44 (f) Nothing in this section precludes the admission of a statement

45 that (1) is made by a person at such person's trial or other hearing in  
46 open court or before an investigatory grand jury, or (2) does not result  
47 from an interrogation.

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

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

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

54 (b) During the term of a person's incarceration resulting from the  
55 conviction of a crime, the state police, all local police departments, any  
56 agent of the state police or a local police department and any other  
57 person to whom biological evidence has been transferred shall  
58 preserve all biological evidence acquired during the course of the  
59 investigation of such crime.

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

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

71 (2) The defendant does not seek further preservation of the  
72 biological evidence.

73 Sec. 3. (NEW) (*Effective October 1, 2003*) (a) Notwithstanding any

74 other provision of law governing postconviction relief, any person  
75 who was convicted of a crime and sentenced to incarceration may, at  
76 any time during the term of such incarceration, file a petition with the  
77 sentencing court requesting the DNA testing of any evidence that is in  
78 the possession or control of the Division of Criminal Justice, any law  
79 enforcement agency, any laboratory or the superior court. The  
80 petitioner shall state under penalties of perjury that the requested  
81 testing is related to the investigation or prosecution that resulted in the  
82 petitioner's conviction and that the evidence sought to be tested  
83 contains biological evidence.

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

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

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

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

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

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

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

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

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

110 (4) The petition before the superior court was filed in order to  
111 demonstrate the petitioner's innocence and not to delay the  
112 administration of justice.

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

117 (e) In a proceeding under this section, the petitioner shall have the  
118 right to be represented by counsel and, if the petitioner is indigent, the  
119 court shall appoint counsel for the petitioner in accordance with  
120 section 51-296 of the general statutes.

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

125 Sec. 5. (NEW) (*Effective October 1, 2003*) (a) For the purposes of this  
126 section:

127 (1) "Eyewitness" means a witness who will testify that he or she  
128 observed the defendant at or near the scene of the offense;

129 (2) "Photo lineup" means a procedure in which an array of  
130 photographs, including a photograph of the person suspected as the  
131 perpetrator of an offense and additional photographs of other persons  
132 not suspected of the offense, is displayed to an eyewitness for the

133 purpose of determining whether the eyewitness is able to identify the  
134 suspect as the perpetrator;

135 (3) "Live lineup" means a procedure in which a group of persons,  
136 including the person suspected as the perpetrator of an offense and  
137 other persons not suspected of the offense, is displayed to an  
138 eyewitness for the purpose of determining whether the eyewitness is  
139 able to identify the suspect as the perpetrator;

140 (4) "Identification procedure" means either a photo lineup or a live  
141 lineup; and

142 (5) "Filler" means either a person or a photograph of a person who is  
143 not suspected of an offense and is included in an identification  
144 procedure.

145 (b) During the trial of a defendant, no eyewitness who has been  
146 exposed, prior to his or her testimony, to an identification procedure  
147 conducted on or after the effective date of this section in which the  
148 defendant was included shall be permitted to identify the defendant,  
149 unless the identification procedure was conducted in compliance with  
150 the following requirements:

151 (1) The person conducting the identification procedure was a person  
152 other than the police officers or detectives who acted as the primary  
153 investigators on the case;

154 (2) The photo lineup or live lineup identification procedures were  
155 conducted in sequence so that the eyewitness was shown each  
156 photograph or each person one at a time rather than viewing the  
157 photographs or the persons simultaneously;

158 (3) The eyewitness was instructed prior to the identification  
159 procedure:

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

162 (B) That the eyewitness should not feel compelled to make an  
163 identification;

164 (C) That each photograph or person would be viewed one at a time;

165 (D) That the photographs or persons would be displayed in random  
166 order;

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

170 (F) That all photographs or persons would be shown to the  
171 eyewitness, even if an identification is made before all have been  
172 viewed;

173 (4) The photo lineup or live lineup was composed so that the fillers  
174 generally fit the description of the perpetrator and, in the case of a  
175 photo lineup, so that the photograph of the defendant resembled his or  
176 her appearance at the time of the offense and the defendant's  
177 photograph did not unduly stand out;

178 (5) If the eyewitness had previously viewed a photo lineup or live  
179 lineup in connection with the identification of another person  
180 suspected of involvement in the offense, the fillers in the lineup in  
181 which the defendant participated were different from the fillers used  
182 in any prior lineups;

183 (6) At least five fillers were included in the photo lineup and at least  
184 four fillers were included in the live lineup, in addition to the  
185 defendant;

186 (7) In a photo lineup, no writings or information concerning any  
187 previous arrest of the defendant was visible to the eyewitness;

188 (8) In a live lineup, any identification actions, such as speaking or  
189 making gestures or other movements, were performed by all lineup

190 participants;

191 (9) In a live lineup, all lineup participants were out of the view of  
192 the eyewitness at the beginning of the identification procedure;

193 (10) The defendant was the only suspected perpetrator included in  
194 the identification procedure;

195 (11) Nothing was said to the eyewitness regarding the defendant's  
196 position in the photo lineup or the live lineup, except as otherwise  
197 provided in subparagraph (D) of subdivision (3) of this subsection;

198 (12) Nothing was said to the eyewitness that could have influenced  
199 the eyewitness's selection of the defendant;

200 (13) After the defendant was identified, the eyewitness was not  
201 provided any information concerning the defendant prior to obtaining  
202 the eyewitness's statement that he or she was certain of the selection;  
203 and

204 (14) A written record of the identification procedure was made that  
205 included the following information:

206 (A) All identification and nonidentification results obtained during  
207 the identification procedure, signed by the eyewitness, including the  
208 eyewitness's own words regarding how certain he or she was of the  
209 selection;

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

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

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

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

215 (F) In a photo lineup, identification information and the sources of

216 all photographs used; and

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

219 Sec. 6. (NEW) (*Effective October 1, 2003*) (a) The Chief Court  
220 Administrator shall establish an advisory commission to review any  
221 criminal or juvenile case involving a wrongful conviction and  
222 recommend reforms to lessen the likelihood of a similar wrongful  
223 conviction occurring in the future. The advisory commission shall  
224 consist of representatives from one or more law schools in this state  
225 and one or more institutions of higher education in this state that offer  
226 undergraduate programs in criminal justice and forensic science.

227 (b) Whenever a person who has been convicted of a crime is  
228 subsequently determined to be innocent of such crime and exonerated,  
229 the advisory commission may conduct an investigation to determine  
230 the cause or causes of the wrongful conviction. Such investigation shall  
231 include, but not be limited to, an examination of the nature and  
232 circumstances of the crime, the background, character and history of  
233 the defendant, and the manner in which the investigation, evidence  
234 collection, prosecution, defense and trial of the case was conducted.  
235 Notwithstanding any provision of the general statutes concerning the  
236 confidentiality, erasure or destruction of records, the advisory  
237 commission shall have access to all police and court records and  
238 records of any prosecuting attorney pertaining to the case under  
239 investigation. The advisory commission shall not further disclose such  
240 records.

241 (c) Upon the conclusion of its investigation, the advisory  
242 commission shall report its findings and any recommendations it may  
243 have for reforms to lessen the likelihood of similar wrongful  
244 convictions occurring in the future to the joint standing committee of  
245 the General Assembly on the judiciary, in accordance with the  
246 provisions of section 11-4a of the general statutes, and to other  
247 interested persons as deemed appropriate including the Chief Court

248 Administrator, the Chief State's Attorney, the Chief Public Defender,  
249 the Commissioner of Public Safety and the chief of any local police  
250 department involved in the investigation of the case.

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>

**Statement of Purpose:**

To adopt procedures to lessen the likelihood of innocent persons being convicted of a crime and to ensure that wrongfully convicted persons have an opportunity to establish their innocence by providing for the electronic recording of interrogations, preservation of DNA evidence, postconviction DNA testing and sequential identification procedures, and to establish an advisory commission to review cases in which an innocent person has been wrongfully convicted.