



General Assembly

February Session, 2012

Raised Bill No. 5513

LCO No. 2358

02358_____JUD

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES
CONCERNING THE CRIMINAL JUSTICE SYSTEM.**

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

1 Section 1. Section 54-33g of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012*):

3 (a) When any property believed to be possessed, controlled,
4 designed or intended for use or which is or has been used or which
5 may be used as a means of committing any criminal offense, or which
6 constitutes the proceeds of the commission of any criminal offense,
7 except a violation of section 21a-267, 21a-277, 21a-278 or 21a-279, has
8 been seized as a result of a lawful arrest or lawful search, which the
9 state claims to be a nuisance and desires to have destroyed or disposed
10 of in accordance with the provisions of this section, the [judge or court
11 issuing the warrant or before whom the arrested person is to be
12 arraigned shall, within ten days after such seizure, cause to be left with
13 the owner of, and with any person claiming of record a bona fide
14 mortgage, assignment of lease or rent, lien or security interest in, the
15 property so seized, or at his usual place of abode, if he is known, or, if
16 unknown, at the place where the property was seized, a summons

17 notifying the owner and any such other person claiming such interest
18 and all others whom it may concern to appear before such judge or
19 court, at a place and time named in such notice, which shall be not less
20 than six nor more than twelve days after the service thereof. Such
21 summons may be signed by a clerk of the court or his assistant and
22 service may be made by a local or state police officer. It shall describe
23 such property with reasonable certainty and state when and where
24 and why the same was seized] Chief State's Attorney or a deputy chief
25 state's attorney, state's attorney or assistant or deputy assistant state's
26 attorney may petition the court not later than ninety days after the
27 seizure in the nature of a proceeding in rem to order forfeiture of such
28 moneys or property. Such proceeding shall be deemed a civil suit in
29 equity in which the state shall have the burden of proving all material
30 facts by clear and convincing evidence. The court shall identify the
31 owner of such property and any other person as appears to have an
32 interest in such property, and order the state to give notice to such
33 owner and any interested person by certified or registered mail. The
34 court shall promptly, but not less than two weeks after such notice,
35 hold a hearing on the petition.

36 [(b) If the owner of such property or any person claiming any
37 interest in the same appears, he shall be made a party defendant in
38 such case. Any state's attorney or assistant state's attorney may appear
39 and prosecute such complaint and shall have the burden of proving all
40 material facts by clear and convincing evidence.]

41 [(c)] (b) If the [judge or] court finds the allegations made in such
42 [complaint] petition to be true and that the property has been
43 possessed, controlled or designed for use, or is or has been or is
44 intended to be used, with intent to violate or in violation of any of the
45 criminal laws of this state, or constitutes the proceeds of a violation of
46 any of the criminal laws of this state, except a violation of section 21a-
47 267, 21a-277, 21a-278 or 21a-279, [he] the court shall render judgment
48 that such property is a nuisance and order the same to be destroyed or
49 disposed of to a charitable or educational institution or to a

50 governmental agency or institution provided, if any such property is
51 subject to a bona fide mortgage, assignment of lease or rent, lien or
52 security interest, such property shall not be so destroyed or disposed
53 of in violation of the rights of the holder of such interest. When [any
54 money or valuable prize has been seized upon such warrant and
55 condemned under the provisions of this section, such money or
56 valuable prize shall become the property of the state and when the
57 property is money it shall be deposited in the General Fund, provided
58 any such property, which at the time of such order] the condemned
59 property is money, the court may, in its discretion, award all or a
60 portion of such money to the investigating law enforcement agency.
61 Any moneys not awarded to such agency shall be deposited in the
62 General Fund. When the condemned property is a valuable prize that
63 is subject to a bona fide mortgage, assignment of lease or rent, lien or
64 security interest, such property shall remain subject to such mortgage,
65 assignment of lease or rent, lien or security interest. When any
66 property or valuable prize has been declared a nuisance and
67 condemned under this section, the court may also order that such
68 property be sold by sale at public auction in which case the proceeds
69 shall become the property of the state and shall be deposited in the
70 General Fund; provided, any person who has a bona fide mortgage,
71 assignment of lease or rent, lien or security interest shall have the same
72 right to the proceeds as [he] such person had in the property prior to
73 sale. Final destruction or disposal of such property shall not be made
74 until any criminal trial in which such property might be used as
75 evidence has been completed.

76 [(d)] (c) If the [judge or] court finds the allegations not to be true or
77 that the property has not been kept with intent to violate or in
78 violation of the criminal laws of this state, or that it does not constitute
79 the proceeds of a violation of the criminal laws of this state, or that it is
80 the property of a person not a defendant, [he] the court shall order the
81 property returned to the owner forthwith and the party in possession
82 of such property pending such determination shall be responsible and
83 personally liable for such property from the time of seizure and shall

84 immediately comply with such order.

85 ~~[(e)]~~ (d) Failure of the state to proceed against such property in
86 accordance with the provisions of this section shall not prevent the use
87 of such property as evidence in any criminal trial.

88 Sec. 2. Subsection (a) of section 54-36p of the general statutes is
89 repealed and the following is substituted in lieu thereof (*Effective*
90 *October 1, 2012*):

91 (a) The following property shall be subject to forfeiture to the state
92 pursuant to subsection (b) of this section:

93 (1) All moneys used, or intended for use, in a violation of
94 subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-
95 87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b or 53a-
96 196c;

97 (2) All property constituting the proceeds obtained, directly or
98 indirectly, from a violation of subdivision (3) of subsection (a) of
99 section 53-21 or section 53a-86, 53a-87, 53a-90a, 53a-189a, 53a-189b,
100 53a-192a, 53a-196a, 53a-196b or 53a-196c;

101 (3) All property derived from the proceeds obtained, directly or
102 indirectly, [from any sale or exchange for pecuniary gain] from a
103 violation of subdivision (3) of subsection (a) of section 53-21 or section
104 53a-86, 53a-87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-
105 196b or 53a-196c;

106 (4) All property used or intended for use, in any manner or part, to
107 commit or facilitate the commission of a violation [for pecuniary gain]
108 of subdivision (3) of subsection (a) of section 53-21 or section 53a-86,
109 53a-87, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b or
110 53a-196c.

111 Sec. 3. Section 53a-189a of the general statutes is repealed and the
112 following is substituted in lieu thereof (*Effective October 1, 2012*):

113 (a) A person is guilty of voyeurism when, (1) with malice, such
114 person knowingly photographs, films, videotapes or otherwise records
115 the image of another person (A) without the knowledge and consent of
116 such other person, (B) while such other person is not in plain view, and
117 (C) under circumstances where such other person has a reasonable
118 expectation of privacy, or (2) with intent to arouse or satisfy the sexual
119 desire of such person or any other person, such person knowingly
120 photographs, films, videotapes or otherwise records the image of
121 another person (A) without the knowledge and consent of such other
122 person, (B) while such other person is not in plain view, and (C) under
123 circumstances where such other person has a reasonable expectation of
124 privacy, or (3) with intent to arouse or satisfy the sexual desire of such
125 person, such person commits simple trespass, as provided in section
126 53a-110a, and observes, in other than a casual or cursory manner,
127 another person (A) without the knowledge or consent of such other
128 person, (B) while such other person is inside a dwelling, as defined in
129 section 53a-100, and not in plain view, and (C) under circumstances
130 where such other person has a reasonable expectation of privacy.

131 (b) Voyeurism is (1) a class D felony for a first offense, except as
132 provided in subdivision (2) of this subsection, and (2) a class C felony
133 for any subsequent offense.

134 (2) Voyeurism is a class C felony for a first offense when (A) such
135 person has been previously convicted of an offense enumerated in
136 subsection (f) of section 53a-29, as amended by this act, or (B) the
137 intended target of the voyeurism is under the age of sixteen.

138 Sec. 4. Subsection (f) of section 53a-29 of the general statutes is
139 repealed and the following is substituted in lieu thereof (*Effective*
140 *October 1, 2012*):

141 (f) The period of probation, unless terminated sooner as provided in
142 section 53a-32, shall be not less than ten years or more than thirty-five
143 years for conviction of a violation of subdivision (2) of subsection (a) of
144 section 53-21 or section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a, 53a-

145 72b, 53a-90a, 53a-189a, as amended by this act, 53a-196b, 53a-196c, 53a-
146 196d, 53a-196e or 53a-196f.

147 Sec. 5. Subdivision (5) of section 54-250 of the general statutes is
148 repealed and the following is substituted in lieu thereof (*Effective*
149 *October 1, 2012*):

150 (5) "Nonviolent sexual offense" means (A) a violation of section 53a-
151 73a or [subdivision (2) of subsection (a) of section] 53a-189a, as
152 amended by this act, or (B) a violation of any of the offenses specified
153 in subparagraph (A) of this subdivision for which a person is
154 criminally liable under section 53a-8, 53a-48 or 53a-49.

155 Sec. 6. Section 54-86k of the general statutes is repealed and the
156 following is substituted in lieu thereof (*Effective October 1, 2012*):

157 (a) In any criminal proceeding, DNA (deoxyribonucleic acid) testing
158 shall be deemed to be a reliable scientific technique and the evidence of
159 a DNA profile comparison may be admitted to prove or disprove the
160 identity of any person. This section shall not otherwise limit the
161 introduction of any relevant evidence bearing upon any question at
162 issue before the court. The court shall, regardless of the results of the
163 DNA analysis, if any, consider such other relevant evidence of the
164 identity of the accused as shall be admissible in evidence.

165 (b) If the results of the DNA analysis tend to exculpate the accused,
166 the prosecuting authority shall disclose such exculpatory information
167 or material to the accused in accordance with section 54-86c.

168 [(c) At least twenty-one days prior to commencement of the
169 proceeding in which the results of a DNA analysis will be offered as
170 evidence, the party intending to offer the evidence shall notify the
171 opposing party, in writing, of the intent to offer the analysis and shall
172 provide or make available copies of the profiles and the report or
173 statement to be introduced. In the event that such notice is not given,
174 and the person proffers such evidence, then the court may in its

175 discretion either allow the opposing party a continuance or, under the
176 appropriate circumstances, bar the person from presenting such
177 evidence. The period of any such continuance shall not be counted for
178 speedy trial purposes under section 54-82c. If the opposing party
179 intends to object to the admissibility of such evidence he shall give
180 written notice of that fact and the basis for his objections at least ten
181 days prior to commencement of the proceedings.]

182 [(d)] (c) No blood sample submitted to the Division of Scientific
183 Services within the Department of Emergency Services and Public
184 Protection for analysis and use as provided in this section and no
185 results of the analysis performed shall be included in the DNA data
186 bank established by the division pursuant to section 54-102j or
187 otherwise used in any way with identifying information on the person
188 whose sample was submitted.

189 Sec. 7. Section 54-63c of the general statutes is repealed and the
190 following is substituted in lieu thereof (*Effective October 1, 2012*):

191 (a) Except in cases of arrest pursuant to a bench warrant of arrest in
192 which the court or a judge thereof has indicated that bail should be
193 denied or ordered that the officer or indifferent person making such
194 arrest shall, without undue delay, bring such person before the clerk or
195 assistant clerk of the superior court for the geographical area under
196 section 54-2a, when any person is arrested for a bailable offense, the
197 chief of police, or the chief's authorized designee, of the police
198 department having custody of the arrested person or any probation
199 officer serving a violation or probation warrant shall promptly advise
200 such person of the person's rights under section 54-1b, and of the
201 person's right to be interviewed concerning the terms and conditions
202 of release. Unless the arrested person waives or refuses such interview,
203 the police officer or probation officer shall promptly interview the
204 arrested person to obtain information relevant to the terms and
205 conditions of the person's release from custody, and shall seek
206 independent verification of such information where necessary. At the

207 request of the arrested person, the person's counsel may be present
208 during the interview. No statement made by the arrested person in
209 response to any question during the interview related to the terms and
210 conditions of release shall be admissible as evidence against the
211 arrested person in any proceeding arising from the incident for which
212 the conditions of release were set. After such a waiver, refusal or
213 interview, the police officer or probation officer shall promptly order
214 release of the arrested person upon the execution of a written promise
215 to appear or the posting of such bond as may be set by the police
216 officer or probation officer, except that no condition of release set by
217 the court or a judge thereof may be modified by such [officer] officers
218 and no person shall be released upon the execution of a written
219 promise to appear or the posting of a bond without surety if the person
220 is charged with the commission of a family violence crime, as defined
221 in section 46b-38a, and in the commission of such crime the person
222 used or threatened the use of a firearm.

223 (b) If the person is charged with the commission of a family violence
224 crime, as defined in section 46b-38a, and the police officer does not
225 intend to impose nonfinancial conditions of release pursuant to this
226 subsection, the police officer shall, pursuant to the procedure set forth
227 in subsection (a) of this section, promptly order the release of such
228 person upon the execution of a written promise to appear or the
229 posting of such bond as may be set by the police officer. If such person
230 is not so released, the police officer shall make reasonable efforts to
231 immediately contact a bail commissioner to set the conditions of such
232 person's release pursuant to section 54-63d. If, after making such
233 reasonable efforts, the police officer is unable to contact a bail
234 commissioner or contacts a bail commissioner but such bail
235 commissioner is unavailable to promptly perform such bail
236 commissioner's duties pursuant to section 54-63d, the police officer
237 shall, pursuant to the procedure set forth in subsection (a) of this
238 section, order the release of such person upon the execution of a
239 written promise to appear or the posting of such bond as may be set by
240 the police officer and may impose nonfinancial conditions of release

241 which may require that the arrested person do one or more of the
242 following: (1) Avoid all contact with the alleged victim of the crime, (2)
243 comply with specified restrictions on the person's travel, association or
244 place of abode that are directly related to the protection of the alleged
245 victim of the crime, or (3) not use or possess a dangerous weapon,
246 intoxicant or controlled substance. Any such nonfinancial conditions of
247 release shall be indicated on a form prescribed by the Judicial Branch
248 and sworn to by the police officer. Such form shall articulate (A) the
249 efforts that were made to contact a bail commissioner, (B) the specific
250 factual basis relied upon by the police officer to impose the
251 nonfinancial conditions of release, and (C) if the arrested person was
252 non-English-speaking, that the services of a translation service or
253 interpreter were used. A copy of that portion of the form that indicates
254 the nonfinancial conditions of release shall immediately be provided to
255 the arrested person. A copy of the entire form shall be provided to
256 counsel for the arrested person at arraignment. Any nonfinancial
257 conditions of release imposed pursuant to this subsection shall remain
258 in effect until the arrested person is presented before the Superior
259 Court pursuant to subsection (a) of section 54-1g. On such date, the
260 court shall conduct a hearing pursuant to section 46b-38c at which the
261 defendant is entitled to be heard with respect to the issuance of a
262 protective order.

263 (c) When cash bail in excess of ten thousand dollars is received for a
264 detained person accused of a felony, where the underlying facts and
265 circumstances of the felony involve the use, attempted use or
266 threatened use of physical force against another person, the police
267 officer shall prepare a report that contains (1) the name, address and
268 taxpayer identification number of the accused person, (2) the name,
269 address and taxpayer identification number of each person offering the
270 cash bail, other than a person licensed as a professional bondsman
271 under chapter 533 or a surety bail bond agent under chapter 700f, (3)
272 the amount of cash received, and (4) the date the cash was received.
273 Not later than fifteen days after receipt of such cash bail, the police
274 officer shall file the report with the Department of Revenue Services

275 and mail a copy of the report to the state's attorney for the judicial
276 district in which the alleged offense was committed and to each person
277 offering the cash bail.

278 (d) No police officer or probation officer serving a violation of
279 probation warrant shall set the terms and conditions of a person's
280 release, set a bond for a person or release a person from custody under
281 this section unless the police officer has first checked the National
282 Crime Information Center (NCIC) computerized index of criminal
283 justice information to determine if such person is listed in such index.

284 (e) If the arrested person has not posted bail, the police officer or
285 probation officer serving a violation of probation warrant shall
286 immediately notify a bail commissioner.

287 (f) The chief, acting chief, superintendent of police, the
288 Commissioner of Emergency Services and Public Protection, any
289 captain or lieutenant of any local police department or the Division of
290 State Police within the Department of Emergency Services and Public
291 Protection, [or] any person lawfully exercising the powers of any such
292 officer or any probation officer serving a violation of probation
293 warrant may take a written promise to appear or a bond with or
294 without surety from an arrested person as provided in subsection (a)
295 of this section, or as fixed by the court or any judge thereof, may
296 administer such oaths as are necessary in the taking of promises or
297 bonds and shall file any report required under subsection (c) of this
298 section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	54-33g
Sec. 2	<i>October 1, 2012</i>	54-36p(a)
Sec. 3	<i>October 1, 2012</i>	53a-189a
Sec. 4	<i>October 1, 2012</i>	53a-29(f)
Sec. 5	<i>October 1, 2012</i>	54-250(5)
Sec. 6	<i>October 1, 2012</i>	54-86k

Sec. 7	October 1, 2012	54-63c
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Statement of Purpose:

To: (1) Revise the procedure for the forfeiture of property seized as a result of a lawful arrest or search; (2) increase the penalties for certain "peeping tom" violations, including subsequent offenses and those involving children; (3) eliminate a notice requirement concerning DNA evidence; and (4) provide that probation officers may set bail in the course of serving arrest warrants for violation of probation.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]