

House of Representatives, April 8, 1998. The Committee on Judiciary reported through REP. LAWLOR, 99th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING SPECIAL INVESTIGATIONS.

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

1 Section 1. Section 51-277a of the general  
2 statutes is repealed and the following is  
3 substituted in lieu thereof:

4 (a) Whenever a peace officer, in the  
5 performance of his duties, uses deadly physical  
6 force upon another person and such person dies as  
7 a result thereof, the Division of Criminal Justice  
8 shall cause an investigation to be made and shall  
9 have the responsibility of determining whether the  
10 use of deadly physical force by the peace officer  
11 was appropriate under section 53a-22. The division  
12 shall request the appropriate law enforcement  
13 agency to provide such assistance as is necessary  
14 to determine the circumstances of the incident.

15 (b) IN CAUSING SUCH AN INVESTIGATION TO BE  
16 MADE, THE CHIEF STATE'S ATTORNEY MAY, AS PROVIDED  
17 IN SECTION 51-281, DESIGNATE A PROSECUTORIAL  
18 OFFICIAL FROM A JUDICIAL DISTRICT OTHER THAN THE  
19 JUDICIAL DISTRICT IN WHICH THE INCIDENT OCCURRED  
20 TO CONDUCT THE INVESTIGATION OR MAY, AS PROVIDED  
21 IN SUBSECTION (a) OF SECTION 51-285, APPOINT A  
22 SPECIAL ASSISTANT STATE'S ATTORNEY OR SPECIAL  
23 DEPUTY ASSISTANT STATE'S ATTORNEY TO CONDUCT THE

24 INVESTIGATION. ANY PERSON MAY MAKE A WRITTEN  
25 REQUEST TO THE CHIEF STATE'S ATTORNEY OR THE  
26 CRIMINAL JUSTICE COMMISSION REQUESTING THAT THE  
27 CHIEF STATE'S ATTORNEY SO DESIGNATE A  
28 PROSECUTORIAL OFFICIAL FROM ANOTHER JUDICIAL  
29 DISTRICT OR APPOINT A SPECIAL PROSECUTOR TO  
30 CONDUCT THE INVESTIGATION.

31 [(b)] (c) Upon the conclusion of the  
32 investigation of the incident, the division shall  
33 file a report with the Chief State's Attorney  
34 which shall contain the following: (1) The  
35 circumstances of the incident, (2) a determination  
36 of whether the use of deadly physical force by the  
37 peace officer was appropriate under section  
38 53a-22, and (3) any future action to be taken by  
39 the Division of Criminal Justice as a result of  
40 the incident. The Chief State's Attorney shall  
41 provide a copy of the report to the chief  
42 executive officer of the municipality in which the  
43 incident occurred and to the Commissioner of  
44 Public Safety or the chief of police of such  
45 municipality, as the case may be.

46 Sec. 2. Section 54-47c of the general  
47 statutes is repealed and the following is  
48 substituted in lieu thereof:

49 (a) Any judge of the Superior Court,  
50 Appellate Court or Supreme Court, the Chief  
51 State's Attorney or a state's attorney may make  
52 application to a panel of judges for an  
53 investigation into the commission of a crime or  
54 crimes whenever such applicant has reasonable  
55 belief that the administration of justice requires  
56 an investigation to determine whether or not there  
57 is probable cause to believe that a crime or  
58 crimes have been committed.

59 (b) Each application for an investigation  
60 into the commission of a crime or crimes shall be  
61 made in writing upon oath or affirmation to a  
62 panel of judges. Each application shall include  
63 the following information: (1) The identity of the  
64 applicant and his authority to make such  
65 application; (2) a full and complete statement of  
66 the facts and circumstances relied upon by the  
67 applicant to justify his reasonable belief that  
68 the investigation will lead to a finding of  
69 probable cause that a crime or crimes have been  
70 committed; and (3) a full and complete statement  
71 of the facts concerning all previous applications

72 known to the applicant, made to any panel of  
73 judges, for investigation of any one or more of  
74 the same criminal offenses involving any of the  
75 same persons specified in the application,  
76 including the action taken by the panel on each  
77 such application. The panel of judges may require  
78 such additional testimony or documentary evidence  
79 in support of facts in the application as it deems  
80 necessary. Such additional testimony shall be  
81 transcribed.

82 (c) If the application is made by the Chief  
83 State's Attorney or a state's attorney, it shall  
84 also include [a full and complete statement of  
85 facts showing that other normal investigative  
86 procedures with respect to the alleged crime have  
87 been tried and have failed or reasonably appear to  
88 be unlikely to succeed if tried or be too  
89 dangerous to employ] (1) A FULL AND COMPLETE  
90 STATEMENT OF THE STATUS OF THE INVESTIGATION AND  
91 OF THE EVIDENCE COLLECTED AS OF THE DATE OF SUCH  
92 APPLICATION, (2) IF OTHER NORMAL INVESTIGATIVE  
93 PROCEDURES HAVE BEEN TRIED WITH RESPECT TO THE  
94 ALLEGED CRIME, A FULL AND COMPLETE STATEMENT  
95 SPECIFYING THE OTHER NORMAL INVESTIGATIVE  
96 PROCEDURES THAT HAVE BEEN TRIED AND THE REASONS  
97 SUCH PROCEDURES HAVE FAILED, (3) IF OTHER NORMAL  
98 INVESTIGATIVE PROCEDURES HAVE NOT BEEN TRIED, A  
99 FULL AND COMPLETE STATEMENT OF THE REASONS SUCH  
100 PROCEDURES REASONABLY APPEAR TO BE UNLIKELY TO  
101 SUCCEED IF TRIED OR BE TOO DANGEROUS TO EMPLOY,  
102 AND (4) A FULL AND COMPLETE STATEMENT OF THE  
103 REASONS FOR THE APPLICANT'S BELIEF THAT THE  
104 APPOINTMENT OF AN INVESTIGATORY GRAND JURY AND THE  
105 INVESTIGATIVE PROCEDURES EMPLOYED BY SUCH  
106 INVESTIGATORY GRAND JURY WILL LEAD TO A FINDING OF  
107 PROBABLE CAUSE THAT A CRIME OR CRIMES HAVE BEEN  
108 COMMITTED.

109 (d) THE PANEL MAY APPROVE THE APPLICATION AND  
110 ORDER AN INVESTIGATION INTO THE COMMISSION OF A  
111 CRIME OR CRIMES IF IT FINDS THAT (1) THE  
112 ADMINISTRATION OF JUSTICE REQUIRES AN  
113 INVESTIGATION TO DETERMINE WHETHER OR NOT THERE IS  
114 PROBABLE CAUSE TO BELIEVE THAT A CRIME OR CRIMES  
115 HAVE BEEN COMMITTED, (2) IF THE APPLICATION WAS  
116 MADE BY THE CHIEF STATE'S ATTORNEY OR A STATE'S  
117 ATTORNEY, OTHER NORMAL INVESTIGATIVE PROCEDURES  
118 WITH RESPECT TO THE ALLEGED CRIME HAVE BEEN TRIED  
119 AND HAVE FAILED OR REASONABLY APPEAR TO BE

120 UNLIKELY TO SUCCEED IF TRIED OR BE TOO DANGEROUS  
121 TO EMPLOY, AND (3) THE INVESTIGATIVE PROCEDURES  
122 EMPLOYED BY AN INVESTIGATORY GRAND JURY APPEAR  
123 LIKELY TO SUCCEED IN DETERMINING WHETHER OR NOT  
124 THERE IS PROBABLE CAUSE TO BELIEVE THAT A CRIME OR  
125 CRIMES HAVE BEEN COMMITTED.

126 Sec. 3. Section 54-47d of the general  
127 statutes is repealed and the following is  
128 substituted in lieu thereof:

129 (a) If the panel approves the application and  
130 orders an investigation into the commission of a  
131 crime or crimes, the Chief Court Administrator  
132 shall (1) appoint an investigatory grand jury to  
133 conduct the investigation and (2) designate the  
134 court location in the judicial district where any  
135 motions to quash and any contempt proceedings  
136 shall be heard and any findings and records of the  
137 investigation shall be filed.

138 (b) Each order authorizing the investigation  
139 into the commission of a crime or crimes by the  
140 panel shall specify: (1) The date of issuance of  
141 the order, (2) the period of time within which the  
142 investigation is to be conducted, provided in no  
143 event shall the investigation be longer than six  
144 months from the date the Chief Court Administrator  
145 appoints the investigatory grand jury to conduct  
146 the investigation, unless an application for an  
147 extension of time is filed and granted pursuant to  
148 subsection (c) of this section, (3) the scope of  
149 the investigation, and (4) [its] THE PANEL'S  
150 reasons for finding that (A) the administration of  
151 justice requires an investigation to determine  
152 whether or not there is probable cause to believe  
153 that a crime or crimes have been committed, (B) IF  
154 THE APPLICATION WAS MADE BY THE CHIEF STATE'S  
155 ATTORNEY OR A STATE'S ATTORNEY, OTHER NORMAL  
156 INVESTIGATIVE PROCEDURES WITH RESPECT TO THE  
157 ALLEGED CRIME HAVE BEEN TRIED AND HAVE FAILED OR  
158 REASONABLY APPEAR TO BE UNLIKELY TO SUCCEED IF  
159 TRIED OR BE TOO DANGEROUS TO EMPLOY AND (C) THE  
160 INVESTIGATIVE PROCEDURES EMPLOYED BY THE  
161 INVESTIGATORY GRAND JURY APPEAR LIKELY TO SUCCEED  
162 IN DETERMINING WHETHER OR NOT THERE IS PROBABLE  
163 CAUSE TO BELIEVE THAT A CRIME OR CRIMES HAVE BEEN  
164 COMMITTED. The panel shall retain a copy of the  
165 order and the original application and shall  
166 transmit to the investigatory grand jury,  
167 appointed pursuant to subsection (a) of this

168 section, the original order and a copy of the  
169 application filed with the panel.

170 (c) The investigatory grand jury may make an  
171 application to the panel of judges for an  
172 extension of time within which to conduct its  
173 investigation or for an amendment to the scope of  
174 its investigation. The application for extension  
175 or amendment shall set forth the reasons for the  
176 necessity of such extension or amendment. No more  
177 than two extensions or amendments of an order may  
178 be granted by the issuing panel. The period of any  
179 extension shall be no longer than the panel deems  
180 necessary to achieve the purposes for which it was  
181 granted and in no event shall any extension be for  
182 a period longer than six months.

183 STATEMENT OF LEGISLATIVE COMMISSIONERS: In  
184 sections 2(d)(2) and 3(b)(3)(B), "IF THE  
185 APPLICATION WAS MADE BY THE CHIEF STATE'S ATTORNEY  
186 OR A STATE'S ATTORNEY," was added for accuracy.

187 JUD COMMITTEE VOTE: YEA 39 NAY 0 JFS-LCO

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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**FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5579**

STATE IMPACT	None, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Judicial Department, Division of Criminal Justice

**EXPLANATION OF ESTIMATES:**

Since grand juries are not commonly utilized in Connecticut, and since the activities of grand juries divert resources from other cases rather than incurring additional costs, a minimal change in the potential for less grand juries in the future would not result in a fiscal impact.

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**OLR BILL ANALYSIS**

SHB 5579

**AN ACT CONCERNING SPECIAL INVESTIGATIONS**

**SUMMARY:** The bill authorizes the chief state's attorney, when ordering an investigation of a peace officer's use of deadly force that resulted in the death of another person, to designate a prosecutor from a judicial district other than the district where the incident occurred or appoint a special prosecutor to conduct the investigation. The bill authorizes anyone to ask the chief state's attorney or to ask the Criminal Justice Commission to ask him to make the designation or appointment.

It expands the information the chief state's attorney or a state's attorney must include in any application for investigatory grand jury investigations and outlines the circumstances under which the three-judge panel reviewing the application may approve it and order an investigation.

Lastly, it expands the list of reasons the panel must state in support of any order authorizing such an investigation.

EFFECTIVE DATE: October 1, 1998

#### **FURTHER EXPLANATION**

##### **Applications for Grand Jury Investigations**

By law, any state court judge, the chief state's attorney, or a state's attorney can apply to a panel of judges for a grand jury investigation into the commission of a crime if he reasonably believes that the administration of justice requires it to determine probable cause that a crime was committed. Each application must be stated in writing under oath.

The bill expands the information required in applications made by the chief state's attorney or a state's attorney to include a full and complete statement of:

1. the status of the investigation and of the evidence collected by the application date,
2. why other normal investigative procedures that were tried failed, and
3. the reasons for the applicant's belief that an investigatory grand jury and the investigative procedures it employs will lead to a finding of probable cause that a crime was committed.

By law, the chief state's attorney and any state's attorney's statement must assert that other normal investigative procedures have been tried and failed or are likely to fail, and that other procedures appear too dangerous to try.

By law all applicants continue to have to identify

themselves in each application and include the facts and circumstances surrounding their belief that the investigation will lead to a finding of probable cause, and any knowledge of previous applications concerning the same crime and the same person.

### Approving Investigative Grand Jury Application

The bill authorizes the panel reviewing applications to approve them and order an investigation if it finds that:

1. the administration of justice requires an investigation to determine if there is probable cause to believe that a crime was committed;
2. for applications submitted by the chief state's attorney or a state's attorney, other normal investigative procedures have failed, reasonably appear to be likely to fail or too dangerous to try; and
3. the investigative procedures that an investigative grand jury uses appear likely to succeed in determining if there is probable cause to believe that a crime was committed.

### Orders for Grand Jury Investigations

In orders authorizing the appointment of an investigatory grand jury, the three judge panel must specify its reason for finding:

1. that the investigatory grand jury's investigative procedures appear likely to succeed in determining if there is probable cause to believe that a crime was committed and
2. if the application was submitted by the chief state's attorney or a state's attorney, that other normal investigative procedures failed, appear likely to fail, or appear to be too dangerous to try.

The law continues to require the panel's order to include its reasons for finding that justice requires

an investigation to determine probable cause that a crime was committed. The order must also include the date it was issued, when the investigation must be conducted, and its scope.

## **BACKGROUND**

### **Prosecutorial Designations**

The chief state's attorney and each deputy chief state's attorney, state's attorney, assistant and deputy assistant state's attorney must be qualified to act in every judicial district in the state. The chief state's attorney may designate any of these attorneys to act in any district at any time.

### **Prosecutorial Appointments**

The chief state's attorney may temporarily appoint special assistant state's attorneys and special deputy assistant state's attorneys on a contractual basis.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Report  
Yea 39      Nay 0