



General Assembly

Substitute Bill No. 6612

January Session, 2003

**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.*