

*Connecticut Legislative Histories. Landmark Series; Public Act No. 95-16*

**Legislative History of  
“An Act Concerning Lethal Injection, Proportionality  
Review of Death Sentences and Murder of a Child”  
Public Act 95-16  
1995 Senate Bill No. 855**

Hartford, Connecticut State Library. Law & Legislative Reference  
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Compiled from the following  
Connecticut General Assembly documents  
on deposit in the  
Law & Legislative Reference Unit of Connecticut State Library:

**38 Senate Proceedings, Part 3, 1995 Session, pp. 810-874.**  
**38 House of Representatives Proceedings, Part 3, 1995 Session,**  
**pp. 1080-1118.**  
**Connecticut. Joint Standing Committee, Judiciary, Parts 3 and**  
**5, 1995 Session, pp. 879-880, 937-938, 966-967, 1008, 1528,**  
**1536-1537.**

*with*

an appendix of items  
from the  
Permanent Bill File Archive  
of  
The Bill Room at Connecticut State Library

## PREFACE

This is the legislative history of the act which prescribes lethal injection, rather than electrocution, as the method of inflicting the death penalty. This act also added a new category to the statutory definition of capital felony and narrowed the grounds for vacating the death penalty. See Appendix Item 5.17 for a more detailed summary which includes case law references.

Glossary of terms and abbreviations:

**Favorable Report**-A report compiled by the committee clerk on a standard form. Among other things, the favorable report summarizes public hearing testimony and lists organizations that support and oppose the bill. Once the committee has conducted a public hearing on a bill, it will meet to determine if the bill merits a favorable report. The Favorable Report is a recommendation to the General Assembly as a whole that the bill ought to pass. Favorably reported bills are referred to the floor or the originating chamber, or to another committee for review. It is usually accompanied by a one-page committee roll call vote. Also known as "JF".

**File** -This is the version of a bill which has been prepared for consideration in the House and Senate. Each favorably reported bill will be reviewed and reissued as a File by the Legislative Commissioner's Office. The File version includes a bill analysis from the Office of Legislative Research and a fiscal impact statement from the Office of Fiscal Analysis. File versions have distinctive numbers which are separate from the bill number.

**Fiscal Note**-Statement prepared by the Office of Fiscal Analysis of the cost or savings resulting from a bill or amendment. Required for every bill or amendment considered by the House or Senate

**JF**- Joint Favorable, another term for the Joint Committee's Favorable Report. It is also used in the phrase JF deadline, as each committee has a deadline for the reporting of bills. "JF" is the joint committee's recommendation to the full General Assembly that it pass a bill.

**LCO**-Legislative Commissioner's Office-The nonpartisan office headed by the legislative commissioners consisting of all the LCO attorneys and their support staff. They provide bill and amendment drafting services

**OCSA**-Office of the Chief State's Attorney, Division of Criminal Justice.

**OFA**-Office of Fiscal Analysis-The nonpartisan staff office responsible for assisting the legislature in its analysis of tax proposals, the budget, and other fiscal issues

**OLR**-Office of Legislative Research-A nonpartisan office providing committee staffing, policy research, bill analyses, and public act summaries. Each committee except Appropriations and Finance, Revenue and Bonding is assigned its own OLR researcher

**Proposed Bill**- a bill which is introduced by an individual legislator at the beginning of the session and which is not fully drafted.

**Raised Bill**- a bill that is introduced and drafted by a Committee and is not based on a Proposed Bill.

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**1.**

**Connecticut. Joint Standing Committee,  
Judiciary, Part 3, 1995 Session, pp. 879-880,  
937-938, 966-967, 1008.**

families and friends of murder victims. They could bring together concerned people with the families to comfort them, to listen to them patiently and to help them through their loss. This program could also provide financial support to compensate for damages and burdens caused by the offense.

I ask you to seriously consider this as a constructive alternative to the death penalty. I urge you to consider the value of another man's life. Once the death penalty is in place, no one wants to claim moral responsibility for it. Our responsibility is to stop it now.

As Representatives of the people and human beings, I trust that you will do what is morally right and what is best for the state and not choose the death penalty as a popular or easy solution. Thank you.

REP. LAWLOR: Thank you, Joe. That's one of the more thoughtful statements I've ever heard on the death penalty, so we appreciate it. I don't know if there are any questions. If not, thanks. Next is Paul Comer.

PAUL COMER: Good morning, Mr. Chairman and few HB 5631 HB 5302  
Committee members, Committee members in your HB 5278 SB 873  
office. I'm here to speak on several bills. All SB 855 SB 670  
the bills that I speak on, I speak in favor of.

With no respect to the Hutterian Brethren, I was told they were the blue church, but sitting up talking to them for a while, they have agreed to adopt some families from the project, so I know there are some positive things that they're doing and trying to do. I also think they are sheltered from some realities I have to address because I asked both of the brothers up there what would happen if they walked in the house and found their whole family murdered, killed, their mother and father included. Would you want that person to be judged by God, or would you yourself judge that person. And they didn't answer right away. I still haven't got an answer.

So the SB 852, I say yes. The faster the better. You can take a life, you forfeit your own life.

I don't look at it as a deterrent to crime. I look at it as punishing for what you do. I will take this part of the Bible and stick with it, an eye for an eye. If you take a life in this society, you must be willing to pay for it with your own. That's how I feel.

On HB5631 concerning the stalking. That's another yes. It's long overdue and I think recent national cases prove that someone's sitting in the bushes do not mean you no good, only harm. So that's another yes.

HB5302, good faith (inaudible) and I said yes to this because I'm tired of people walking away on technicalities. I'm talking about murderers and rapists and killers of children, so I have to go yes with that, too.

HB5278 concerning dangerous felony, persistent dangerous felon offenders. In baseball, three strikes you're out. If you committed three felony Capital A crimes, again, you're out. Death penalty. Lethal injection. As soon as possible.

SB873, all right. Serious juvenile offenders. I'm almost wrapping up. Serious juvenile offenders. I have to put yes to that. If you're old enough to do the crime, you're old enough to do the time. But on this case, I would not advocate for the death penalty, because maybe we can save that child. We'll see. But incarceration for a long time, absolutely.

Concern lethal injection, yes. I hope that there will be a voluntary death penalty and give them all lethal injections. The state will save a lot of money if people who are in prison for life now, we spend \$1.5 million, take a \$10,000 settlement and kill themselves. SB855

SB670 concerning murder of a child. Yes. Lethal injection as soon as possible. Voluntary death penalty should be executed as soon as possible. We have a death penalty that don't work, my friends. When someone can kill as many people as they want

000937  
Every murder that is not in self-defense is a "heinous crime." If you take someone else's life, maybe you don't deserve to live. America could have several executions every day! Is that what this country wants?

Today in this hearing we're supposed to talk about whether lethal injection is a "better" way to kill than electrocuting, and whether this or that factor in a convict's life should be taken into account so we can kill a few more people.

I am embarrassed when I hear politicians who believe in capital punishment calmly talking about these questions. I am embarrassed for them because they don't seem to even know that what they favor is something very bizarre and barbaric: strapping another human being into a chair and running electricity through them or strapping them to a gurney and poisoning them. It reminds me of the Middle Ages or the Nazis. Why not draw and quarter them, or just chop off their heads?

The State should help make 000938 safe. The State should invest in programs that might prevent people from becoming violent in the first place.

The State should not be in the business of killing. Lethal injection wouldn't make it OK. The individual who, representing the State, kills a person who is already in custody, is him or herself committing a cold-blooded murder. Nobody has the right, the moral right, to do this killing.

You legislators are just fooling yourself if you think that either a lethal injection of poison or aggravating factors would make this 2nd murder OK.

Sally Joughin

14 Everitt St,  
New Haven 06511

February 10, 1995

SB 852 SB 855 SB 670

To the honorable members of the Judiciary Committee of the legislature of the State of Connecticut:

Thank you for giving me the opportunity to testify today. My name is Phil Gattis, and I am a member of the Hutterian Brethren community in Norfolk, CT. You may think that members of religious orders are too sheltered from the everyday fears of most Americans. Let me give you a few brief facts about myself. My father had an business in downtown Washington, DC. We knew fear first-hand during the inner-city riots of the '60's. I served in the Marines during the Vietnam war, working in the field of intelligence. I'm forbidden by law to discuss those activities, but I learned that, in the words of Gen. Patton's chaplain, "Bravery is fear that has said its prayers."

For over two years, I visited inmates of the Fayette County Jail in Uniontown, PA, on a weekly basis, also working with their families. I met a man named Mark Breakiron, who was charged with murder, and got to know him over a period of 6 months prior to his trial. At first, he was very scared and hard to approach. It was Christmas, and our community children had decided to send a decorated Christmas tree into the prison and to give some of their toys for gifts to the children of inmates. These small acts touched Mark's heart, and he obtained permission to be released from his cell range for a short time each day to water the tree. That was the beginning of a time of discovery for me. I discovered a young man who had grown up in the woods of the beautiful mountains surrounding his town; a young man who, at the age of 7, had watched his father walk out on his mother, leaving her to raise 7 children on her own while working two jobs, tending a garden, and putting up as much food as she could; a young man who had taken to alcohol and had had several scrapes with the law; and a young man who, fresh out of prison and with his new job's first week's paycheck in his pocket, went out to celebrate and ended up at a bar. I discovered the murderous neglect of a bar owner who had left the job of closing up after midnight to a young barmaid alone. She was brutally murdered, a horrible crime that shocked all of us. I attended much of Mark's trial, and discovered an atmosphere of hatred and desire for revenge so thick, it made me physically ill. I was sitting next to his mother and sister, and behind the parents of the victim, when the judge, a friend of mine, sentenced Mark to death. I will never forget that moment. I could weep over it now, because I discovered that it didn't and wouldn't heal or comfort anyone. Not the victim. Not those grieving parents. Not the outraged citizens of the county. Not Mark or his family. Not me. No one.

For 9 years, Mark has been a regular and active correspondent to me and others in our community, including many children. He answers every letter, taking a lively interest in all the children's activities, especially relating to nature. The children have become for him the freedom which he had lost, the outdoors which he loved. I haven't discovered a modern-day saint, but I've discovered a hurting young man who has gone wrong and would give anything to make right what he has done if he could.

While I agree that society deserves to be protected from Mark because of the crime of which he's convicted, I maintain that it will serve absolutely no purpose to put him to death. 48 out of 50 states, including Connecticut, already have capital sentencing guidelines severe enough to ensure the protection of their citizens through life imprisonment with a minimum number of years that must be served. Numerous studies have been made on the deterrence effect of the death penalty, and not one has ever been able to demonstrate it; in fact, some have even demonstrated exactly the opposite, that the death penalty actually increases the murder rate.

It will cost from 2 to 4 times as much to put Mark to death than it would to lock him up for the rest of his life. We are to understand that the money to pay for the privilege of having a stronger death penalty will come from the programs for the poor and elderly, the programs that would strengthen neighborhood police patrols, and the programs which would explore alternatives to our expensive and pointless prisons, all of which will have to be cut back or never begun. Given our justified concern to balance the budget, do we need any better way to drive our state into bankruptcy?

If we must have a death penalty law, it must be a safe one to guard against the tragedy of executing the innocent, one which makes a serious attempt to apply the severest sanction in only the most heinous cases. Connecticut presently has such a law. Out of 7,000 executions that have taken place in this country since 1900, whose cases were reviewed by a law school, 23 defendants were found to have been innocent. A stronger law will only add to this number. For this reason, I ask you to defeat S.B. No. 852, entitled "An Act Concerning the Death Penalty," and, at the very least, leave our death penalty law as it is. For what it's worth, it's probably the best one in the country, although I would rather not have one at all.

I further ask you to defeat S.B. No. 855, entitled "An Act Concerning Lethal Injection." The purpose of this is only to make us all feel more comfortable, and an inevitable result of it will be to involve the medical profession, one which is dedicated to the preservation of life, in the taking of life, at least indirectly through the training of the execution team. Nothing can make the taking of human life humane.

Concerning S.B. No. 670, entitled "An Act Concerning the Murder of a Child," I ask you to consider this carefully. As a father of 4 young children, I'm as horrified by such a murder as any of you. Yet I must be as opposed to this act as to any expansion of the death penalty. I would also point out that in the great majority of cases, the murder of a child would also come under one or more of the other capital felonies already subject to the death penalty.

I have come to the above conclusions after extensive study of this subject and much heart-searching. I can recommend the book The Death Penalty in America by Hugo Adam Bedau as an excellent source for verification of any of the above facts.

Most importantly, if we strengthen the death penalty, we will have done nothing to stop the cycle of violence. We will give the criminal a mixed signal, that the life he took was not negotiable, but that his life is, regrettably, very negotiable. We will bring ourselves down to meet the criminal on his own moral level, instead of coming to him from a higher righteousness. And we will be doing this as the last major western democracy to hold on to this practice, keeping such company as South Africa, Russia, China, Iran, Iraq, Nigeria, and Singapore.

My church, the Hutterian Brethren, or Bruderhof, is a Christian community with a 475 year history of attempting to put the justice of the Kingdom of God into practice here and now. To this has also belonged opposition to the application of the penalty of death in human justice. In the 1500's, our forefathers refused to pay war taxes and executioner's dues in order to take no part in the killing of human life, and for this they suffered persecution.

Today, I say to you members of my representative government, many of whom are fellow Christians and believers in the one, merciful God, "Don't kill in my name." I cannot participate in retributive justice, and I cannot sit idly by while others do it.

God, the Judge, showed mercy and granted executive clemency to Cain in the first recorded capital case in history, refusing to allow any man to apply the death penalty. (Genesis 4:15) Let us take this example.

Thank you.

Phil Gattis  
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February 10, 1995

Testimony by Welton Snavely  
to the  
Judiciary Committee of the Connecticut State Legislature

Honorable Members of the Judiciary Committee:

I appreciate the responsibility put upon you as you consider three proposals SB 855 now before the Connecticut State Legislature which aim to strengthen the use of the SB 852 death penalty in our state. My plea is that you will vote against any form or use of the SB 670 death penalty. Its practice is unchristian and ignores the sacredness of human life. I abhor the notion that a man, state, or government can take the life of another human being. "Thou shalt not kill" is deeply rooted in the hearts and lives of thousands of Connecticut citizens. It is praiseworthy that the last execution in Connecticut dates back to 1960—thirty-five years ago. What a tragedy if this good record is now broken in these next years.

The death penalty is also unjust. Those who go to the electric chair are by far the so called "second class citizens" the "down-and-outers". I was convinced of this thirty years ago while pastoring a small church near South Bend, Indiana. A boy of 19 from the slums of that city was spending the summer traveling about Texas. He was convicted of committing rape while carrying a gun. Eventually the boy found himself on death row with no parents and few friends to stand by him. He was a nobody. An aunt asked for help and four of us traveled to Texas; we had meetings with the district attorney and the Texas State Parole Board. The injustice cried to heaven. A boy with no home, no money, no education, no close friends was sent to the electric chair in Texas as "a deterrent to others". His body was sent back to South Bend where I held the sad funeral with a handful of distant relatives.

Sharlette Holdman is right in saying:

"We must look seriously at our society that puts people to death. It is the children whom we deny medical care, day care, education, family life, and support who are the people who go to death row."

Thank you.

Welton Snavely, Minister  
Hutterian Brethren Church  
207 West Side Road  
Norfolk, CT 06058-1225

**2.**

**Connecticut. Joint Standing Committee,  
Judiciary, Part 5, 1995 Session, pp. 1528,  
1536-1537.**

not a joke.

I have read two books that are currently out, *With Justice for Some*, by George Fletcher and *The Jury Trial and Error in the American Courtroom* and I wish that you or some of the people that are in here would read them. It just goes on to show you all the things that happen in court.

Another thing that seems to bother me is that criminals can have the choice of the best attorneys. O. J. Simpson has everybody. We, the victim are given who the court assigns, whatever prosecutor it is. I would have liked to have John Connolly. You know, I didn't get to choose. Why is that so? Is that how it's going to continue to be?

It seems that the laws were made to protect the criminal. We keep doing everything for the criminal. Oh the criminal, the criminal, but what about us, the victim?

Again, the death penalty should be by the electric chair, not by lethal injection. That's for my dog (SB855) that I had for 14 years and I had to put him to sleep because of an illness. That's the humane way to go. But not for a murderer, not somebody who took a part of me with them.

The lives of the victim's families are changed forever. It's not easy to get back to work and go on with your life. The power that makes a difference in the life of victims lies not at the end of the process, but at the beginning. So let's all go to work and make the changes that are necessary to implement a death penalty.

Somewhere down the road my grandson Christopher, who was born four months after my son's murder, is going to grow up and ask me what happened to his father. And I'm going to tell him what happened to his father, and I'm never going to let the world forget because there was no justice as far as I was concerned in the murder of my son. The lady of justice surely wore a blindfold when the jury found the murderer innocent of murdering my son.

REP. LAWLOR: You mentioned, you thought that the proposal to add the so-called balancing to the death penalty is a good first step. That presumes there's going to be more steps. Wouldn't it be better just to do it all this year and get it over with rather than keep changing the statute and extent the appeals out (inaudible).

ATTY. JOHN BAILEY: From our appellate unit, it would be.

REP. LAWLOR: So are there other suggestions you think we should incorporate this year, before --

ATTY. JOHN BAILEY: We will be presenting, and as I told your Co-Chair, again, the killing of a child I think should be done. Type of, how death will be imposed, I think that can be done. SB 670

REP. LAWLOR: You mean to lethal injection? SB 855

ATTY. JOHN BAILEY: But that will not be, of course, retroactive.

REP. LAWLOR: And is there anything else?

ATTY. JOHN BAILEY: We will prepare, I don't want, there's so many --

(GAP FROM SIDE A TO SIDE B)

REP. LAWLOR: I think in the interest of efficiency, saving everybody a lot of time and money that if everything that needs to be done, if we could do it this year to get it over with, so that we won't have to keep fighting this battle every legislative session, just do it and save all the money for the appeals.

ATTY. JOHN BAILEY: I would have to agree with you, Mr. Chairman. It would be, I think, very beneficial to the litigation on these death penalty cases if we made any changes, we try to make them all this year.

REP. LAWLOR: So that we need the input from your office as soon as possible.

ATTY. JOHN BAILEY: You will have it by Thursday.

REP. LAWLOR: And the last question I have. I don't know if you heard Mrs. Cronin's testimony, she complained that apparently there's a lot of plea bargaining going on and victims aren't consulted. What is your policy on plea bargaining and do you require prosecutors to consult with the victims prior to entering into an agreement. (SJ55)

ATTY. JOHN BAILEY: I was a prosecutor, now I do administration, I used to do crime. But as state's attorney for Hartford, we would never move a major case, when I say a major case, a murder case, a Class B felony, without having the input of the victim, because I don't think you can plea bargain without the input of the victim.

Because what could happen is, you enter into a plea bargain and all at once the victim is notified, they show up at the date of sentencing. The judge is so upset about the victim's attitude, he will not accept a plea and you're back at base one.

And I see a bill in there where we would be required to notify victims. I have no problem with that.

REP. LAWLOR: Do you require that today of all your prosecutors to do that?

ATTY. JOHN BAILEY: As you know, the 12 state's attorneys are independent constitutional officers. We spoke on that today. It's only good public relations and it's good law for us to notify victims. You have a bill in here, I saw it this morning when I was going over these, where you would require it. I have no problem with that. It would mean more work, but so what? Victims should be notified.

SEN. UPSON: Yes, Representative Radcliffe.

REP. RADCLIFFE: Thank you, Mr. Chairman. I'm delighted that you had that meeting with the 12 state's attorneys today, but we found out what some of us have known, that we have an unworkable death

**3.**

**38 Senate Proceedings, Part 3, 1995 Session,  
pp. 810-874.**

Will the Clerk please announce the tally?

THE CLERK:

Total Senators voting, 35. Required for passage, 18. Those voting "yea", 35; those voting "nay", 0.

THE CHAIR:

The consent calendar passes.

Senator Fleming.

SEN. FLEMING:

Thank you, Madam President.

Madam President, we've completed the first markings and I'd like to go back to re-mark the calendar.

On page 4, Calendar 69, previously marked PT, is marked Go.

On page 5, Calendar 75, again, previously marked PT, is marked Go.

And on page 6, Calendar 82, previously marked PT, is marked Go.

THE CHAIR:

Thank you, Senator Fleming.

Would the Clerk please call Calendar No. 69?

THE CLERK:

On page 4, Calendar No. 69, SB855, AN ACT CONCERNING LETHAL INJECTION, favorable report from the Joint Committee on Judiciary. And the Clerk is

possession of amendments.

THE CHAIR:

Senator Upson?

SEN. UPSON:

Thank you, Madam President.

I move adoption of the Joint Committee's favorable report and adoption of the bill and ask for permission to summarize.

THE CHAIR:

The question is on passage of the bill.

SEN. UPSON:

Yes.

THE CHAIR:

Please proceed.

SEN. UPSON:

If I may, Madam President, move Senate Amendment A, I guess it's going to be A, LC05828.

THE CLERK:

Senate Amendment A, LC05828.

THE CHAIR:

Questions on passage of Senate Amendment A. Will you remark?

SEN. UPSON:

Yes, thank you, Madam President.

What this does is strikes everything out of the

bill and adds new language.

Essentially the language added, Madam President, besides having and allowing for lethal injection in death penalty cases, it will allow the Department of Corrections to choose an appropriate correctional institution; in the past, it was in Somers. And a warden.

As I said, the former language said "The warden of the Connecticut Correctional Institution, Somers." Now it just says, "The Commissioner shall direct a warden of an appropriate correctional institution."

So those are the -- that would become the bill with other amendments.

I do -- when we do vote on this, I'd like to have a roll call, Madam President.

Lethal injection, as you know, first of all, we passed the death penalty, I think it was two weeks ago. It was one that was similarly passed two times during the Weicker Administration which changes the weighing factors in the State of Connecticut.

This would allow for lethal injection and take away electrocution, which is more humane, one. There is no fiscal impact and it will be easier to administer and basically a more humane type of treatment to the death penalty.

THE CHAIR:

The question then is on passage of Senate Amendment Schedule A. Will --

SEN. UPSON:

That's correct.

THE CHAIR:

-- you remark further? Will you remark? Senator Looney?

SEN. LOONEY:

Yes, Madam President. Thank you.

Through you, Madam President, a question to the proponent of the Amendment.

THE CHAIR:

Please proceed.

SEN. LOONEY:

Yes, Madam President. In the -- Senator Upson, in the change to the format now allowing this procedure by lethal injection to be carried out at any correctional facility, is that right, rather than only in Somers where the electric chair is located --

THE CHAIR:

Senator Upson?

SEN. UPSON:

Through you, Madam President.

While it does say any, it's going to be -- there

will be most likely one institution, at this time, I think there's some question about using Northern Institution, but they have not decided yet.

But although it does say -- I guess it does -- even though it doesn't say any, but there'll probably be one. But right now the latitude is up to the Commissioner of Corrections. Thank you.

THE CHAIR:

Senator Looney?

SEN. LOONEY:

Yes, thank you, Madam President. And another question through you to Senator Upson.

Where it says on lines 35 through 41, referring to "an appropriate correctional institution and the punishment will be inflicted within an enclosure to be prepared for that purpose under direction of the warden of said institution and such enclosure shall be so constructed as to exclude public view."

Are we talking about the creation of something like a death row in every institution in the state where this could be -- could be carried out?

THE CHAIR:

Senator Upson?

SEN. LOONEY:

And how much construction are we talking about,

perhaps?

THE CHAIR:

Senator Upson, would you care to respond?

SEN. UPSON:

Yes, through you, Madam President.

It's my understanding there'll be one location, although the site has not been determined.

THE CHAIR:

Senator Looney?

SEN. LOONEY:

Thank you, Madam President.

THE CHAIR:

Senator Kissel?

SEN. KISSEL:

Thank you, Madam President.

I rise in support of the Amendment and also the underlying concept of lethal injection. I supported this in the Judiciary Committee and as the Senator who currently has death row in his district, I took it upon myself recently to tour death row.

For those of you who have not been there, as you walk down the hallway to your right are cells of prisoners who have had the death sentence imposed upon them. And as they get closer to that time, their cells move, they move from cell to cell. And at the end of

this hallway behind a door is the electric chair.

In my tour, I went and I viewed it up close. And quite frankly, although I feel very strongly about this state's utilization of the death penalty to exact justice from those who commit the most diabolical crimes in our state, I must say that this apparatus clearly had not been used in 30, 35 years. It was something that one would imagine belongs in Madam Tussand's Wax Museum.

And while I understand as a proponent of the death penalty, its utilization within our judicial system, it seems to me that even within those parameters that the utilization of lethal injection is far more humane.

And I feel very strongly that in attempting to obtain justice in the State of Connecticut that we have to be mindful of what new technology, new advancements can bring to this field.

And I'll be the first to admit, it's a somewhat macabre concept, but I would urge my fellow legislators, including the ones who are philosophically opposed to the death penalty, to support lethal injection as something that we, as the state, want to move forward with. Thank you very much, Madam President.

THE CHAIR:

Thank you, Senator Kissel. Senator Harp.

SEN. HARP:

Madam President, through you.

I would like to ask the proponent of the bill if he can describe to me the legal injection process, the length of time that it takes and how many technicians are involved in completing the process.

And, as well, describe the difference between the humanity involved in that form of death and electrocution.

THE CHAIR:

Senator Upson?

SEN. UPSON:

Thank you very much, Madam President.

Like the new head of the Veterans Administration, I am -- happen to be a medical expert.

Madam President, lethal injection 1977 was invented at the Oklahoma University Medical School as a less expensive alternative to the electric chair.

And then, as I say, 1980, was adopted by several states. It's estimated to cost about \$20 per injection.

The procedure is -- and I'm assuming you do want to know the procedure. The prisoner is strapped to a hospital gurney, equipped with an extension for his

arm. . A technician inserts a catheter needle into the prisoner's arm.

Then sodium thiopental, I guess that's how it's pronounced, is released intravenously. This is a common barbiturate, used as an anesthetic which puts the patient to sleep.

Then pavulon is next dripped intravenously and is a common, I guess it's -- pavulon is a common muscle relaxer. Here, there's ten times the normal dose. Then potassium chloride, a drug commonly used in bypass surgery that relaxes the heart, again, ten times the normal dosage.

I'm just giving you an idea -- I don't know exactly how many people have to administer it, but I'm giving you an idea of -- certainly a technician is needed.

THE CHAIR:

Senator Harp?

SEN. HARP:

Did your Committee during public hearing or in examining this matter discuss how often there are problems related to the administration of lethal injection and how long it takes the person to die in a normal case and in those cases where there are obstructions, a time to die?

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes, through you, Madam President.

To be quite honest with you, I don't remember any testimony of failed attempts, if you're -- so to speak.

THE CHAIR:

Senator Harp?

SEN. HARP:

Through you, Madam President.

In your discussion of the process, you didn't tell us how long it takes the person to die.

THE CHAIR:

Senator Upson?

SEN. UPSON:

Through you, Madam President.

I would have to guess 20 minutes to a half-an-hour, but that's a guess.

THE CHAIR:

Senator Harp.

SEN. HARP:

Through you, Madam President, as well.

My question, I guess, spoke to the humanity and I was hoping that -- which is the major point, I believe that you're asking us to consider as we change systems.

Could you compare for me the difference in the death through electrocution and lethal injection and how it relates to humanity? I heard that it was cheaper. I just wonder how it enhances humanity for the person who's put to death.

SEN. UPSON:

Through you --

THE CHAIR:

Senator Upson.

SEN. UPSON:

-- Madam President.

It's my understanding that the electric chair takes three to five minutes and whereas this is a quick procedure, quicker than that, even though I may have said something differently.

So that this is more -- this would be a more humane, obviously less painful and the person could be out within seconds of the beginning of the process, unconscious, that is.

Whereas electric chair takes -- is a longer process.

Again, exactly the minutes -- we're talking about minutes, but exactly how long, I don't have that answer.

THE CHAIR:

Thank you, Senator Upson. Senator Harp?

SEN. UPSON:

Thank you.

SEN. HARP:

Thank you, Madam President.

THE CHAIR:

You're welcome. Will you remark further?

Senator Colapietro.

SEN. COLAPIETRO:

Thank you, Madam President.

Through you, Madam President, I'd like to ask the proponent of the bill, being he's an attorney and I'm certainly not an attorney and I don't know the legalities of it.

But I'm concerned about one of the things that we do most up here and we do it very well and that's delay things or make things happen and take longer than what it normally would if we didn't do anything. And that - my feeling was that on the death penalty, it's also on this.

And my concern is and what I'm hearing from other attorneys that are a lot smarter than I am, that there's a possibility that this bill could be challenged.

And is it possible, I guess through you, Madam

President, is it possible that the death -- that the means of the lethal injection can be challenged and cause another delay based on the fact that -- of the people that are already on death row that could be changed over and the humane part.

Is there some technicalities that could cause a challenge if you were an attorney and wanted to delay this process?

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes, through you, Madam President to Senator Colapietro.

The death penalty that we passed, I think it was two weeks ago, will certainly be challenged when we change the weighing and mitigating -- the aggravating and mitigating factors and the weighing process.

This will be amended to that and effective date on all of them will be October 1st. So all these different provisions and we're going to amend it with other things today, are subject to a challenge as they will be.

Any time any death penalty provision is -- and, for example, New York State which just passed one, they're all subject to challenge, as was our death

penalty statute.

So, yes, even lethal injection, there's always a reason -- you can find a reason for challenging statutes.

THE CHAIR:

Senator Colapietro?

SEN. COLAPIETRO:

Thank you, Senator Upson. Well, based on that argument there that we know what we have now and it's probably a problem and it is a delay. But I've seen just putting another obstacle in the way and it doesn't matter to me. I was prepared to vote for lethal injection, because it doesn't matter how the process goes as far as I'm concerned whether it's humane or not, it doesn't make a difference to me.

But it does make a difference to me if we're going to be telling the truth up here and delaying processes or putting other obstacles in the way to possibly prolong the death penalty as it is.

And in my eyes, I see this as another obstacle to overcome and that's my -- based on that, I will vote against the bill.

THE CHAIR:

Questions on adoption of Senate Amendment A. Will you remark further? Senator Upson?

SEN. UPSON:

For the second time, just that the United States Supreme Court has found lethal injection to be constitutional. Thank you.

THE CHAIR:

Will you remark further? Will you remark further? If not, would the Clerk please announce the pendency of a roll call vote? Members and guests, please take your seat. The machine will be open.

THE CLERK:

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

Have all members voted? The machine will be locked. Clerk, please take a tally.

THE CLERK:

Total number of Senators voting, 35. Necessary for passage 18. Those voting "yea", 27; those voting "nay", 8.

THE CHAIR:

Senate A is adopted. Rule technical.

Senator Upson.

SEN. UPSON:

Yes, thank you. May -- have the Clerk call Senate Amendment B, which is LC05302?

THE CLERK:

Senate Amendment B, LC05302.

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes. Madam President, this next amendment has to do with what we call proportionality review, which, in fact, will eliminate lines 30, 31, 32 and 33 of the actual death penalty statute applying to appeals. All right?

In this case, Madam President, the -- what this provides for, right now a defendant, when a death penalty case is being reviewed by our own Connecticut Supreme Court, the provisions now say that in deciding the appeal, the Supreme Court must look into death penalty cases to determine -- all death penalty cases in the state, to determine whether or not a particular Connecticut sentence is proportionate. It's a review that's very extensive.

The Supreme Court in 1984 in Pulley versus Harris required and found in a 7 to 2 decision that this

proportionality review is not required.

This was a California case, Madam President and in it, the issue that they had before them was whether or not proportionality had been used with reference to an abstract evaluation of the appropriateness of a sentence for a particular crime.

And they found that because the statute in California that they were reviewing, by requiring the jury in California to find at least one special circumstance beyond a reasonable doubt, the statute limits -- and that the statute limits the death penalty to a small subclass of capital eligible cases.

In this case in Connecticut, remember, that our statute, our death penalty statute is limited to a small class of capital eligible cases.

They found, therefore, that that system was constitutional and that there was no need for proportionality review and that was the finding.

Therefore, since the Supreme Court of the United States has found that there's no need for this review, I've asked that this amendment be considered by this body.

Also like to remind you that last year this bill, which eliminates our Connecticut Supreme Court duty to a review in vacating death penalty sentences, was

passed in Judiciary and it also passed the House and, apparently it -- I guess it was tabled after the House passed it.

I would like to call for a roll call vote.

THE CHAIR:

The question is on adoption of Senate Amendment Schedule B. Will you remark further? Senator Kissel?

SEN. KISSEL:

Thank you very much, Madam President.

I would like to associate myself with the remarks of Senator Upson and speak in favor of the proposed Amendment.

And to those who may have concerns, I would just like to assure them that in reviewing LC05302, upon a sentence of death when the -- the Supreme Court will still conduct a review, it will still have completely within its authority its ability to correct errors that it believed occurred at the trial level and also it will be able to overturn such a decision if there's a determination by the Supreme Court that that decision was the product of passion, prejudice or any other arbitrary factor.

And, additionally, if the evidence failed to support the finding of an aggravated factor, that would also be grounds for overturning the decision.

So while pursuant to the court decision noted by Senator Upson, there are still several very important safeguards built into the system which would continue to allow this state to have this sentence imposed after a great deal of scrutiny.

And, therefore, with those precautionary measures in there and still having many grounds for the state Supreme Court to review the underlying decisions, I believe that not only is this proposal workable, but that it would be in the best interest of the citizens of the State of Connecticut.

And I would urge the members of this circle to support this Amendment. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Kissel.

Will you remark? Senator Looney?

SEN. LOONEY:

Thank you, Madam President.

Madam President, I rise in opposition to the Amendment. What the Amendment will do, as stated by Senators Upson and Kissel is to remove what is called the proportionality review.

Maintaining that in our statutes is crucial, especially in light of what we did two weeks ago in passing SB852, AN ACT CONCERNING THE DEATH PENALTY.

What this Amendment will do is introduce a further element of dangerous subjectivity going farther down the road that we began down two weeks ago by moving to a balancing of mitigating and aggravating factors, instead of the previously existing principle of cancelling the possibility of the death penalty when a mitigating factor was established.

What this does is remove yet another safeguard to make sure that we have equal application of justice in our state.

The proportionality review, the current law provides that the court shall affirm the sentence of death unless it determines the first factor was mentioned earlier that the sentence was a product of passion, prejudice or other arbitrary factor; the second, failing to find aggravating factor; or, third, that the sentence is excessive or disproportionate to the penalty imposed in similar cases considering both the circumstances of the crime and the character and record of the defendant.

Given what we did two weeks ago, Madam President, it is more important than ever that we maintain this in our statutes. Because what we did two weeks ago opened up the possibility of unequal application of the law.

The fact that under similar circumstances one

panel of judges might find that the balance tilts slightly toward death; another panel of judges or jury or perhaps even the same individuals on a different occasion, given the same facts, but given a more or less persuasive prosecutor or more or less persuasive defense attorney might go the other way and find a sentence that should result in a life sentence rather than death.

This language is at least another safeguard against that kind of subjectivity giving rise to different results under our statute. It is ultimately very, very important that we maintain this now, especially since we kicked out one of the underpinnings of safeguards in our statutes two weeks ago.

The death penalty should be difficult to apply. It should not be something that we can rush too easily. It is something that when and if it is applied in this state, we should all be confident that it was done with every possible care and safeguard. And this is another step in allowing for a free-fall and the greater possibility of error or anomalous results.

Madam President, there is in the play "A Man For All Seasons" by Robert Bolt, there is a piece of dialogue there where Sir Thomas Moore is talking with a young friend of his who -- and the friend is

criticizing Sir Thomas for relying upon the intricacies and protections of the law, rather than engaging in a direct confrontation with King Henry the Eighth and his views at the time regarding the roles of state and church.

And Sir Thomas, at the point, cautions him and says something to the effect that when you chase the devil into the forest and cut down all of the trees to prevent him from having a hiding place, where are you going to hide when he turns on you?

Those are the reasons for these protections and safeguards which wisdom builds into our law.

And if you take together what we did two weeks ago and what's proposed to be done here, it is a dangerous path and not a responsible one, Madam President.

So given the passage of SB852, we should certainly defeat this Amendment and retain this minimal element of protection to at least provide that additional safeguard against the dangerous subjectivity that we introduced two weeks ago.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator Looney.

Will you remark further? Senator Jepsen?

SEN. JEPSEN:

Thank you, Madam President.

I, likewise, rise in opposition to this Amendment and I do so as a proponent of the death penalty.

I think that Senator Looney has put his finger on the issue precisely that with the changes that have been made in the death penalty, which I supported, to take away the proportionality review introduces an element of potential uncertainty in the application of the death penalty, which would rob it of any chance down the road the death penalty being applied in a consistent, fair and not arbitrary manner.

I would go further than Senator Looney to point out that there's another proposed change in the death penalty that we'll be voting on sometime soon, murder of a person under 16 years of age.

The trend -- it is likely to pass and the trend over the last several years has been to, every year or two, to expand the field of capital crimes for which the death penalty can be applied.

And I speak, in part, on the -- agree with Senator Looney's core argument that this will introduce an element of unfairness and potential arbitrariness into the law, but to go even further, as we march down the road, it seems, forever expanding the death penalty, those to whom it can be applied and you take away

proportionality, you run the risk -- proponents of the death penalty, you run the risk of creating, perhaps not this year, but as we add more crimes for which the death penalty can be applied, arbitrariness that will lead to a decision of unconstitutionality.

And the result in whether you're handicapping it, you know, after yesterday's casino vote, I guess you can handicap a lot of things, whether the chances are one-in-two or one-in-three or one-in-five of our death penalty being ruled unconstitutional the next couple years, the effect to all of you who support the death penalty, is that sometime 11 years from now, 12 years from now, 13 years from now when the seven, eight, ten, twelve people who are on death row for crimes committed after enactment of this bill, they're all going to be set freed.

You run that risk. And it's a legitimate risk. And if you truly support a fair workable death penalty, you will join me in opposing this, not only for the reasons that Senator Looney has stated and he's absolutely right; it introduces an element of unfairness and arbitrariness that we should not have in our death penalty.

But mark my words, you run the risk down the road of creating a law that is constitutionally untenable.

So my recommend -- it's happened. In all likelihood after all of us have left this Chamber and we'll be turning it over to a Senate and a House of Representatives in the future, to clean up the mess that we're making, but we certainly run that risk.

THE CHAIR:

Thank you, Senator Jepsen. Senator Coleman?

SEN. COLEMAN:

Thank you, Madam President.

Through you, a question to the proponent of the Amendment.

THE CHAIR:

Please proceed.

SEN. COLEMAN:

Thank you, Madam President.

Senator Upson, can you tell us how many states in the nation have a death penalty?

SEN. UPSON:

I believe it's 28 -- 38 have a death penalty.

THE CHAIR:

Senator --

SEN. UPSON:

Including New York.

THE CHAIR:

Senator Coleman?

SEN. COLEMAN:

Thank you. And of those that have a death penalty, how many states have a statute that approximates our proportionality statute?

SEN. UPSON:

I --

THE CHAIR:

Senator Upson?

SEN. UPSON:

-- oh, this -- the one we're taking out?

I don't know the answer of how many people do -- how many states do not have this provision, is that what you're asking?

THE CHAIR:

Senator --

SEN. UPSON:

But, as I said to you, the Supreme Court said in 1984 that it was not a necessary provision to -- for the 8th Amendment, meaning whether or not it's cruel and unusual punishment.

THE CHAIR:

Senator Coleman?

SEN. COLEMAN:

Thank you, Madam President.

Notwithstanding that the Supreme Court has said

that it's not necessary, can you tell us whether there is a majority of states that have retained some form of proportionality?

SEN. UPSON:

I do not know --

THE CHAIR:

Senator Upson?

SEN. UPSON:

-- that answer -- through you, Madam President.

THE CHAIR:

Senator Coleman?

SEN. COLEMAN:

Madam President, I'm opposed to this particular Amendment and my information indicates to me that there are 24 states that have a proportionality statute that is consistent with the statute presently on the books in the State of Connecticut.

And in opposing this Amendment, I think I'd like to associate myself with the remarks of Senator Looney. I am disturbed about the great potential for disparate and inconsistent results if this particular safeguard is removed.

I don't think that a death penalty is something that we should lightly consider. I don't think it's -- it should be easy to put a person to death, because we

are a society that values life, I think we should be very deliberative.

And we should maintain and preserve whatever safeguards, on an issue like this, that exist.

So for this reason, Madam President, I think I would urge my colleagues in the circle to vote against this particular Amendment and I will certainly be voting against it. Thank you.

THE CHAIR:

Thank you, Senator Coleman. Senator Sullivan.

SEN. SULLIVAN:

Thank you very much, Madam President.

I rise to associate myself with Senator Jepsen's remarks, in particular.

For me and I guess for each of us, we must draw the lines here somewhere. This Amendment is the line that is drawn in my mind between punishment and politics.

I am embarrassed as a supporter of capital punishment that we feel the need to push this issue to the limits as this Amendment does, not at the level of sentencing, not at the level of trial, but at the level of one measure of reasonable review to assure that a workable death penalty has been imposed fairly and proportionally to the crime and to the acts and to the

record.

It bothers me that we cannot, as we should have last week, had this debate on capital punishment, taken what I believe is, in fact, the proper step that I voted for now three years in a row and move along to the Governor a workable death penalty, without somehow feeling the need to also do this and this and this and whatever the other issues that are going to come before us today are.

In fairness, I think this is a wrong step. And I think it does an injustice to those of us who argue that a reasonable death penalty should be part of the law of Connecticut. And I think it is ammunition to those who oppose capital punishment. And I'm sorry to see it here today.

And I would urge us to reject it and go on with the business of what we supported last week.

THE CHAIR:

Thank you, Senator Sullivan. Will you remark further? Will you remark further? Senator Prague?

SEN. PRAGUE:

Thank you, Madam President.

I would like to associate myself with the remarks of Senator Sullivan.

I supported the death penalty, but after listening

to this debate, frankly, I don't see how anybody in this Chamber, supporters of the death penalty, could support this Amendment that seems so cruel and vindictive.

I believe in the death penalty under certain circumstances. I have always supported it. But to be vindictive and bypass the necessary protections, I think is something that this Chamber ought not to support and I thank you, Madam President.

THE CHAIR:

Thank you, Senator Prague. Will you remark further? Will you remark further?

If not -- Senator Upson?

SEN. UPSON:

Yes, just one comment, if I may and I appreciate the different comments from the -- on both sides.

The -- it still says when you appeal -- this is just the penalty itself, the sentence of death; we're not talking about the other part. "The Supreme Court shall affirm the sentence of death, unless it determines that, one" -- this is what's -- if we take out proportionality review, this is what will remain, "one, that the sentence was a product of passion, prejudice or any other arbitrary factor; or, two, the evidence fails to support the finding of an aggravating

factor specified in subsection H."

I still feel that -- I realize this is not required, proportionality is not required by the Supreme Court. But there are still safeguards built in when you appeal the actual sentence of death. Thank you.

THE CHAIR:

Thank you, Senator Upson. Senator Harp.

SEN. HARP:

Madam President, I -- through you. I want to ask a question, aside from the fact that, through you, to the proponent of the bill.

Aside from the fact that in California, this issue was not necessary according to the Supreme Court, what is the other public policy reason that you are proposing that we don't consider whether or not there have been other acceptable punishments that were less than the death penalty in determining whether or not a death penalty should be imposed or has been imposed fairly?

What are the other reasons besides just this one particular California case?

SEN. UPSON:

Well --

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes, through you, Madam President.

It's not just -- it's not a California case, it was the review of the California statute by the Supreme Court. So it's the Supreme Court of the United States talking to us, not just the California court.

And a decision was made by, as I say, a 7 to 2 decision that California statute which only applied to a subclass of capital eligible cases, and so far we only have a subclass.

As you know, I may be wrong in my statistics, but the last 300 murders we had, maybe six of them would apply or five of them apply to our death penalty statute. So it's drawn right now.

I understand what Senator Jepsen's talking about. If this is expanded, the subclass gets bigger, but right now the very small subclass.

And so the California statute was limited to that and the relevant factors, the jury -- what the jury had to go through in California, was very limited and they had to find at least one special circumstance beyond a reasonable doubt. And that's what was required in California.

And lastly, the Supreme Court made a suggestion,

not a suggestion. They said as we have acknowledged in the past, there could be no perfect procedure for deciding in which cases governmental authority should be used to impose death.

I'm not saying this is a perfect statute. I'm suggesting that the Supreme Court has ruled that the 8th Amendment to the Constitution of the United States which says, cruel and unusual punishment, that if a state does not require for this kind of review, does not make it a state that violates the 8th Amendment of cruel and unusual punishment.

THE CHAIR:

Senator Harp?

SEN. HARP:

Madam President, through you.

I'm just wondering though, are you saying that to have this particular section in our law makes it more difficult to impose the death penalty so that as, in California, we can change it?

I just don't understand the public policy reason, aside from the ability to do it now, because the Supreme Court found in California that they had a situation which you believe to be similar to ours, what this does to enhance what has already been done by this particular House of the General Assembly. And how, in

fact, from a public policy point of view, this achieves something.

So I'm trying to understand, aside from making this confirm with whatever is going on in California or can go on, from a public policy point of view, what are you trying to achieve through eliminating this, deleting this language?

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes, through you, Madam President.

I believe that the public policy in this case would be something where the Supreme Court does not have to spend an inordinate amount of time determining every possible case that came before it or is before it and whether or not it is disproportionate in the sentencing and the type of crime, the character of the crime.

So there's no question that going through the hoop, so to speak, this does take a much, much longer time for the Supreme Court to go through their deliberations.

Through you, Madam President, thank you.

THE CHAIR:

Senator Harp?

SEN. HARP:

Madam President, I don't believe I have any other questions.

But one of the points that I want to make is that there have been studies around the death penalty throughout the United States. And one of the things that has been clear time and time again, that in most other states, aside from Connecticut, because we've made it so very difficult to impose the death penalty, that there is in this country a very color sensitive and racist driven system of who gets the death penalty.

There have been studies that have shown time and time again that this is true.

I believe that as we make it more and more easy to -- to enforce a death penalty where, in fact, one person commits a crime that may be very similar to another person, that we can't assure that we won't have a color-blind system which we currently have.

I think that we have to guard against some of our -- the things that affect us as human beings that may make us look at the way in which one culture commits a crime differently to the way in which another culture commits a crime.

Until we, as a state, till we as a country can assure that justice applies across the board for all

people, I don't believe that we can trust ourselves not to use every measure available to us to assure fairness.

I don't believe that deleting this insures that. I believe that it opens us up to that part of us which, in fact, has been negative and destructive and I think that we have to use everything within our means when we are exacting the highest price we know, which is another person's life, to assure that we are at least fair and that it is at least consistent.

THE CHAIR:

Thank you, Senator Harp. Will you remark further?  
Senator Jepsen?

SEN. JEPSEN:

If I might, just very briefly follow up on Senator Harp's point. I think she has raised an excellent point, one that was inadequately addressed, with all respect by proponents of this legislation.

If the proportionality requirement has teeth and means anything apart from the other points cited, points one and two in the statute about arbitrary discriminatory behavior, it means very simply that when two people commit the same crime, the same kind of capital crime, that they ought to get equivalent treatment.

It seems to me that this gets to the issue of the fundamental fairness of our judicial system and this is especially important in the instance of capital crimes.

And what we're hearing from proponents of this legislation, is actually two contradictory arguments; one, well, there's plenty of room anyways for the Supreme Court to deal with any kind of discrimination. That would, as an argument says, in effect, that the proportionality requirement means nothing.

If the proportionality argument means nothing, why worry about it. But, in fact, it does mean something. It does stand for something above and beyond certain forms of discrimination. It also says that if you got two cop killers, treat them the same.

And what we're hearing from proponents of this legislation is, that in arguing in favor of this bill, that they would be removing this requirement just to make it a little quicker, a little easier for the Supreme Court to do their work.

In fact, the Supreme Court has reviewed this case extensively in the Ross case and the amount of time required by the Supreme Court in future reviews will be fairly minimal.

And so what, in effect, proponents of this bill are saying is that they don't really care whether

people who commit the same heinous crime, get treated the same or differently and all they want to do is chop a little bit of time off of when the execution may or may not take place.

It would seem to me that that kind of procedural argument on a point that has been very well articulated by Senator Harp and Senator Looney, Senator Sullivan on fundamental fairness, that such a short-term procedural argument has to give way against the substantive need for a criminal justice system in meting out capital punishment does it in a way that doesn't discriminate.

THE CHAIR:

Senator Williams?

SEN. WILLIAMS:

Madam President, I wish to associate my remarks with Senator Jepsen, Senator Looney and especially the remarks of Senator Harp and the questioning there.

Certainly I think we have to be concerned whether sentences are disproportionate or excessive on a case-by-case basis.

And let me just give you one quick real life example. Recently in the State of Texas there was a murder committed; two people were implicated. The prosecutor brought a case against one individual in a separate trial. It was found in that trial that that

individual had committed the act of murder and the other was an accessory and accomplice.

The prosecutor then brought an action against the second individual. Incidentally in the first case, the defendant was sentenced to death for capital murder.

In the second trial against the so-called accomplice, the prosecutor changed his mind and decided that based on new evidence, the second defendant was actually the perpetrator, was actually the murderer.

Now, in the case of the first action against the first defendant who was sentenced to die, we would have to say that in that case the sentence was not the product of passion, prejudice or other arbitrary factor. And we would have to also say or assume in that case that number two, which we leave in place in the law here, would not apply either.

However, when the prosecutor proceeded in the second case against the second defendant, now charging that that defendant had pulled the trigger, the jury disagreed and the defendant was sentenced to a lesser charge.

Even though the prosecutor had strongly argued in the second case that the first defendant was not the perpetrator, was not the murderer, the State of Texas in January, killed that defendant by lethal injection.

Do we open ourselves to that kind of outcome by dismissing the analysis of whether a penalty is excessive or disproportionate?

Absolutely we do and therefore, I will vote against this Amendment.

THE CHAIR:

Thank you, Senator. Senator Bozek.

SEN. BOZEK:

Thank you, Madam Chair -- President, sorry.

Madam President, there were some arguments made in this body that I'm sure have been made prior to my arriving at this forum, at this circle. And I think the arguments that were brought up with regard to proportionality and discrimination, I think that in due fairness to everybody else that was here, to stand up and make generalized statements without presenting statistics, facts for the rest of us who will be ready and prepared to adopt those particular statements is not a fair argument on a matter as serious this.

It's arrived here before, it's been here before and to stand up and use the same language that was used in prior -- prior legislative measures that we've adopted, I think is unfair and it's -- to us and it's not fair to not be prepared with documents and data when this thing has occurred at this circle prior to

this particular session.

And I think that on any other type of session that deals with this type of matter, broad statements on matters of this importance should have substantiated statistics and data and examples.

Thank you very much.

THE CHAIR:

Thank you, Senator. Senator Smith?

SEN. SMITH:

Thank you, Madam President

I rise in support of this bill and we've heard a lot of nice arguments here today about one thing and the next.

And, you know, in layman's parlance, this section is a technicality. This is the kind of thing that people in the street don't understand how it is the legislatures and courts renew the argument time over time on appeal about whether this is fair or that's fair. And they throw out sentences and people don't understand why.

This is part and parcel of what we did two weeks ago. This is part of making Connecticut's death penalty a workable death penalty statute.

I respect the arguments and the individuals who are opposed to the death penalty. That is their

prerogative to be opposed to it. But for people to suggest that somehow by dealing with these -- these sections of the statute which the voters, the people who want the death penalty, would understand to be technicalities rather than getting involved in the legal jargon.

You hear lawyers standing up here and talk about this case and that case and this point and that point. The point is we have hamstrung our courts. They are not able to impose the death penalty. If you support the death penalty, this is exactly the kind of thing that we ought to be streamline.

This is the kind of -- this is the kind of technicality that prevents our courts from using the kinds of sentences that we decide as a government to implement. If our policy is to have a workable death penalty, we should have one.

I would also note that the statute still provides, even without this section, that in the event of prejudice or arbitrary decision, the court still has the ability to throw out the sentence.

We're not saying here that if there is wildly arbitrary decisions that the court isn't going to have the ability to review those things or that if there isn't prejudice shown, the court won't have the -- the

court will have the ability to review those things.

We're not suggesting that it do anything else.

And then, finally, I'd just like to say that the death penalty is something that touches a lot of raw nerves and it's been a difficult thing for a lot of us to come to a conclusion to.

This is something that the state clearly wants and I've decided to support it after -- after reviewing it very carefully and I'd like to make sure that everybody understands that if you're opposed to the death penalty, that's fine. But don't -- don't hide behind technicalities like this.

Thank you, Madam President.

THE CHAIR:

Thank you, Senator Smith. Will you remark further? Will you remark further?

If not, would the Clerk please announce the pendency of a roll call vote? The machine will be --

THE CLERK:

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

The machine will be open.

Have all members voted? If so, the machine will be locked. Clerk, please take a tally.

Will the Clerk please announce the tally?

THE CLERK:

Total number of Senators voting, 35. Those required for passage, 18. Those voting "yea", 22; those voting "nay", 13.

THE CHAIR:

Senate B is adopted.

Senator Upson?

SEN. UPSON:

If I may, Madam President, Senate Amendment C, LCO, if you'd call it, 4070.

THE CLERK:

Senate Amendment C, LCO4070, offered by Senator Upson.

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes. And Madam President, if I may explain, this would add to the list of capital felonies, number nine, murder of a person under 16 years of age.

We've had hearings on this, Madam President and

we've had examples in Connecticut of heinous murders of people -- of children who are unable to -- the most defenseless of our citizens.

I would suggest that number nine -- and, by the way, this would be the last death penalty -- this will be incorporating all the death penalty provisions for this year in this bill. And the number nine, sounded reasonable to ask that this be included as many other states have the same for children under 18 -- under 16.

Many, we have many statutes in the State of Connecticut where single-out children in the sexual assault area and tender ages in rape and other things, based on their age.

And I think certainly in Connecticut recent history that this should be subject, a person who does kill a child under 16, should be subject to the capital penalty provisions and the death sentence. Thank you.

I'd also ask for a roll call.

THE CHAIR:

Senator Upson, would you move adoption?

SEN. UPSON:

Yes.

THE CHAIR:

Thank you. The question is on adoption. Will you remark? Senator Kissel?

SEN. KISSEL:

Thank you, Madam President. I rise in support of the Amendment.

It's unfortunate what we've been witnessing on television, listening to on the radio, reading in our newspapers, regarding the state of affairs in the State of Connecticut.

One thing that I feel is extremely important is that we have to make a statement that the lives of our children and our young people in this great state of ours are extremely worthy of the utmost protection. We have seen unseemly developments and, in particular, in our urban areas, but not limited thereto spreading out to our urban and rural areas where the taking of life is becoming all too common.

Quite often and perhaps it's because in some measure we lack role models. We have seen to some extent the disintegration of the family. But for whatever reason and I think it's important for us as a legislature to explore those root causes of the problem.

But for whatever reason we are seeing the utilization of young people in crimes, crimes over drugs, crimes over theft, violence. And what we're trying to do is state that if a young person under 16

years of age is murdered and let's not mistake the fact that we are talking about murder, that this is something that we would consider worthy of analysis in determining whether the ultimate sanction has to be imposed.

And it is clearly something that we should not approach lightly. It carries with it the utmost burden. But certainly it is a class of individual in our state like all the other classes that Senator Upson reiterated that we should, as a society, say is worthy of our utmost protection.

And, therefore, I would urge my fellow Senators to support the Amendment. Thank you, Madam President.

THE CHAIR:

Thank you. Senator Looney?

SEN. LOONEY:

Thank you, Madam President.

Madam President, I rise in opposition to the Amendment.

First of all, the murder of a person under the age of 16 years is certainly a heinous and terrible crime if it is done under the circumstances that would bring it under the purview of our capital felony statute, as are all of the other currently -- eight currently enumerated capital crimes.

But what this begins to do is what Senator Jepsen mentioned in his earlier comments, is, it's an expansion of the death penalty, a further category beginning to spread the parameters even more of the kinds of cases under which the State of Connecticut will take a life.

And that is dangerous, especially given what we did two weeks ago and what we did just now in the previous amendment of knocking out some of the unpinning of objectivity in our statutes.

What concerns me about this, Madam President, is that there is a certain element of arbitrariness to this. Certainly the case, I think, where a child of perhaps 10-years-old is horribly killed by an adult, that might very well -- you might make that argument that that is certainly heinous enough to be included in the category of the capital felonies.

But what about the gradations on the margin, Madam President. What about a case where you have two people who are peers, perhaps members of the same organization, friends. One of them is 18-years and a day and the other is 15-years and 364 days. Under this, that -- the perpetrator could be tried for a capital offense, if the defendant -- or rather, if the victim were two days older or if the perpetrator were

two days younger, it would not come under this statute as proposed.

So there is a dangerous element of arbitrariness here. That's one of the problems about this legislation, Madam President, is that it is not sufficiently nuanced or gradated to deal with the real situations in which the court encounters these kinds of horrible cases.

There should perhaps be some gradation. If the murderer is some degree of age older than the victim or some other circumstance, rather than baldly stating as it is without the kind of nuances in which we encounter this in real life. This could give rise to very, very dangerous and disparate results.

And for that reason, because this proposal is not sufficiently ripe or nuanced, I urge its rejection at this time. Thank you, Madam President.

THE CHAIR:

Thank you, Senator Looney. Senator Sullivan?

SEN. SULLIVAN:

Thank you, Madam President.

Occasionally, rarely, but occasionally I rise to ask a question to which I genuinely do not know the answer, nor do I have a particularly strong opinion. And this is one of those occasions.

As I look through what we have crafted over the years as those circumstances for which capital punishment may be imposed, this addition stands out in stark contrast to all of the others.

A little bit of the question I'm going to ask in a moment is gotten to by Senator Looney's remarks and that is the sort of wonder I have in my mind about the value judgment that we make in saying that there is something profoundly, this is death penalty, after all, profoundly different between the life of a person aged 16 and the life of a person older than age 16.

And what is it about that act that would add a specific offense for which capital punishment can be imposed. We have the death, causing the death of a public safety officer or corrections officer. We have murder for hire, we have mass murder, we have murder in the course of other offenses or by individuals who have committed previous serious offenses, all of which ring with some consistency.

And apart from the notion that we must send some front page message, what, if I may through you, Madam President, to Senator Upson, so distinguishes the death of a 16-year-old and a 15-year-old or a 15-year-old minus a month or a day, that would cause us to add this type of crime to the list of capital punishment?

SEN. UPSON:

Thank you very much, Madam President. Through you to Senator Sullivan?

THE CHAIR:

Senator Upson?

SEN. UPSON:

It is an arbitrary -- first of all, it's under 16. If I miss -- I don't think I did mislead you there, but -- of course, that's also the same cut-off for juvenile offenders; someone who's under 16 is a juvenile offender.

We use age, I hate to use the word discrimination, but age variations on all our statutes, whether or not they reach, you know, if it's -- whether or not they're one day away or over. I mean, that's true in every single statute we have.

So that we picked this -- this would coincide with the age of a juvenile, obviously. When a juvenile becomes, at least in adult court, when they're 16-years-old. So anyone under 16.

If that's arbitrary, that's true with most of the statutes we pass. The feeling is that no one should be allowed to kill a child, one. And I'm not here to throw that at you.

What I'm here to say is that -- that because of

this problem, because the -- of our society and the violence and because they're the most vulnerable, that they should be added as a class, no matter how arbitrary the age cut-off is. Thank you.

THE CHAIR:

Senator Sullivan?

SEN. SULLIVAN:

Thank you, Madam President.

I do thank Senator Upson for his response. It is, I think the -- as good as argument as can be made on behalf of this distinction.

And I do understand the earlier part of his response which goes to the age of the offender. And we will, I think later today, I believe, perhaps, have an opportunity to deal with that issue. That will be an issue in which I will probably concur with what is being offered in this Chamber.

It still bothers me that we are using an age distinction. I happen to have profound caring for the elderly and I know we have an aggravating circumstance that deals with older people. But we don't say that the murder of a frail, 90-year-old is something that merits capital punishment.

We don't say that the murder of a -- apparently, as of today, the murder of a 16-and-day-year-old will

merit capital punishment. Instead, we say 16, 17, pick a number, pass a bill. Thank you.

THE CHAIR:

Senator Bozek?

SEN. BOZEK:

Thank you, Madam President.

Some of the arguments that have -- used here, I think sound well and they ring well. But there was a remark made earlier by Senator Smith concerning if you're for the death penalty or opposed to the death penalty, we're all up here to safeguard and protect the innocent and have civil laws. But the -- I'm not quoting him directly.

But don't be -- don't hide behind some of the arguments that are being put forward.

If any of us who are up here and it so happened that a family member was murdered or killed, or a family member, maybe to some people wasn't murdered, but in a drive-by situation, the police call up and their son or their daughter who was driving by for some other reason, because these things happen in all neighborhoods, was killed, that person using the weapon, the gun, was that negligence? He didn't intend to kill or she didn't intend to kill?

I think our society has got to be -- has grown to

be so complex that some of these situations cannot be separated. And unfortunately it's come down to that society has to have the other foot come down and we have to demonstrate that young people and everybody else that deals with frustration and anxiety and difficulties and the pressures that exist in a modern world like ours, have to further safeguard their own protection by being more careful with what they do and what they -- and how they conduct their lives.

One more example is, to me it makes -- it doesn't make much difference if two young men, one who is a day over 16 and one who is a day under 16 confront two more young men who are a day under 16 and a day over 16. And the day over 16 happens to shoot the young man who's a day under 16. And the young man who's a day under 16, happens to shoot the young man who's a day over 16.

When we get these two guys in court, we're going to have -- we're going to have such a -- such difficulty and a problem to determine what's the difference between these four young men, who actually, probably might have known each other.

Now we can draw all the lines we want, but we're up here on something that's so important to us today and it's life and we have to, have to, we have to look

out after ourselves. We have to say if I'm in the wrong place at the wrong time doing the wrong thing and the hammer comes down or the other foot comes down, it -- there's too many circumstances happening.

We can't protect every single circumstance. We can do our very best. And I do give a lot of credit to a number of my colleagues in the circle who are trying to protect the innocent and making sure that our laws are civil as they can be.

But from my position and from a lot of communications that I've had with my constituents and people even outside my area, it's the frustration of trying to deal with all the many circumstances and lines that are in the sand, are too frustrating and too complex and they want some, so to speak, some action.

And so, Madam Chairman, thank you very much.

THE CHAIR:

Thank you, Senator Bozek. Will you remark further? Will you remark further?

Senator Upson?

SEN. UPSON:

Just for the second time and I may make two comments.

I respect Martin Looney and the other people with their philosophical differences. And I think they have

a lot of guts to come up and talk about this and I respect that. If you don't believe in the death penalty, you have to be consistent.

But I will say, whatever we pass this session, if any -- if there's any deterrent at all, death of a child, that will be known by criminals. Thank you.

THE CHAIR:

Thank you, Senator Upson. Will you remark further? Will you remark further?

If not, I'd ask that all members please take their seat. Would the Clerk please announce the pendency of a roll call vote? The machine will be open.

THE CLERK:

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

Have all members voted? If so, the machine will be locked. Clerk, please take a tally.

THE CLERK:

Total number of Senators voting, 34. Those necessary for passage, 18. Those voting "yea", 26;

those voting "nay", 8.

THE CHAIR:

Senate Amendment C passes.

SEN. UPSON:

Madam President?

THE CHAIR:

Senator Upson.

SEN. UPSON:

And, lastly, Senate Amendment D, LCO4947.

THE CLERK:

Senate Amendment D, LCO4947, offered by Senator  
Upson.

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes, I move its passage, by the way, this  
Amendment and ask for a roll call vote.

THE CHAIR:

Questions on passage. Will you remark?

SEN. UPSON:

Yes. What this does, Madam President, it says  
this Act shall take effect, that is all the current  
amendments which become the Act, October 1st, 1995 and  
shall be applicable to executions carried out on or  
after said date. Which means the lethal injection can

be used for anyone on death row.

We do have authority for that. When the hanging statute was changed to electrocution, that was also allowed to those people who were on death row at that time or what do they call it, The Row.

Also, we have an OLR report. And I might read, "A change in the execution method for current death row inmates is likely to require a modification of judgments rendered by the Superior Court. Based on our examination of three of the five pending" -- and it's now six, by the way -- "death penalty cases, it would appear the judgments in death penalty cases expressly provide for the punishment of death inflicted by electrocution. For the change in execution method be applied to current death row inmates, their judgments must be reopened and modified to provide for punishment by lethal injection."

And it cites this can be done under Superior Court Criminal Rule 935, which states that "the judicial authority may at any time correct an illegal sentence or other illegal disposition."

I would like a roll call.

THE CHAIR:

Questions on adoption of Senate Amendment D. Will you remark further? Senator Sullivan?

SEN. SULLIVAN:

Thank you, Madam President.

If I may, through you, to Senator Upson. And it may have been answered, though -- I thought it was answered and then the OLR reading confused me.

SEN. UPSON:

You're right.

SEN. SULLIVAN:

In your first remark, Senator Upson, you indicated that when the state historically substituted death by electrocution for death by hanging --

SEN. UPSON:

That's correct.

SEN. SULLIVAN:

-- it was deemed that the subsequent statute could apply to individuals awaiting execution and who had been sentenced to death under the prior law?

SEN. UPSON:

Through you, Madam President.

That is our understanding and researched by our staff.

THE CHAIR:

Senator Sullivan?

SEN. SULLIVAN:

Thank you, Madam President.

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Was that true also of cases where the specific sentence was death by hanging?

THE CHAIR:

Senator Upson?

SEN. UPSON:

Apparently the cases say that it's constitutionally fair to -- because the punishment is a lesser -- assuming that lethal injection is a lesser form of punishment than electrocution, but the judgments would have to be modified.

THE CHAIR:

Senator Sullivan?

SEN. SULLIVAN:

Thank you. And that gets to the OLR reading.

To the extent of having to modify the judgments for individuals in Connecticut expressly sentenced to death by electrocution and who are awaiting the carrying out of that sentence, will that modification - - do we have any idea of what that modification process is like, what -- how long it is likely to take and what appeals it might create?

THE CHAIR:

Senator Upson?

SEN. UPSON:

Through you, I have no idea.

THE CHAIR:

Senator Sullivan?

SEN. UPSON:

That is of the length and time that it would take to change the form of execution, so to speak, or penalty, let's call it.

THE CHAIR:

Senator Sullivan?

SEN. SULLIVAN:

One last question with Senator Upson's kind indulgence.

Would it then be possible that an individual who had exhausted all recourse and was awaiting execution who had been sentenced to be executed by electrocution, might now, once again, extend and therefore avoid the death penalty as a consequence of imposing lethal injection retroactively.

THE CHAIR:

Senator Upson?

SEN. UPSON:

I would like to answer that, but it's going to be Upson on criminal law. It's my -- I don't think so, but I don't want to -- I cannot stand before you, through you, Madam President, and say that.

In other words, does it open up the whole process

again for everything? My opinion, it doesn't, but I do not consider myself the final authority.

THE CHAIR:

Senator Sullivan?

SEN. SULLIVAN:

Thank you, Senator Upson. Thank you, Madam President.

SEN. UPSON:

Thank you very much.

THE CHAIR:

Will you remark further? Senator Kissel.

SEN. KISSEL:

Thank you, Madam President.

I rise in support of the Amendment. I would like to associate myself with the remarks of Senator Upson.

And in relation to the concerns voiced by Senator Sullivan, once again, I really sincerely believe that lethal injection is a more humane form of imposing the death penalty than the electrocution. And it's probably a very similar debate as the one that took place when they were debating whether to switch from hanging to electrocution.

And because I believe it is more humane, for those who seek retribution by the death penalty, they may not be satisfied with this. But for those of us who simply

are seeking justice in the most humane way possible, it seems to me fundamentally fair that those who are on death row right now would have that option of seeking lethal injection.

Thank you, Madam President.

THE CHAIR:

Thank you. Will you remark further? Will you remark further?

If not, I'd ask the members to take their seat. Would the Clerk please announce the pendency of a roll call vote? The machine will be open.

THE CLERK:

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

An immediate roll call vote has been ordered in the Senate. Will all Senators please return to the Chamber?

THE CHAIR:

Have all members voted? If so, the machine will be locked. Clerk, please take a tally.

THE CLERK:

Total number of Senators voting, 34. Necessary for passage, 18. Those voting, "yea", 25; those voting "nay", 9.

THE CHAIR:

Senate Amendment D passes.

Senator Upson.

SEN. UPSON:

I move passage of the bill as amended with Senate Amendment, I believe they're called A, B, C and D.

THE CHAIR:

Questions on adoption of the bill as amended.

Will you remark further?

If not, again, members please take their seat.

Would the Clerk please announce a roll call vote. The machine will be open.

THE CLERK:

A roll call vote has been ordered in the Senate.

Will all Senators please return to the Chamber?

A roll call vote has been ordered in the Senate.

Will all Senators please return to the Chamber?

THE CHAIR:

Have all members voted? If so, the machine will be locked. And Clerk please take a tally.

THE CLERK:

Total number of Senators voting, 34. Necessary for passage, 18. Those voting "yea", 26; those voting "nay", 8.

THE CHAIR:

The bill passes.

Senator Fleming.

SEN. FLEMING:

Madam President, at this time I would ask for a suspension for the immediate transmittal of this item to the House.

THE CHAIR:

Without objection, suspension so ordered.

Would the Clerk please return to the Call of the Calendar?

THE CLERK:

On page 5, Calendar No. 75, SB888, AN ACT CONCERNING FOOD SOLD AT BAKE SALES. And the Clerk is in possession of an Amendment.

THE CHAIR:

Senator Kissel.

SEN. KISSEL:

Thank you, Madam President.

And I have to note that from my days in watching Monty Python, I always liked it when they said, "And now for something completely different."

Madam President, I move acceptance of the Joint Committee's favorable report and passage of the bill and would the Clerk please call the Amendment.

THE CLERK:

**4.**

**38 House of Representatives Proceedings,  
Part 3, 1995 Session, pp. 1080-1118.**

Total number voting	146
Necessary for Passage	74
Those voting Yea	87
Those voting nay	59
Those absent and not voting	5

DEPUTY SPEAKER PUDLIN:

The bill, as amended, passes. We will return to the Call of the Calendar.

Will the Clerk please call Calendar 73?

CLERK:

On Page 1, Calendar 73, Senate Bill Number 855, AN ACT CONCERNING LETHAL INJECTION, as amended by Senate Amendment Schedules "A", "B", "C" and "D". Favorable report of the committee on Judiciary.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura, before you begin --

REP. JARJURA: (74th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative, if you will wait one second. We welcome all of you back to the Chamber. The rules continue. If you are going to stay, you will have to be quiet. We are going to try to have some proper decorum for the remainder of this debate and hopefully move it along quickly. Representative Jarjura.

REP. JARJURA: (74th)

Thank you, Mr. Speaker. Mr. Speaker, I move adoption of the Joint Committee's Favorable Report and passage of the bill, in accordance with the Senate.

DEPUTY SPEAKER PUDLIN:

The question is on passage and adoption. Will you remark?

REP. JARJURA: (74th)

Yes, thank you, Mr. Speaker. Mr. Speaker, I will be calling a series of amendments, Senate "A", "B", "C" and "D" which make up the corpus of this bill and the Clerk has in his possession, LCO Number 5828, previously designated Senate "A". I would ask that he please call and I be allowed to summarize.

DEPUTY SPEAKER PUDLIN:

Would the Clerk please call LCO 5828, Senate "A"?

CLERK:

LCO Number 5828, previously designated Senate "A"  
offered by Senator Upson.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura has asked leave of the Chamber to summarize. Hearing no objection, proceed, sir.

REP. JARJURA: (74th)

Thank you, Mr. Speaker. Mr. Speaker, what this

amendment does is replace the File Copy in terms of replacing Connecticut's system for inflicting the death from electrocution to lethal injection. The bill goes on to prescribe that the Commissioner of Corrections shall prescribe the procedures in consultation with the Commissioner of Public Health and Addiction Services. But the basic corpus is that this is replacing electrocution with lethal injection and I move adoption.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark?

REP. JARJURA: (74th)

I think it is self explanatory, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Will you remark further on Senate "A"?

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you, Mr. Speaker. I rise in opposition to Senate "A" which would allow for execution by lethal injection and this is commonly proposed as a more humane means of execution. I have looked into it to ascertain what in fact the effect is of lethal injection.

And I have obtained descriptions of certain instances where lethal injection has been used in order

to effectuate execution in various states around the country. I would just like to read a couple of those descriptions, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Proceed.

REP. SCALETTAR: (114th)

Thank you. On May 24, 1989 in Texas, Steven McCoy had such a violent physical reaction to the drugs, heaving chest, gasping, choking, etc. that one of the witnesses who was a male, fainted, crashing into and knocking over another witness. Houston Attorney Karen Zellers who represented McCoy and witnessed the execution thought the fainting would catalyze a chain reaction. The Texas Attorney General admitted the inmate "seemed to have a somewhat stronger reaction" adding "the drugs might have been administered in a heavier dose or more rapidly".

On January 24, 1992 in Arkansas, Ricky Rae Richter. It took medical staff more than fifty minutes to find a suitable vein in Richter's arm. Witnesses were not permitted to view this scene, but reported hearing Richter's loud moans throughout the process.

On March 10, 1992 in Oklahoma, Robin Lee Parks. Parks had a violent reaction to the drugs used in the lethal injection. Two minutes after the drugs were

administered, the muscles in his jaw, neck and abdomen began to react spasmodically for approximately 45 seconds. Parks continued to gasp and violently gag. Death came eleven minutes after the drugs were administered.

In many cases it takes nearly an hour for the technicians to find a vein in order to administer the lethal injection. I think it is important for people to understand what this change actually means in terms of what is called a more humane death penalty. And I urge rejection of the amendment. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Belden.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I certainly can agree with Representative Scalettar that in the process of carrying out a death penalty there is no easy way. There is no painless way. But I think we have to look at where we are at. Representative Scalettar did not describe what happens when someone is electrocuted. I haven't seen it personally, but I certainly have read about it. Not fool proof either. Terrible reactions. If you have ever seen anybody hit by lightning or whatever, you get an idea.

This is a proposal that I have offered in past years and in fact, it was passed in past years and vetoed as part of the death penalty bill. Mr. Speaker and members of the Chamber, I think this is, if we are going to have the death penalty, the most appropriate means of carrying out that penalty in today's world.

First of all, we do not, at this time, have electric chairs set up and operational. This amendment, in fact, would be upon passage, as I recall or there is another amendment that would make it on passage. It is a reasonable amendment. It is going to save the State money. In my estimation, it is going to be a more compassionate way to carry out the death sentence and I would urge the members to support the amendment.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Will you remark further on Senate "A"? Will you remark? Representative Radcliffe.

REP. RADCLIFFE: (123rd):

Thank you, Mr. Speaker. Very quickly, Mr. Speaker. First of all, I would ask that when the vote be taken that it be taken by roll.

DEPUTY SPEAKER PUDLIN:

This vote will be taken by roll.

REP. RADCLIFFE: (123rd):

Thank you, Mr. Speaker. Very quickly on this and we have heard and I know many members could undoubtedly recite instances where the ultimate penalty has been imposed and where something has gone wrong and the individual, however deserving of that ultimate penalty he may have been, have been subjected to needless pain and discomfort.

This bill, this lethal injection bill, seeks to bring Connecticut in line with 28 other states. Twenty-eight other states have adopted this particular method as opposed to public hanging which was still the law until recently in some states or the electric chair and I would hope that by adopting this amendment we wouldn't have sound bites in future campaigns or public utterances that talk about rigging up old sparky and that sort of thing. That is totally inappropriate to this sort of situation. No one enjoys the idea or the act of putting another individual to death particularly those people, judges, prosecutors, jurors, correction officials who were involved in the process.

If this amendment could be advocated very quickly, I think it would be the best that could be said for it is that it is more humane and less expensive in that order and I urge adoption on that basis.

DEPUTY SPEAKER PUDLIN:

Will you remark? Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I rise to oppose the amendment in that it is the bill effectively with regard to lethal injection. Not because I don't want to more humane, but it seems to me that -- as I was groping for the word earlier, one of my colleagues gave it to me. I think taking somebody's life intentionally and with purpose, whether under the guise of law or otherwise is distasteful for want of a better word. Distasteful to such that it should be hard for us to do. We should not clean it up, sanitize it, put a green or white coat on it and make us think that it is another medical procedure.

It seems to me that in fact the use of lethal injection is not for the individual to whom it will be administered because I don't know that anybody thinks it is humane when their life is being taken against their will, by whatever means. But it for us. It is for us, we who administer it and for us, we who have to watch it. It is for us who want to think that it is just a simple medical procedure. And to make it so clean and easy makes it easier for us to do and the workable death penalty does not even prick our conscience any more.

And sooner or later we just maybe confined to just an easier way to administer it. So we will make it little wider and broader of a death penalty because after all, it is just another hospital procedure. For those reasons, Mr. Speaker, not because of my lack of empathy for the person to whom it is being administered, but for my lack of empathy for ourselves, that I oppose this amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Will you remark further on Senate "A"? Will you remark? If not, staff and guests to the well of the House. Members, please be seated. The machine is now opened.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber.

DEPUTY SPEAKER PUDLIN:

Have all members voted? If you have voted and your votes are properly recorded, please check the board to make sure your votes are properly recorded. The machine will be locked. The Clerk will take the tally. The Clerk will announce that tally.

CLERK:

Senate Amendment Schedule "A" to Senate Bill 855

Total Number Voting 145

Necessary for Adoption 73

Those voting Yea 106

Those voting Nay 39

Those absent and not voting 6

DEPUTY SPEAKER PUDLIN:

Senate "A" is adopted. Representative Jarjura.

REP. JARJURA: (74th)

Thank you, Mr. Speaker. Mr. Speaker, the Clerk has in his possession an amendment previously designated Senate Amendment "B", LCO Number 5302. Would the Clerk please call and may I be allowed to summarize?

DEPUTY SPEAKER PUDLIN:

Clerk, please call LCO Number 5302, designated Senate "B".

CLERK:

LCO Number 5302, previously designated Senate Amendment Schedule "B" offered by Senator Upson.

DEPUTY SPEAKER PUDLIN:

The gentleman has asked leave of the Chamber to summarize. Hearing no objection, proceed, Representative Jarjura.

REP. JARJURA: (74th)

Thank you, Mr. Speaker. Mr. Speaker, what this amendment does is make changes to Title 53a-46(b) of the General Statutes. For those who were here and listened to the previous discussion under the bill, you will -- as Representative Radcliffe eloquently did, went through sort of the trilogy. First you have a conviction beyond a reasonable doubt of a capital felony murder. He listed those. Then you end up in the penalty or the sentencing phase which was the topic of the last bill and the major discussion there about aggravating factors, mitigating factors. If there is a sentence of death at that phase, Connecticut law provides, under 53a-46(b) an automatic right of appeal to the State Supreme Court.

This is where this amendment is effectuating change. Under the scheme presently in the legislature, it prescribes that the State Supreme Court shall affirm the sentence of death unless it determines, one, that the sentence was the product of passion, prejudice or arbitrary factors; two, that the evidence fails to support a finding of aggravating factors or; three, that the sentence is excessive or disproportionate to similar cases.

This is where the amendment proposes to eliminate number three from the appellate review and I move

adoption.

DEPUTY SPEAKER PUDLIN:

On adoption. Will you remark? Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you. Mr. Speaker, I rise in opposition to this amendment. A question to the proponent of the amendment.

DEPUTY SPEAKER PUDLIN:

Proceed, Madam.

REP. SCALETTAR: (114th)

Thank you. Through you, Mr. Speaker. Would this change in any way preclude the Supreme Court from conducting a proportionality review? Through you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Jarjura.

REP. JARJURA: (74th)

Through you, Mr. Speaker. While I don't have the complete expertise in this particular area, my understanding is that this would not preclude the Supreme Court from an independent review.

REP. SCALETTAR: (114th)

Mr. Speaker, this amendment proposes to take out one of the most important safeguards currently in our

death penalty statute. It is a provision that is commonly found in death penalty statutes and it is extremely important because it gives the court the opportunity to weigh the sentence given in one case with sentences given in other cases to make sure that they are not disproportionate. This is an important safeguard because of racial discrimination in death penalty cases and political discrimination as well as variations among juries.

The bill that we have passed today in this body gives juries more discretion in imposing the death sentence. This proportionality review by the court becomes even more important in light of that change in the law. I urge rejection of the amendment.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Will you remark? Representative Radcliffe.

REP. RADCLIFFE: (123rd):

Thank you, Mr. Speaker. Mr. Speaker, I rise in support of this amendment. And I do so because this is probably as important as any amendment that we are going to deal with this afternoon. In fact, this amendment proportionality, elimination of proportionality review passed this General Assembly last year and like all other amendments to make the

death penalty statute a workable statute, both at the trial and at the appellate level, was vetoed by the Governor.

Now, what we are really talking about here and I would refer the members of the Chamber to File Number 82, what we are really talking about is eliminating language in lines 204 to lines 208 for a consideration that the Supreme Court may consider on appeal. In the Ross case, the Supreme Court expressly declined to review the issue of proportionality and is waiting for the second phase of the penalty phase.

Now these four lines in our bill produced a mountain, a literal mountain of paperwork from both the State and the public defender's officer on this issue of proportionality. These are the briefs on proportionality alone. This is not all of the other factors that we talked about. This is simply the brief on proportionality and it isn't necessary and in fact, in most instances, it is cumulative because the safeguards that the previous speaker mentioned are already in the existing statute and will remain in the existing statute if this very important amendment is adopted.

Now proportionality is not required by the United States Supreme Court. In fact, when this General

Assembly put proportionality into the statute in 1980, it was prior to the 1984 case by the United States Supreme Court which indicated that proportionality in this sense was not essential or was not necessary for a death penalty statute to pass constitutional standards.

The standards that would remain in the law, and I want to emphasize that they will remain in the law, if this amendment is approved, is that the Supreme Court, as required will review the case. Not only the law, but also the facts in a death penalty case and the Supreme Court can set aside a death penalty conviction if it finds that that conviction was the result of passion, prejudice or some other form of arbitrary factor. So the safeguards that we are talking about regarding a runaway jury, a jury influenced by passion rather than by the evidence that was before it, a court allowing evidence outside the courtroom to be presented to that jury, those safeguards are already here.

The second phase of the Supreme Court's review, which stays in the law, is that the Supreme Court will look at the aggravating factors which we haven't changed and the court will still have to decide whether or not those aggravating factors are supported by the evidence before it beyond a reasonable doubt. So, the Supreme Court takes the transcript and then determines

whether the aggravating factors have been proven on the basis of the evidence. Those are the safeguards that remain in the law. If this mountain of appellate briefing is dispensed with. We aren't dispensing with constitutional rights. We aren't dispensing with due process requirements. We aren't dispensing with rights guaranteed under the constitution. We are simply dispensing with additional paperwork.

Now, there are two kinds of proportionality and this is what really confuses the debate. Many states do have proportionality. What they have is a traditional proportionality review in which you examine the punishment and then through actual jury verdicts compare that punishment to the individual in the case before the court. This was the standard, traditional review, for example that the United States Supreme Court reviewed used in the Georgia case, the Crocker case in which an individual had been sentenced to death for a rape that did not result in murder. The Supreme Court said that that was disproportional using traditional proportionality standards. That standard remains in our law. It doesn't have to be stated in the law, but it remains in the law because it is part of the 8th Amendment protection against cruel and unusual punishment. That is what the Supreme Court

held in that particular case.

What we don't have to have is the type of proportionality that produced this paperwork and which the public defender's office argued on appeal in this case and that is comparative proportionality where you review not only the individual case, but other cases that may have gone to a jury verdict, other cases that may have been resolved and it creates a convoluted appeals process that does the Supreme Court little good, that does not protect a defendant's substantive rights, but only puts the State to an additional and frankly, a very expensive burden not required by either 8th Amendment protections or by cases decided by the United States Supreme Court.

Now, I have read the Public Defender's memorandum on this and frankly, I find it rather unpersuasive. All that our Supreme Court said in Ross is that there must be an opportunity for meaningful appellate review and I suggest that meaningful appellate review is provided if the Supreme Court reviews the evidence to see if a finding beyond a reasonable doubt is supported in aggravating factors and has the ability to set aside a verdict if it was the result of prejudice, passion or other arbitrary factors.

There is simply no reason to leave this particular

provision in the law and to provide another hurdle which is a hurdle not required by either the federal or the state constitution in this area.

So I urge support of this amendment and would ask, Mr. Speaker, that when the vote on this amendment is taken that it be taken by roll.

DEPUTY SPEAKER PUDLIN:

For you, Representative Radcliffe, we will take it by roll. Will you remark further on Senate "B"? Will you remark? If not, staff and guests to the well of the House. Members, please be seated. The machine is open.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber.

DEPUTY SPEAKER PUDLIN:

If the members have voted and your votes are properly recorded, the machine is locked. The Clerk will take the tally. And will now announce it.

CLERK:

Senate Amendment Schedule "B" to Senate Bill 855

Total Number Voting 145

Necessary for Adoption 73

Those voting Yea 87

Those voting Nay 58

Those absent and not voting 6

DEPUTY SPEAKER PUDLIN:

"B" is adopted. Representative Jarjura.

REP. JARJURA: (74th)

Thank you, Mr. Speaker. Mr. Speaker the Clerk has in his possession an amendment previously designated Senate Amendment "C" LCO number 4070. I would ask that the Clerk please call and I be allowed to summarize.

DEPUTY SPEAKER PUDLIN:

Clerk please call LCO 4070, Senate "C".

CLERK:

LCO Number 4070 previously designated Senate Amendment Schedule "C" offered by Senator Upson.

DEPUTY SPEAKER PUDLIN:

The gentleman has asked leave to summarize.  
Hearing no objection, proceed, sir.

REP. JARJURA: (74th)

Thank you, Mr. Speaker. Mr. Speaker, what this Senate Amendment "C" does is, again this is all sort of related, our discussions today, this would amend Section 53a-54(b) of the General Statutes. This is the outlining the various capital felony murders. And was outlined before, this is the first step along the way. This is a murder of -- it includes such things as a

murder of a police officer or a fireman in the line of duty, the murder of two or more people, the murder of somebody who has been kidnapped. This would add to the current eight categories, a ninth category, the murder of a person under sixteen years of age. And I move adoption.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark?  
Representative San Angelo.

REP. SAN ANGELO: (131st)

Thank you, Mr. Speaker. Mr. Speaker, I rise in support of this particular amendment. And I must say that as Representative Jarjura pointed out, there are only certain ways where you can get the death penalty and what we try to do in part of that is to protect certain vulnerable members of our society. One of those being correction officers, police officers, and what we are doing here today with this amendment is protecting the most vulnerable part of our society, our children.

A very good friend of mine asked me to support this particular bill where she had two nieces that were viciously murdered, abused and then murdered in Texas. And this particular bill is sort of dear to the heart. You know, in today's society, so many of our children

are being abused. We have heard recently with the sad events of what is happening with DCF right now. And things that are going on all around our country, children are being raped, children are being murdered, they are being kidnapped and I think it is time that we send a clear message that it has to end.

And truly, I don't think that a life of a thirteen or a twelve year old is necessarily more valuable than a life of someone that is eighteen or nineteen, but truly that child of ten and twelve is much more vulnerable to those in our society that place no value whatsoever on human life and I happen to be someone who thinks that a child is special. Someone who has many, many dreams and a long life that they want to fulfill and I think we must do whatever we can as a General Assembly to protect those children, to see to it that they aren't murdered, that they aren't raped, to make sure that a parent can allow their child to play at the local playground or to be out in the front yard or to be able to walk down the street to his school. Truly there has got to be a message that we will take severe action against those that would harm our children.

So I ask that the General Assembly support this amendment. Frankly, I think it is long overdue and it deserves support. We must protect our young.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Will you remark? Representative Chase.

REP. CHASE: (120th)

Thank you, Mr. Speaker. After the words of my colleague in support of the amendment, I did hesitate whether or not I was going to speak, but since you did call on me, I will address this amendment.

There is no one in this body who is not interested in protecting children. Right now we only give or we only authorize capital felony convictions to law enforcement officials, hired guns, read that hit man, two time murderers, murder while in jail, drug dealers, murder while committing rape, and now we are going to add children under the age of sixteen.

I don't think I know what the difference between a child of age fifteen is to a child aged sixteen. My colleagues say that well you have to start somewhere. Murder is murder is murder is murder. Who are we to play Solomon? We have given the courts the right to the changes we have made to fairly determine and weigh your aggravating and mitigating circumstances.

But we sit here and we try to play Solomon. That well, okay, why don't we do it for this heinous crime, but we are going to sort of look the other way for that

crime.

I understand where we are going and I am going to vote for it. But I hope that in the future we can treat this in a more even handed matter. Justice is blind, supposedly and I don't see the difference between the housewife in the kitchen who might be 35 murdered to have her children come in and see her lying in a pool of blood versus one of the children. I don't understand the difference and I don't think there is a difference.

It is important that we pass this bill. So we need to pass this particular amendment, but I hope that is something that we might consider in the future. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

And thank you, sir. Will you remark further on Senate "C"? Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I rise this oppose this amendment also. And I think the record should be clear why. And I think Representative Chase hit on some of those reasons why. Some of you may know that my granddaughter who comes here periodically with me who is now six and one-half is probably one of the greatest gifts I have ever had as well as my grandson who now

will start coming here. And you know, I can't imagine a time whether they be six and one-half or seventeen or twenty-one that my love and my caring will not be as great as it is now. And to have, as I indicated in the earlier debate, something happen to them would make me want retribution. I know it. And for the State to begin to decide which child is worth more than another child and start choosing when retribution will be met out and otherwise, seems to me, to diminish what childhood means to all of us. You are always a child and you know, until my mother's own death, I was her son. I was her child and it never changed. And so that relationship doesn't change and age doesn't make the difference.

I also oppose it for another reason. If you recall our earlier debate, we talked about how narrow our death penalty was and how there can be no mistakes and I warned, we were just weighing an aggravating and extending it. We are extending the potential risk for us to make human mistake and error and once again, we are doing it again.

We are doing it again as this bill, as amended, passes, we are putting in jeopardy, I think, any law that we do have -- again, I don't want to be misinterpreted. I do not support a death penalty

because I don't think it is an effective tool for society, but the fact for those that even do, I think this amendment, prior amendments, not only are they unfair to other children, but I think they are unfair to even the citizens of the State because I think it looks like something it is not.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Will you remark further? Will you remark further on Senate "C"? Representative San Angelo.

REP. SAN ANGELO: (131st)

Thank you, Mr. Speaker and I don't want to belabor the time here or the point, but I want to make just one thing very clear. I thought I was very specific the first time, but perhaps not.

I don't think there is a difference in the 35 year old and the five year old as to the value of their life. I want to make it very clear there is an issue of self defense here. And it is much easier for someone who is twenty or twenty-five or thirty-five or forty to defend themselves than it is for a five year old child. And that is the issue and I think that they deserve special protection. Just as our police officers deserve special protection because they deal

with criminals on a daily basis.

It is not an issue of whose life is more important. It is an issue of protecting people in our society that are more vulnerable than other people. That is the issue that is here before us with this amendment. Truly, people who cannot defend themselves deserve a little added protection by the State of Connecticut.

DEPUTY SPEAKER PUDLIN:

Will you remark further? Representative Caron.  
Good evening, sir.

REP. CARON: (44th)

Good evening, Mr. Speaker. Mr. Speaker, I am not sure I heard whether or not the vote be taken by roll, but if that has not been requested, I would request it when the vote is taken that it be taken by roll.

DEPUTY SPEAKER PUDLIN:

Then the vote will be taken by roll.

REP. CARON: (44th)

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Will you remark further on Senate "C"? Will you remark? If not, staff and guests to the well of the House. Members, be seated. The machine is open.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll. Members to the Chamber, please.

DEPUTY SPEAKER PUDLIN:

If the members have voted and if the votes are all -- then I will wait. If the members have all voted and if the votes are properly recorded, the machine will be locked. The Clerk will please take that tally. And announce it.

CLERK:

Senate Amendment Schedule "C" to Senate Bill 855	
Total Number Voting	147
Necessary for Adoption	74
Those voting Yea	90
Those voting Nay	57
Those absent and not voting	4

DEPUTY SPEAKER PUDLIN:

"C" is adopted. Representative Jarjura.

REP. JARJURA: (74th)

Thank you Mr. Speaker. Mr. Speaker, the Clerk has in his possession LCO Number 4947 previously designated Senate Amendment "D". I would ask that the Clerk please call and that I be allowed to summarize.

DEPUTY SPEAKER PUDLIN:

Clerk, please call LCO 4947, Senate "D".

CLERK:

LCO Number 4947 previously designated Senate "D".

Offered by Senator Upson.

DEPUTY SPEAKER PUDLIN:

The gentleman has asked leave to summarize.

Hearing no objection, proceed sir.

REP. JARJURA: (74th)

Mr. Speaker, this is a simple amendment. It simply states that the effective date of this action shall be October 1, 1995 and that Section 1 which is the lethal injection will be applicable to executions carried out on or after October 1, 1995. I move adoption.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark?  
Representative Belden, sir.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. Mr. Speaker, just to get the record straight and I am going to ask the Representative that brought out the amendment a question after. Senate Amendment "B" indicates that the act will be effective on passage except Sections 1 and 2 shall take effect October 1. Sections 1 and 2 being Senate "A", I believe since Senate "B" starts with Section 3. So at the end of the adoption of

Senate "B" we have debilitating effect on passage. As far as Section 3 was concerned, but Sections 1 and 2 took effect on October 1. Now we have Senate "D" that essentially says after Section 2 that this action shall take effect October 1, 1995. And Section 1 shall be applicable to executions carried out after said date.

Mr. Speaker, through you to the gentleman, it is my interpretation of this that Senate "D", the language in Senate "D" would only have an affect as relates to Sections 1 and 2. And through you Mr. Speaker, to the gentleman, would that be his interpretation, as well?

REP. JARJURA: (74th)

Through you, Mr. Speaker, that would also be my interpretation.

REP. BELDEN: (113th)

Thank you, Mr. Speaker. I did want to get that in the record for the LCO action later on that what in fact the effect of Senate "D" had on the rest of the file was clear at least in the minds of the members of this body.

Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Thank you, sir. Representative Jarjura.

REP. JARJURA: (74th)

I would ask that when the vote be taken, it be

taken by roll call.

DEPUTY SPEAKER PUDLIN:

The vote will be taken by roll. Will you remark further on Senate "D"? Will you remark further? Staff and guests to the well of the House. Members be seated. The machine is open.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber.

DEPUTY SPEAKER PUDLIN:

Have all the members voted? And are your votes recorded as you intended them to be? If that is true, the machine will be locked. The Clerk will take a tally. The Clerk will announce that tally.

CLERK:

Senate Amendment Schedule "D" to Senate Bill 855	
Total Number Voting	140
Necessary for Adoption	71
Those voting Yea	92
Those voting Nay	48
Those absent and not voting	11

DEPUTY SPEAKER PUDLIN:

Senate "D" is adopted. Will you remark further? Will you remark further on the bill, as amended?

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Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you, Mr. Speaker. Mr. Speaker, the Clerk has LCO 5975 in his possession. Will he call and I be permitted to summarize?

DEPUTY SPEAKER PUDLIN:

Will the Clerk please call LCO 5975, House "A"?

CLERK:

LCO Number 5975, designated House "A" offered by Representative Scalettar.

DEPUTY SPEAKER PUDLIN:

The lady has asked leave of the Chamber to summarize. Madam, proceed.

REP. SCALETTAR: (114th)

Thank you, Mr. Speaker. Mr. Speaker, this amendment would preclude participation in executions by physicians, nurses and other health care professionals. I move adoption of the amendment, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

The question is on adoption. Will you remark?

REP. SCALETTAR: (114th)

Yes. Mr. Speaker, the bill that has been proposed with respect to lethal injection leaves the procedure up to the Commissioner of Corrections.

DEPUTY SPEAKER PUDLIN:

Representative Scalettar, I am sorry to interrupt.  
It's there now. It wasn't there before.

REP. SCALETTAR: (114th)

But it should be amendment --

DEPUTY SPEAKER PUDLIN:

Alright. It is House "A".

REP. SCALETTAR: (114th)

Right. Thank you, Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Excuse the interruption, Madam.

REP. SCALETTAR: (114th)

Certainly. Some states do require physician participation and attendants at executions. And in some instances, medical staff personnel at correction institutions have been sanctioned for refusing to participate in executions. It is currently a violation of the professional ethical standards of physicians, nurses and other health care professionals to participate in executions. This standard has been adopted, among other organizations, the American Medical Association, the American College of Physicians, the American Nurses Association, and the American Public Health Association.

In order for us to have physicians, nurses and these other health care professionals participate in

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And that is not something that we should have.

And that our current statute, both in the establishment of the principle of the mitigating factor being controlling and also in the concomitant principle of the proportionality review to be undertaken under appeal, those are necessary procedural protections that are built into a responsible statute.

Both of those underpinnings would now be knocked out with the bill we passed two weeks ago and with this, if we take final action on it now. And as Representative Colapietro pointed out, the memo from Attorney Weller of the Chief State's Attorney's Office points out that the irony is that our current statute has finally been upheld, has withstood the test of Constitutionality in the Ross case. We would now begin a whole new round of litigation on the new statute.

So perhaps it's ironic that those of us who have grave doubts about the death penalty are raising questions about this bill because it probably will mean a delay in executions for a number of years but, down the road, could mean easier access to executions and also to anomalous results and inconsistent results from case to case. And that is a real danger.

And it also seems to me to be ironic, Madam President, that many people in this Chamber and in the

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House who are supportive of this bill are generally very, very reluctant to grant enhanced powers to government, are very much leery of governmental power, are concerned about overreaching of governmental power, and, yet, want to make it easier to clear away the obstacles to impose the ultimate State power, the power of life and death, the power of the ultimate sanction.

And that seems to me to be a dangerous thing, Madam President, and I urge once again that on final thought the Chamber reflect reasonably and reject this bill before it's too late.

Thank you, Madam President.

PRESIDENT RELL:

Thank you, Senator Looney.

Will you remark further? Will you remark further?

Senator Harp.

SENATOR HARP:

Thank you, Madam President. Capital punishment is not a deterrent to crime. Few death row inmates gave any thought to the possibility of a death sentence when they committed their crimes. They didn't even expect to get caught.

We've heard from religious leaders across the spectrum of religions that killing people is wrong. It's wrong when murderers do it and it's wrong when the

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State does it.

Mistakes often happen in administering the death penalty and they're made, as well, in execution. Of the 237 executions since the death penalty was reinstated in 1976, 18 have been botched. In our new system, which is the, quote, "humane" system of killing, lethal injection, it is, as well, cruel.

John Wayne Gacy waited 18 minutes to die because of a clogged delivery tube attached to his arm. Ricky Ray Rechter died moaning as technicians kept him tied down while they searched for good veins for an hour.

Long ago in America, criminals were tarred and feathered. We stopped this cruel punishment not because we sympathized with killers but because we are a civilized and honorable people.

Eventually, since we've expanded the law and made it more subjective, innocent people will be killed here in Connecticut. Our criminal justice system is far from perfect. In 1970, 48 people -- since 1970, 48 people have been released from death row because of evidence of their innocence.

The death penalty is administered with a racial bias. Since 1988, the government has sought the death penalty for 36 drug kingpins, four whites, four Hispanics and 28 blacks. However, 75 percent of those

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charged under the statute are white. Over the last 18 years, 88 black men have been put to death for killing whites, only two for killing blacks.

In the final analysis, the death penalty is an expensive, racist, cruel and arbitrary means of collective revenge. It does little or nothing to deter crime and can lead to the execution of innocent people.

We have something that is going to become a law that will make it even more difficult to do. So for the public relations, I say why don't we look to that within us which is greater, that within us we know can change and people can change, and abandon the death penalty?

I have one other thought. We talked about lethal injection. And we as a Chamber passed it. We didn't talk about the people who had to actually perform the lethal injection and what we do to relieve their consciences. We may say that it's not really killing. But, in fact, we've asked them to kill on our behalf. Therefore, I dissent.

PRESIDENT RELI:

Thank you, Senator Harp.

Will you remark further?

Senator Scarpetti.

SENATOR SCARPETTI:

Thank you, Madam President. Madam President, I wasn't planning to get up today to speak because I had spoken on the death penalty when we voted on it. But what I hear and what really upsets me is we talk about the cruelty to the murderer who is being electrocuted and let's not let him suffer. Somebody just had to stay 18 minutes, a lethal injection didn't work and he suffered for 18 minutes. And all I can think of are these people, these victims that were murdered and God knows what was done to them before they were killed. And no one seems to be concerned about that.

And again I say it would have to be a deterrent. We have not tried it. But we have to do something. We have to say to these people that are going out killing innocent people, "You can't do that. Because if you do that, you will be punished. You will be put to death like the people you are killing." And the people that are going to be put to death, Madam President, they're going to be on trial. They are going to have people defending them. And this isn't going to be just anybody and everybody. They're going to have to be proven guilty.

And give me an argument as to why. But don't give me the argument that we don't want the murderer to suffer because I would like to know how many victims

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suffered and how long they suffered before they died. And I think my colleagues should remember that when they're thinking about the death penalty.

Thank you.

PRESIDENT RELL:

Thank you, Senator.

Will you remark further?

Senator Penn.

SENATOR PENN:

Thank you, Madam President. I, like my colleague, had not intended to speak again on this matter. I think right now a lot of the voices are falling on deaf ears.

But just in response to my colleague's last remark, as I said last time, I still don't understand if we're talking about justice or revenge. If we're talking about revenge, is what I'm hearing an eye for an eye, a tooth for a tooth? We'll all end up blind and toothless. Then let's say that.

Nobody around this Circle wants to see anybody's family maimed, murdered or put in jail. That's not our intent. I don't think anybody in this Circle who had a loved one who happened to be on the other side of the fence or on death row would not try to petition the Governor to spare his or her life. And I can

prh

Senate

Wednesday, April 12, 1995

understand that and I can sympathize with that.

But if we're talking about justice, then why aren't we putting the same energy in those preventive measures instead of sprouting all these platitudes about taking a life? Why is America so bent on the amount of blood that we shed instead of the amount of lives that we save? That I have a problem with.

And if we can't send that message out from the General Assembly and through the streets of Bridgeport and Hartford and these other towns, the rest of world still doesn't get why America's hands are always so quick on the blood lever. And England outlawed the death penalty years ago. Why is it America is so hell-bent on taking a life rather than saving one?

That, Madam President, I have a problem with. And not because I'm from any urban city. Violence across America is violence everywhere. Nobody around this Circle is immune from violence.

And again I say to my colleague, nobody here sympathizes with a murderer. But what type of message do we send to our young people if the last bastion of hope and when the General Assembly and the Senate says we can't move any further? That's it. There's no putting or breathing life back into a mistaken person who has been executed or somebody on death row who has

**5.**

**Appendix of Items from the Permanent Bill  
File Archive**

## **5.1**

**Raised Senate Bill No. 855 (1995), introduced  
1/31/1995**

STATE OF CONNECTICUT

Raised Bill No. 855 Page 1 of 2

Referred to Committee on **JUDICIARY**

LCO No. 3862

Introduced by (JUD)

General Assembly  
January Session, A.D., 1995

AN ACT CONCERNING LETHAL INJECTION. 11

Be it enacted by the Senate and House of Representatives in  
General Assembly convened: 13  
14

Section 1. Section 54-100 of the general statutes is repealed  
and the following is substituted in lieu thereof: 15  
16

The method of inflicting the punishment of death shall be by  
[electrocution] LETHAL INJECTION IN ACCORDANCE WITH PROCEDURES  
PRESCRIBED BY THE COMMISSIONER OF CORRECTION. The warden of the  
Connecticut Correctional Institution, Somers, is directed to  
appoint a suitable person to perform the duty of executing  
sentences of the court requiring the infliction of the death  
penalty. Such person shall receive, for such duty, such  
compensation as is determined by the directors of the Connecticut  
Correctional Institution, Somers. When any person is sentenced TO  
DEATH by any court of this state having competent jurisdiction,  
[to be electrocuted,] he shall, within twenty days after final  
sentence, be conveyed to the Connecticut Correctional  
Institution, Somers, and such punishment shall be inflicted only  
within the walls of said institution in Somers, within an  
enclosure to be prepared for that purpose under direction of the  
warden of the Connecticut Correctional Institution, Somers, and  
the board of directors thereof, which enclosure shall be so  
constructed as to exclude public view. Besides the warden or  
deputy warden and such number of guards as he thinks necessary,  
the following persons may be present at the execution, but no 17  
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others: The sheriff of the county in which the prisoner was tried 37  
and convicted, the board of directors, the physician of the 38  
Connecticut Correctional Institution, Somers, the clergyman in 39  
attendance upon the prisoner and such other adults, as the 40  
prisoner may designate, not exceeding three in number, 41  
representatives of not more than five newspapers in the county 42  
where the crime was committed, and one reporter for each of the 43  
daily newspapers published in the city of Hartford. 44

Sec. 2. Section 54-148 of the general statutes is repealed 45  
and the following is substituted in lieu thereof: 46

The support of prisoners in community correctional centers, 47  
sentenced to the Connecticut Correctional Institution, Somers, or 48  
[to be electrocuted] SENTENCED TO DEATH, shall be paid by the 49  
state. 50

STATEMENT OF PURPOSE: To prescribe lethal injection, rather than 53  
electrocution, as the method of inflicting the death penalty. 54

[Proposed deletions are enclosed in brackets. Proposed 56  
additions are all capitalized or underlined where appropriate, 57  
except that when the entire text of a bill or resolution or a 58  
section thereof is new, it is not capitalized or underlined.] 59

**5.2**

**Letter, OCSA to Judiciary Chair re  
proportionality dated 3/3/1995**

MAR 03 '95 09:57 STATE'S ATTORNEY'S

P.1/12



JOHN M. BAILEY  
CHIEF STATE'S ATTORNEY

State of Connecticut  
DIVISION OF CRIMINAL JUSTICE

OFFICE OF  
THE CHIEF STATE'S ATTORNEY

340 QUINNIPIAC STREET  
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WALLINGFORD, CONNECTICUT 06492  
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March 3, 1995

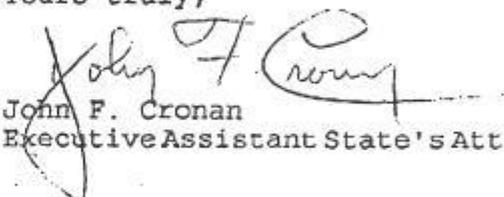
Representative Michael Lawlor  
Chairman  
Judiciary Committee  
Legislative Office Building  
Hartford, CT 06106

Dear Representative Lawlor:

Per your request, please find attached a proposal that addresses the issue of proportionality in death penalty cases.

The language of the proposal was drafted by the staff of the Division of Criminal Justice's Appellate Unit who have had extensive experience in death penalty issues.

Yours truly,

  
John F. Cronan  
Executive Assistant State's Attorney

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LEGISLATIVE REFERENCE SECTION

MEMO TO: JOHN CRONAN, A.S.A  
FROM: HARRY WELLER, A.S.A.  
RE: 1995 DEATH PENALTY PROPOSALS  
DATE: MARCH 3, 1995

**PROPOSALS FOR TOUGHENING CAPITAL SENTENCING SCHEME**

This year, as in the past, the legislature is considering proposals for making it easier to impose the death penalty here in Connecticut. Recognizing that Connecticut has the "most focused" capital sentencing scheme in the country, legislators have sought to remove what is considered the greatest barrier to the imposition of the death penalty-- the automatic imposition of a life sentence when any one mitigating factor is found-- and to replace it with a system wherein mitigating factors can be weighed against aggravating factors. This change, it is presumed, will make it easier for juries and three judge-panels to impose the death penalty.

Although weighing proposals are one mechanism available for making it easier to impose the death penalty, there are other areas within the capital sentencing scheme that, in the opinion of both trial and appellate prosecutors, can be changed to make the process of seeking and imposing the death penalty easier in the first instance, while retaining certain qualities that make the statute easy to defend during post-conviction litigation. Proponents of the death penalty may look to build on the recent decision in State v. Ross, 230 Conn, 189 (1994) which affirmed the constitutionality of all aspects of Connecticut's present capital scheme, with a more

workable statute that corrects deficiencies in a practical manner yet maintains the structural integrity that has passed its first test.

If, however, a "weighing statute" is adopted the legislature must draft it simply without the many accoutrements found in prior proposals. With these general principles in mind the following proposals are made.

**A. Changes That Will Improve the State's Ability to Seek and Impose the Death Penalty**

**1. Changes Regarding Capital Crimes & Aggravating Factors**

Unlike most states, Connecticut's scheme requires two tiers of proof beyond a reasonable doubt before the state can seek the death penalty. Thus, one of the primary difficulties prosecutors face when seeking the death penalty is not overcoming mitigating factors, but rather proving that the defendant has not only committed a capital felony; General Statutes §53a-54b; but has also committed one of the listed aggravating factors. General Statutes §53a-46a(h). Although the two-tiered system (capital felony plus aggravants) has many positive attributes and should be maintained, the primary impediment to a death penalty could be ameliorated by providing for additional capital felonies and additional objective aggravating factors which reflect problems that are occurring on our streets and in our towns. The following are some practical examples:

**Additions to General Statutes §53a-54b**

- A.** It should be a capital felony to murder a witness to a crime either before or after the

person has testified.

- B. A statute should be fashioned to make it a capital crime to kill to further gang activity.

**Additional Aggravating Factors for General Statutes §53a-46a(h)**

Prosecutors would be greatly aided by the creation of additional aggravating factors that will address some of our most serious social concerns. For example:

- A. It should also be an aggravating factor to have committed more than one form of capital felony (i.e. Michael Ross committed kidnap/murder and rape/murder of two victims). Where both are proved the state need only offer the convictions as an aggravating factor. In the Ross scenario, each capital felony would act as an aggravant for the other capital felonies.
- B. It should be an aggravating factor to kill a child under a certain age.
- C. It should also be an aggravating factor that a convicted capital felon has committed another murder (i.e. a serial killer). Thus, in the guilt phase the state must prove a capital felony, while in the penalty phase the state must prove beyond a reasonable doubt that the defendant committed another murder, even if the defendant has not been convicted of that murder as an independent crime.

- D. It should be an aggravating factor to commit a capital crime in furtherance of or to conceal a drug transaction or enterprise.

The thrust of these proposals is to target some of our most egregious crimes while also isolating and identifying some of our most vicious criminals with the goal of permitting an effective and more flexible method of pursuing the death penalty. All of this can be accomplished while maintaining Connecticut's two tiers of narrowing and its third tier of dispositive mitigating factors that contribute to the scheme's enhanced appellate defensibility. Experience indicates that any added avenues for proving aggravation will do more to insure capital verdicts than the difficulties perceived by the fact that, when it comes to mitigating factors, we are a non-weighing state.

#### 2. Changes Regarding Mitigating Evidence

A change should also be made in subsection (c) of General Statutes Sec. 53a-46a(c) regarding the evidence used to prove mitigating factors. Although it is constitutionally necessary to admit "any" relevant evidence in mitigation regardless of the its admissibility under the rules of evidence( as stated in the present statute), neither side should be able to avoid the rules of evidence where compliance is reasonably possible. State v. Ross, was reversed primarily because the trial court refused to admit expert reports and records proffered by Ross without the authenticating testimony of the expert who created them, despite the fact that he was readily available to the defense. Therefore, rules of evidence regarding mitigating factors should be suspended

"only when there is no reasonable method for admitting mitigating evidence consistent with the rules of evidence."

### 3. Eliminating Proportionality

One of the most time consuming and useless appendages of the present capital sentencing scheme is General Statutes §53a-46b(b)(3) known as proportionality review. This subsection was passed at a time when the legislature thought proportionality review was necessary for the scheme to pass constitutional muster. Now that we know that proportionality is not constitutionally required; Pulley v. Harris, 465 U.S. 37 (1984); the statute should be amended to remove it.<sup>1</sup> In Connecticut's present scheme, no death sentence will ever be disproportionate. Eliminating proportionality should include the intent to apply the change retrospectively.

### 4. General Statutes § 54-56

This statute grants trial courts the power to dismiss a prosecution whenever it finds "cause" to terminate the case. The supreme court allowed the trial court in State v. Daniels, 207 Conn. 374 (1988) to employ this statute to dismiss a penalty phase hearing after the first jury was deadlocked 6-6 on mitigating factors. The trial court dismissed the penalty phase hearing ruling that it wanted to bring finality to the process after the first jury was deadlocked. A similar result occurred in State v. Usry, where the jury was deadlocked 7-5 against finding a mitigating factor.

This type of dismissal should not be permitted under the

---

<sup>1</sup> The Idaho legislature recently eliminated proportionality review from its statute. Idaho Session Law, Chap. 127, § 1 (1994). The Arizona Supreme Court refuses to perform proportionality review. State v. Salazar, 844 P. 2d 566 (Ariz. 1992).

present non-weighting scheme because a hung jury on mitigation is a failure of proof by the defendant after the state has overcome all its burdens of proving the defendant death eligible. This problem can be remedied in one of two ways. A broad proposal would amend §54-56 to state:

"Nothing in this statute is applicable to the penalty phase of a capital case."

A narrower but still acceptable reform would state:

"This section cannot be applied to a capital sentence deadlocked regarding mitigating factors in the penalty phase of a capital sentencing hearing."

#### B. Creation of a Weighing Statute

Should the legislature decide to adopt a weighing scheme, the equation should be simple.

Only if the state proves that the aggravating factors outweigh the mitigating factors by a preponderance of the evidence shall the defendant be sentenced to death.

Any effort to seek an explanation from the jury regarding how much "weight" they gave particular factors would create a myriad of problems. Special verdict forms could still indicate which aggravating factors were found, and some method could be established to determine what mitigants, if any, were "weighed" by jurors, but the verdict would focus eventually on a simple weighing equation.

Moreover, the legislature must still decide if any of the statutory mitigants remain dispositive. With the exception of a minimum age for death eligibility, a true weighing state should have

no automatic mitigating factors save those that may be constitutionally required (i.e. age, limited accessorial liability consistent with Enmund v. Florida, 458 U.S. 747 (1982)). Prior proposals did not clearly resolve this question.

**C. Disadvantages of Changing To a Weighing Formula  
At This Late Date**

Successful capital litigation requires expertise, time, patience and perseverance.<sup>2</sup> Twenty-two years after the death penalty was reenacted in this state there are finally cases on appeal which are deciding the validity of the present scheme, and answering questions of how to apply it correctly. These lessons will permit prosecutors and judges alike to more effectively administer the law and to succeed where in the past where they have failed. Changing course drastically now, without seeing the process through will lay waste to much of the mammoth effort and expense that has brought the capital sentencing scheme to this critical juncture in the state's history.

Moreover, a change now will require expensive duplication of effort, as Justices, judges and lawyers will still have to litigate many cases under the old scheme, while starting from several steps backward with the new weighing statute. The state will foot the exorbitant costs for both of these simultaneous learning curves, which on one side will be litigating a dinosaur.

Finally, there is no question the present statute will satisfy

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<sup>2</sup>. The New Jersey Supreme Court reversed 32 of its first 33 death penalties, and sent several back for multiple sentencing hearing. It was only two years ago that the first case State v. Marshall, completed direct review in New Jersey, and just last year State v. Bey successfully completed its second trip through that state's appellate process.

federal and state constitutional mandates because of its extra protections. The present scheme lends itself to arguments about flexibility with regards to harmless error, the elimination of proportionality and other claims that are not as readily made in a weighing state.

Legislators must realize that imposing the death penalty at trial is not the test of the enforceability of a capital scheme. It is the scheme's ability to withstand the true battle, which occurs after a conviction, that measure a scheme's enforceability. With the decision in State v. Ross, 230 Conn. 189 (1994), Connecticut's capital sentencing scheme has passed its first and probably most difficult hurdle. All efforts should be made to progress from this point and not to be distracted by attractive but not necessarily curative changes in the present scheme.

## **5.3**

### **Joint Favorable Report from Judiciary Committee**

**REPORT ON BILLS FAVORABLY REPORTED BY COMMITTEE**

**COMMITTEE:** Judiciary

File No.: 83  
Bill No.: SB-855  
PH Date: 02/27/95  
Action/Date: JF  
3/8/95

Change of Reference:

**TITLE OF BILL:**

AN ACT CONCERNING LETHAL INJECTION.

**SPONSORS OF BILL:**

Judiciary Committee

**REASONS FOR BILL:**

The bill would make lethal injection, rather than electrocution as the method of execution. Execution is considered more difficult, inhumane and expensive as opposed to lethal injection. It should be noted that the five current persons on death row do not fall under this bill and as such will have to be electrocuted rather than put to death by lethal injection.

**RESPONSE FROM ADMINISTRATION/AGENCY:**

The Governor's Office and Chief State's Attorney's Office both support the passage of the bill.

**NATURE AND SOURCES OF SUPPORT:**

None.

**NATURE AND SOURCES OF OPPOSITION:**

None.

\*Attached voting tally sheet

-----  
Reported by John R. Emra, Jr.

-----  
Date 3/12/95

Page 1 of 1 SB-855

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## **5.4**

**File No. 83, Senate Bill No. 855 (1995)**



Senate, March 10, 1995. The Committee on  
Judiciary reported through SEN. UPSON, 15th DIST.,  
Chairman of the Committee on the part of the  
Senate, that the bill ought to pass.

AN ACT CONCERNING LETHAL INJECTION.

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

1 Section 1. Section 54-100 of the general  
2 statutes is repealed and the following is  
3 substituted in lieu thereof:

4 The method of inflicting the punishment of  
5 death shall be by [electrocution] LETHAL INJECTION  
6 IN ACCORDANCE WITH PROCEDURES PRESCRIBED BY THE  
7 COMMISSIONER OF CORRECTION. The warden of the  
8 Connecticut Correctional Institution, Somers, is  
9 directed to appoint a suitable person to perform  
10 the duty of executing sentences of the court  
11 requiring the infliction of the death penalty.  
12 Such person shall receive, for such duty, such  
13 compensation as is determined by the directors of  
14 the Connecticut Correctional Institution, Somers.  
15 When any person is sentenced TO DEATH by any court  
16 of this state having competent jurisdiction, [to  
17 be electrocuted,] he shall, within twenty days  
18 after final sentence, be conveyed to the  
19 Connecticut Correctional Institution, Somers, and  
20 such punishment shall be inflicted only within the  
21 walls of said institution in Somers, within an  
22 enclosure to be prepared for that purpose under  
23 direction of the warden of the Connecticut  
24 Correctional Institution, Somers, and the board of

25 directors thereof, which enclosure shall be so  
26 constructed as to exclude public view. Besides the  
27 warden or deputy warden and such number of guards  
28 as he thinks necessary, the following persons may  
29 be present at the execution, but no others: The  
30 sheriff of the county in which the prisoner was  
31 tried and convicted, the board of directors, the  
32 physician of the Connecticut Correctional  
33 Institution, Somers, the clergyman in attendance  
34 upon the prisoner and such other adults, as the  
35 prisoner may designate, not exceeding three in  
36 number, representatives of not more than five  
37 newspapers in the county where the crime was  
38 committed, and one reporter for each of the daily  
39 newspapers published in the city of Hartford.

40 Sec. 2. Section 54-148 of the general  
41 statutes is repealed and the following is  
42 substituted in lieu thereof:

43 The support of prisoners in community  
44 correctional centers, sentenced to the Connecticut  
45 Correctional Institution, Somers, or [to be  
46 electrocuted] SENTENCED TO DEATH, shall be paid by  
47 the state.

48 JUD COMMITTEE VOTE: YEA 21 NAY 12 JF

\* \* \* \* \*

"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."

\* \* \* \* \*

## FISCAL IMPACT STATEMENT - BILL NUMBER SB 855

STATE IMPACT	Potential Indeterminate Cost and Potential Savings, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Correction

## EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of the bill would result in potential indeterminate costs and savings to the Department of Correction (DOC).

There are currently 28 states that carry out executions with lethal injection, 13 that utilize electrocution and four others with authority for both methods. In several states that have shifted practice to lethal injection, there have been initial costs associated with facility reconstruction, but minimal cost related to equipment purchase and maintenance thereafter. Potential savings could result from the reduced necessity of such equipment maintenance, however, no net fiscal impact to DOC can be determined at this time.

\* \* \* \* \*

## OLR BILL ANALYSIS

SB 855

## AN ACT CONCERNING LETHAL INJECTION

**SUMMARY:** This bill changes the method of executing people sentenced to death from electrocution to lethal injection. Apparently, the change applies to people tried and sentenced to death after October 1, 1995. The bill requires the commissioner of correction to establish procedures to be used in lethal injection executions.

**EFFECTIVE DATE:** October 1, 1995

## BACKGROUND

Related Statute

Under CGS Sec. 54-194, the repeal of any statute prescribing a punishment does not affect any pending prosecution or liability for punishment, unless the legislature declares that the repeal is retroactive.

## COMMITTEE ACTION

Judiciary Committee

Joint Favorable Report  
Yea 21      Nay 12

## **5.5**

**Senate Amendment A (LCO#5828) –adopted**

[SEN.] AMENDMENT [A.]

LCO No. 5828

General Assembly

January Session, A.D., 1995

Offered by SEN. UPSON, 15th DIST.

To Senate Bill No. 855

File No. 83

Cal. No. 69

Entitled "AN ACT CONCERNING LETHAL INJECTION."

Strike out everything after the enacting clause and substitute the following in lieu thereof:

"Section 1. Section 54-100 of the general statutes is repealed and the following is substituted in lieu thereof:

The method of inflicting the punishment of death shall be by [electrocution] CONTINUOUS INTRAVENOUS INJECTION OF A SUBSTANCE OR SUBSTANCES IN A QUANTITY SUFFICIENT TO CAUSE DEATH, IN ACCORDANCE WITH PROCEDURES PRESCRIBED BY THE COMMISSIONER OF CORRECTION IN CONSULTATION WITH THE COMMISSIONER OF PUBLIC HEALTH AND ADDICTION SERVICES. The [warden of the Connecticut Correctional Institution, Somers, is directed] COMMISSIONER SHALL DIRECT A WARDEN OF AN APPROPRIATE CORRECTIONAL INSTITUTION to appoint a suitable person to perform the duty of executing sentences of the court requiring the infliction of the death penalty. Such person shall receive, for such duty, such compensation as is determined by the [directors of the Connecticut Correctional Institution, Somers] COMMISSIONER. When any person is sentenced TO DEATH by any court of this state having competent jurisdiction, [to be electrocuted,] he shall, within twenty days after final sentence, be conveyed to [the Connecticut Correctional Institution, Somers,] AN APPROPRIATE CORRECTIONAL INSTITUTION and such punishment shall be inflicted

LCO No. 5828

only within the walls of said institution, [in Somers,] within an 37  
enclosure to be prepared for that purpose under direction of the 38  
warden of [the Connecticut Correctional Institution, Somers, and 39  
the board of directors thereof, which] SAID INSTITUTION. SUCH 40  
enclosure shall be so constructed as to exclude public view. 41  
Besides the warden or deputy warden and such number of [guards] 42  
CORRECTION OFFICERS as he thinks necessary, the following persons 43  
may be present at the execution, but no others: The sheriff of 44  
the county in which the prisoner was tried and convicted, the 45  
[board of directors, the] COMMISSIONER, A physician of [the 46  
Connecticut Correctional Institution, Somers, the] A CORRECTIONAL 47  
INSTITUTION, A clergyman in attendance upon the prisoner and such 48  
other adults, as the prisoner may designate, not exceeding three 49  
in number, representatives of not more than five newspapers in 50  
the county where the crime was committed, and one reporter for 51  
each of the daily newspapers published in the city of Hartford. 52

Sec. 2. Section 54-148 of the general statutes is repealed 53  
and the following is substituted in lieu thereof: 54

The support of prisoners in community correctional centers, 55  
sentenced to [the Connecticut Correctional Institution, Somers, 56  
or to be electrocuted] A CORRECTIONAL INSTITUTION, OR SENTENCED 57  
TO DEATH, shall be paid by the state." 58

## **5.6**

### **Senate Amendment B (LCO#5302)-adopted**

[SEN] AMENDMENT [B.]

LCO No. 5302

General Assembly

January Session, A.D., 1995

Offered by SEN. UPSON, 15th DIST.

To Senate Bill No. 855

File No. 83

Cal. No. 69

(As Amended)

Entitled "AN ACT CONCERNING LETHAL INJECTION."

After section 2, add the following:

"Sec. 3. Section 53a-46b of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any sentence of death imposed in accordance with the provisions of section 53a-46a shall be reviewed by the supreme court pursuant to its rules. In addition to its authority to correct errors at trial, the supreme court shall either affirm the sentence of death or vacate said sentence and remand for imposition of a sentence in accordance with subdivision (1) of section 53a-35a.

(b) The supreme court shall affirm the sentence of death unless it determines that: (1) The sentence was the product of passion, prejudice or any other arbitrary factor; OR (2) the evidence fails to support the finding of an aggravating factor specified in subsection (h) of section 53a-46a\_ [; or (3) the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant.]

(c) The sentence review shall be in addition to direct appeal and, if an appeal is taken, the review and appeal shall be consolidated for consideration. The court shall then render its

LCO No. 5302

decision on the legal errors claimed and the validity of the sentence. 37  
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Sec. 4. This act shall take effect from its passage except 39  
that sections 1 and 2 shall take effect October 1, 1995." 40

## **5.7**

### **Fiscal Note for Senate Amendment B**

247

AMENDMENT  
FISCAL NOTE (Form 2)  
(Office of Fiscal Analysis)  
Analyst: AC 3/27/95  
lal  
Version: 2

Upton

BILL NUMBER:  
FILE NUMBER:  
AMENDMENTS: LCO #5302  
(to SB 855, as amended,  
File #83)  
Cal. #69

TITLE: "AN ACT CONCERNING LETHAL INJECTION."

FAVORABLY REPORTED BY

SUMMARY: The amendment eliminates the proportionality review by the Connecticut Supreme Court for death penalty cases.

EFFECTIVE DATE:

\* \* \* \* \*

FISCAL IMPACT STATEMENT - BILL NUMBER SB 855

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

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of the amendment would result in an indeterminate level of savings to the Judicial Department. The elimination of the requirement for a proportionality review in death penalty cases would result in a shift in resources to other court business. The amendment would also result in savings to the Public Defenders and Division of Criminal Justice who would no longer allocate time and resources to the preparation for this review.

"THIS DOCUMENT IS PREPARED FOR THE BENEFIT OF THE MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION. IT DOES NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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**5.8**

**Senate Amendment C (LCO#4070)-adopted**

## [SEN.] AMENDMENT [C.]

LCO No. 4070

General Assembly

January Session, A.D., 1995

Offered by SEN. UPSON, 15th DIST.

To Senate Bill No. 855

File No. 83

Cal. No. 69

(As Amended)

Entitled "AN ACT CONCERNING LETHAL INJECTION."

After section 2, add the following:

"Sec. 3. Section 53a-54b of the general statutes is repealed and the following is substituted in lieu thereof:

A person is guilty of a capital felony who is convicted of any of the following: (1) Murder of a member of the division of state police within the department of public safety or of any local police department, a chief inspector or inspector in the division of criminal justice, a sheriff or deputy sheriff, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, an official of the department of correction authorized by the commissioner of correction to make arrests in a correctional institution or facility, or any fireman, while such victim was acting within the scope of his duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or of murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person

LCO No. 4070

is able to return or be returned to safety; (6) the illegal sale, 37  
for economic gain, of cocaine, heroin or methadone to a person 38  
who dies as a direct result of the use by him of such cocaine, 39  
heroin or methadone; (7) murder committed in the course of the 40  
commission of sexual assault in the first degree; (8) murder of 41  
two or more persons at the same time or in the course of a single 42  
transaction; OR (9) MURDER OF A PERSON UNDER SIXTEEN YEARS OF 43  
AGE." 44

**5.9**

**Fiscal Note for Senate Amendment C**

244

AMENDMENT  
FISCAL NOTE (Form 2)  
(Office of Fiscal Analysis)  
Analyst: AC/mc 3/29/95  
lal  
Version: 1

Upton

BILL NUMBER:  
FILE NUMBER:  
AMENDMENTS: LCO #4070  
(to SB 855, as amended,  
File #83)  
Cal. #69

TITLE: "AN ACT CONCERNING LETHAL INJECTION."

FAVORABLY REPORTED BY

SUMMARY: The bill adds murder of a child under 16 to the list of offenses classified as capital felonies, for which the penalty is death or life imprisonment without the possibility of release.

EFFECTIVE DATE:

\* \* \* \* \*

FISCAL IMPACT STATEMENT - BILL NUMBER SB 855

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Judicial Department, Division of Criminal Justice, Public Defenders, Department of Correction, County Sheriffs

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of the bill would result in a potential indeterminate cost to the front end of the criminal justice system. It is anticipated that the bill would cause an increase in death penalty litigation over time due to increased application of the capital statutes. In addition, since the bill may increase the number of death sentences that will be imposed, an increase in appeals and the litigation and costs associated with them would occur. The effect of these changes would be an increase in the consumption of resources within the Judicial Department, Division of Criminal Justice, Public Defenders and County Sheriffs. However, as the number and type of increased cases, appeals, or extent of litigation that may occur is not known, the increase in workload or costs cannot be determined at this time, although, depending on the number of cases, it could be significant.

It should be noted that more resources are allocated to capital trials by the defense and prosecution on average than to other cases. An increase of even a few cases can strain or require an increase in resources for these agencies.

CONNECTICUT STATE LIBRARY  
LEGISLATIVE REFERENCE SECTION

Passage of the bill may also result in an increase in the number of death row inmates at some point. Although the cost of housing an inmate on death row is similar to the cost of housing others in a high-level security facility (about \$25,000 per year), there are certain enhanced security measures such as higher guard to inmate ratios that result in increased costs for these types of inmates. These costs are anticipated to be minimal and can be absorbed within the normal budgetary resources of the Department of Correction.

The impact resulting from executions as opposed to life imprisonment would consist of a minimal decrease in the accumulated pressure on the prison system over the long-term. In the short-term, there would not be any savings since the number of individuals and affected cell space would likely be low and vacated cells would be filled almost immediately.

"THIS DOCUMENT IS PREPARED FOR THE BENEFIT OF THE MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION. IT DOES NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

**5.10**

**Senate Amendment D (LCO#4947)-adopted**

STATE OF CONNECTICUT

2

SENATE AMENDMENT D

5

LCO No. 4947

7

General Assembly

8

January Session, A.D., 1995

9

Offered by SEN. UPSON, 15th DIST.

10

To Senate Bill No. 855

File No. 83

Cal. No. 69

11

(AS AMENDED)

12

Entitled "AN ACT CONCERNING LETHAL INJECTION."

14

After section 2, add the following:

16

"Sec. 3. This act shall take effect October 1, 1995, and section 1 shall be applicable to executions carried out on or after said date."

17

18

19

y

## **5.11**

### **Fiscal Note for Senate Amendments A-D**

269

FISCAL NOTE(Form 1)  
(Office of Fiscal Analysis)  
Analyst: AC/ml 4/3/95  
tk  
Version: 3

BILL NUMBER: SB 855  
FILE NUMBER:  
AMENDMENTS: Senate "A", "B",  
"C" & "D"

TITLE: "AN ACT CONCERNING LETHAL INJECTION."

FAVORABLY REPORTED BY Judiciary

EFFECTIVE DATE: 10/1/95

\* \* \* \* \*

FISCAL IMPACT STATEMENT - BILL NUMBER

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Judicial Department, Division of Criminal Justice, Public Defenders, County Sheriffs, Department of Correction, Department of Public Health and Addiction Services

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of the bill as amended would result in potential indeterminate costs and savings to the Department of Correction (DOC) by changing the method of execution to lethal injection. There are currently 28 states that carry out executions with lethal injection, 13 that utilize electrocution and four others with authority for both methods. In several states that have shifted practice to lethal injection, there have been initial costs associated with facility reconstruction, but minimal cost related to equipment purchase and maintenance thereafter. Potential savings could result from the reduced necessity of such equipment maintenance, however, no net fiscal impact to DOC can be determined at this time. There would also be a minimal and absorbable impact on the Department of Public Health and Addiction Services related to the establishment of their role in the procedures for lethal injection.

The elimination of the proportionality review in death penalty cases (which has never been conducted in Connecticut) would result in an indeterminate level of cost avoidance to the Judicial Department and would result in a shift in resources to other court business. The bill as amended would also result in similar cost avoidance to the Public Defenders and Division of Criminal Justice which would not have to allocate time and resources to this review.

Expanding the list of capital felonies to include murder of a person under 16 would result in a potential indeterminate cost to the front end of the criminal justice system. It is anticipated that the bill as amended would cause an increase in death penalty litigation over time due to increased application of the capital statutes. In addition, since the bill as amended may increase the number of death sentences that will be imposed, an increase in appeals and the litigation and costs associated with them would occur. The effect of these changes would be an increase in the consumption of resources within the Judicial Department, Division of Criminal Justice, Public Defenders and County Sheriffs. However, as the number and type of increased cases, appeals, or extent of litigation that may occur is not known, the increase in workload or costs cannot be determined at this time. Depending on the number of cases, it could be significant.

It should be noted that on average more resources are allocated to capital trials than to other cases by the both defense and prosecution. An increase of even a few cases can strain or require an increase in appropriations for these agencies.

Passage of the bill as amended may also result in an increase in the number of death row inmates at some point. Although the cost of housing an inmate on death row is similar to the cost of housing others in a high-level security facility (about \$25,000 per year), there are certain enhanced security measures such as higher guard to inmate ratios that result in increased costs for these types of inmates. These costs are anticipated to be minimal and can be absorbed within the normal budgetary resources of the Department of Correction.

The impact resulting from executions as opposed to life imprisonment would consist of a minimal decrease in the accumulated pressure on the prison system over the long-term. In the short-term, there would not be any savings since the number of individuals and affected cell space would likely be low and vacated cells would be filled almost immediately.

Senate "A" and Senate "D" were technical and did not result in a fiscal impact.

Senate "B" resulted in an indeterminate cost avoidance by eliminating the proportionality review in death penalty cases.

Senate "C" resulted in an indeterminate cost to the criminal justice system by adding murder of a person under sixteen to the list of capital felonies.

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**5.12**

**Addendum to Fiscal Note for Senate  
Amendments A-D**

# Connecticut General Assembly



OFFICE OF FISCAL ANALYSIS

RALPH J. CARUSO  
DIRECTOR

April 5, 1995

LEGISLATIVE OFFICE BUILDING  
ROOM 5200  
HARTFORD, CONNECTICUT 06106-1591  
(203) 240-0200

## ADDENDUM

To Fiscal Note on SB 855, as amended by Senate "A"- "D"  
"AN ACT CONCERNING LETHAL INJECTION"

The fiscal note on the bill indicated that a death penalty proportionality review by the Supreme Court has never been conducted in Connecticut. Recently obtained information indicates that two reviews (in the Ross and Breton cases) have been conducted that took about a half day of court time each. Estimates concerning the level of resources used in preparation by involved agencies for this review is not currently available. It should be noted that this does not change the fiscal impact described in the fiscal note which indicates a savings and reallocation of resources for the Judicial Department, Division of Criminal Justice and Public Defenders.

AC 1a1  
SB 855.mem

CONNECTICUT STATE LIBRARY  
LEGISLATIVE REFERENCE SECTION

**5.13**

**OLR Amended Bill Analysis for File 83,  
Amendments A-D**

[1995]

OLR AMENDED BILL ANALYSIS

SB 855 (File 83, as amended by Senate "A," "B," "C," and "D")\*

AN ACT CONCERNING LETHAL INJECTION

SUMMARY: This bill:

- 1. eliminates as a ground for the Connecticut Supreme Court to vacate a death sentence, that it is excessive or disproportionate compared to the penalty in similar cases;
- 2. makes murder of a child under age 16 a capital felony; and
- 3. requires that execution be by intravenous injection rather than electrocution.

\*Senate Amendment "A" requires the commissioner of correction to establish lethal injection procedures in consultation with the commissioner of public health and addiction services, allows the commissioner of correction to select an appropriate correctional institution for executions, and makes technical changes consistent with these provisions.

\*Senate Amendment "B" eliminates the Supreme Court's proportionality review of a death sentence and makes the act effective upon passage, except the lethal injection provisions are to take effect on October 1, 1995.

\*Senate Amendment "C" adds murder of a child under age 16 to the list of capital felonies.

\*Senate Amendment "D" makes the act effective on October 1, 1995, with the lethal injection provisions applying to executions on or after that date.

EFFECTIVE DATE: October 1, 1995

FURTHER EXPLANATION

Proportionality Review

CONNECTICUT STATE LIBRARY  
LEGISLATIVE REFERENCE SECTION

[SB 855, 1995]  
[OLR Bill Analysis]

The state Supreme Court must review every death sentence and affirm it or vacate it (send the case back to the trial court to impose life imprisonment without the possibility of release). The Court must affirm the death sentence unless one of three specified grounds for vacating it exists.

The bill eliminates as a ground that the sentence is excessive or disproportionate compared to the penalty imposed in similar cases. The two remaining grounds are that the (1) sentence resulted from passion, prejudice, or other arbitrariness, or (2) finding of an aggravating factor is unsupported by the evidence. By eliminating the excessive or disproportionate ground, the bill eliminates the requirement that the Supreme Court specifically review every sentence to determine if this ground exists.

Murder of a Child

By making the murder of a child under age 16 a capital felony, the bill increases the penalty for this crime from a prison sentence of between 25 to 60 years to a death sentence or life imprisonment without the possibility of release (natural life).

Lethal Injection Requirement

The bill requires the commissioner of correction, in consultation with the commissioner of public health and addiction services, to establish procedures for use in lethal injection executions. It allows the correction commissioner to select an appropriate correctional institutional for the executions, rather than requiring that they be done at the Somers institution. At the commissioner's direction, the warden of the institution selected must appoint a person to perform the injections, and this person's compensation is determined by the commissioner, rather than the institution's directing body. The bill also adds the commissioner to the list of people who may witness the execution.

Finally, the bill requires that the lethal injection method be used for all those executed on or after October 1, 1995.

CONNECTICUT STATE  
LEGISLATIVE DEPARTMENT

**BACKGROUND**

Constitutional Requirements of Proportionality Review

In Pulley v. Harris, 104 S. Ct. 871 (1984) the U.S. Supreme Court held that the U.S. Constitution's Eighth Amendment prohibition on cruel and unusual punishment does not require that an appellate court conduct a comparative proportionality review in every death penalty case. Furthermore, a comparative proportionality review is not a required component of a capital sentencing system that includes other adequate safeguards to minimize the risk of arbitrary or capricious sentences.

The Connecticut Supreme Court has not ruled on whether the state constitution requires a comparative proportionality review.

List of Capital Felonies

A person commits a capital felony if he:

1. murders a law enforcement officer or firefighter acting within the scope of his duties;
2. murders for pay or hires someone to murder;
3. murders and was previously convicted of intentional murder or murder while a felony was committed;
4. murders while sentenced to life imprisonment;
5. murders a kidnapped person and is the kidnapper;
6. illegally sells cocaine, heroin, or methadone for financial gain to a person who dies as a direct result of using the drug;
7. murders while committing first degree sexual assault; or
8. murders two or more people at the same time or in the course of a single transaction.

[SB 855, 1975]  
[over bill analysis]

Penalty for Capital Felonies

A person found guilty of a capital felony must be sentenced to life imprisonment without the possibility of release if the judge or jury determines that there are no aggravating factors or at least one mitigating factor. Otherwise, the person must be sentenced to death. The law defines what aggravating and mitigating factors are.

Related Bill

SB 670, (File 105) was amended by the Senate on March 29 to remove murder of a child and replaced it with other crime-related provisions.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Report  
Yea 21    Nay 12

CONNECTICUT STATE LIBRARY  
LEGISLATIVE REFERENCE SECTION

## **5.14**

**Senate Amendment (LCO#5946)-not called**

[SEN.] AMENDMENT

LCO No. 5946

General Assembly

January Session, A.D., 1995

Offered by SEN. UPSON, 15th DIST.

To Senate Bill No. 855

File No. 83

Cal. No. 69

(As Amended)

Entitled "AN ACT CONCERNING LETHAL INJECTION."

After section 2, add the following:

"Sec. 3. Section 53a-46b of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any sentence of death imposed in accordance with the provisions of section 53a-46a shall be reviewed by the supreme court pursuant to its rules. In addition to its authority to correct errors at trial, the supreme court shall either affirm the sentence of death or vacate said sentence and remand for imposition of a sentence in accordance with subdivision (1) of section 53a-35a.

(b) The supreme court shall affirm the sentence of death unless it determines that: (1) The sentence was the product of passion, prejudice or any other arbitrary factor; OR (2) the evidence fails to support the finding of an aggravating factor specified in subsection (h) of section 53a-46a\_ [; or (3) the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant.]

(c) The sentence review shall be in addition to direct appeal and, if an appeal is taken, the review and appeal shall be consolidated for consideration. The court shall then render its

LCO No. 5946

[1995 SBSS SEN.] Amendment LCO# 5946  
Page 2  
decision on the legal errors claimed and the validity of the  
sentence."

37  
38

## **5.15**

**House Amendment A (LCO#5975)-rejected**

[HOUSE] AMENDMENT [A]

LCO No. 5975

General Assembly

January Session, A.D., 1995

Offered by REP. SCALETTAR, 114th DIST.

To Senate Bill No. 855

File No. 83

Cal. No. 73

(AS AMENDED)

Entitled "AN ACT CONCERNING LETHAL INJECTION."

After section 1, insert the following and renumber the remaining sections accordingly:

"Sec. 2. (NEW) No physician, nurse or other health care professional shall participate in the infliction of the punishment of death pursuant to section 54-100 of the general statutes."

## **5.16**

**Public Act No. 95-16, as passed by the House  
and Senate and signed by the Governor on  
April 12, 1995.**

AN ACT CONCERNING LETHAL INJECTION,  
PROPORTIONALITY REVIEW OF DEATH SENTENCES AND  
MURDER OF A CHILD.

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

Section 1. Section 54-100 of the general  
statutes is repealed and the following is  
substituted in lieu thereof:

The method of inflicting the punishment of  
death shall be by [electrocution] CONTINUOUS  
INTRAVENOUS INJECTION OF A SUBSTANCE OR SUBSTANCES  
IN A QUANTITY SUFFICIENT TO CAUSE DEATH, IN  
ACCORDANCE WITH PROCEDURES PRESCRIBED BY THE  
COMMISSIONER OF CORRECTION IN CONSULTATION WITH  
THE COMMISSIONER OF PUBLIC HEALTH AND ADDICTION  
SERVICES. The [warden of the Connecticut  
Correctional Institution, Somers, is directed]  
COMMISSIONER SHALL DIRECT A WARDEN OF AN  
APPROPRIATE CORRECTIONAL INSTITUTION to appoint a  
suitable person to perform the duty of executing  
sentences of the court requiring the infliction of  
the death penalty. Such person shall receive, for  
such duty, such compensation as is determined by  
the [directors of the Connecticut Correctional  
Institution, Somers] COMMISSIONER. When any person  
is sentenced TO DEATH by any court of this state  
having competent jurisdiction, [to be  
electrocuted,] he shall, within twenty days after  
final sentence, be conveyed to [the Connecticut  
Correctional Institution, Somers,] AN APPROPRIATE  
CORRECTIONAL INSTITUTION and such punishment shall  
be inflicted only within the walls of said  
institution, [in Somers,] within an enclosure to  
be prepared for that purpose under direction of  
the warden of [the Connecticut Correctional  
Institution, Somers, and the board of directors  
thereof, which] SAID INSTITUTION. SUCH enclosure  
shall be so constructed as to exclude public view.  
Besides the warden or deputy warden and such  
number of [guards] CORRECTION OFFICERS as he  
thinks necessary, the following persons may be  
present at the execution, but no others: The  
sheriff of the county in which the prisoner was  
tried and convicted, the [board of directors, the]  
COMMISSIONER, A physician of [the Connecticut  
Correctional Institution, Somers, the] A

Senate Bill No. 855

CORRECTIONAL INSTITUTION, A clergyman in attendance upon the prisoner and such other adults, as the prisoner may designate, not exceeding three in number, representatives of not more than five newspapers in the county where the crime was committed, and one reporter for each of the daily newspapers published in the city of Hartford.

Sec. 2. Section 54-148 of the general statutes is repealed and the following is substituted in lieu thereof:

The support of prisoners in community correctional centers, sentenced to [the Connecticut Correctional Institution, Somers, or to be electrocuted] A CORRECTIONAL INSTITUTION, OR SENTENCED TO DEATH, shall be paid by the state.

Sec. 3. Section 53a-46b of the general statutes is repealed and the following is substituted in lieu thereof:

(a) Any sentence of death imposed in accordance with the provisions of section 53a-46a shall be reviewed by the supreme court pursuant to its rules. In addition to its authority to correct errors at trial, the supreme court shall either affirm the sentence of death or vacate said sentence and remand for imposition of a sentence in accordance with subdivision (1) of section 53a-35a.

(b) The supreme court shall affirm the sentence of death unless it determines that: (1) The sentence was the product of passion, prejudice or any other arbitrary factor; OR (2) the evidence fails to support the finding of an aggravating factor specified in subsection (h) of section 53a-46a. [; or (3) the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant.]

(c) The sentence review shall be in addition to direct appeal and, if an appeal is taken, the review and appeal shall be consolidated for consideration. The court shall then render its decision on the legal errors claimed and the validity of the sentence.

Sec. 4. Section 53a-54b of the general statutes is repealed and the following is substituted in lieu thereof:

A person is guilty of a capital felony who is convicted of any of the following: (1) Murder of a member of the division of state police within the

Senate Bill No. 855

department of public safety or of any local police department, a chief inspector or inspector in the division of criminal justice, a sheriff or deputy sheriff, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, an official of the department of correction authorized by the commissioner of correction to make arrests in a correctional institution or facility, or any fireman, while such victim was acting within the scope of his duties; (2) murder committed by a defendant who is hired to commit the same for pecuniary gain or murder committed by one who is hired by the defendant to commit the same for pecuniary gain; (3) murder committed by one who has previously been convicted of intentional murder or of murder committed in the course of commission of a felony; (4) murder committed by one who was, at the time of commission of the murder, under sentence of life imprisonment; (5) murder by a kidnapper of a kidnapped person during the course of the kidnapping or before such person is able to return or be returned to safety; (6) the illegal sale, for economic gain, of cocaine, heroin or methadone to a person who dies as a direct result of the use by him of such cocaine, heroin or methadone; (7) murder committed in the course of the commission of sexual assault in the first degree; (8) murder of two or more persons at the same time or in the course of a single transaction; OR (9) MURDER OF A PERSON UNDER SIXTEEN YEARS OF AGE.

Sec. 5. This act shall take effect from its passage, except that sections 1, 2 and 4 shall take effect October 1, 1995, and section 1 shall be applicable to executions carried out on or after said date.

*Certified as correct by*

\_\_\_\_\_  
*Legislative Commissioner.*

\_\_\_\_\_  
*Clerk of the Senate.*

\_\_\_\_\_  
*Clerk of the House.*

Approved

*April 12*

\_\_\_\_\_, 1995.

\_\_\_\_\_  
*Governor, State of Connecticut.*

**5.17**

**Office of Legislative Research. Summary of  
Public Acts, 1995. No. 16**

**SUMMARY OF 1995  
PUBLIC ACTS**

Connecticut General Assembly

OFFICE OF LEGISLATIVE RESEARCH  
LEGISLATIVE OFFICE BUILDING  
ROOM 5300  
HARTFORD, CT 06106

## JUDICIARY COMMITTEE

PA 95-3—SB 842  
*Judiciary Committee*

### AN ACT CONFIRMING AND ADOPTING VOLUMES 1 TO 13, INCLUSIVE, OF THE GENERAL STATUTES, REVISED TO 1995

**SUMMARY:** This act formally adopts, ratifies, confirms, and enacts the General Statutes as revised to January 1, 1995.

**EFFECTIVE DATE:** Upon passage

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PA 95-6—SB 840  
*Judiciary Committee*

### AN ACT CONCERNING VALIDATION OF MARRIAGES

**SUMMARY:** This act validates marriages performed between June 2, 1993, and April 13, 1995, if they would otherwise have been valid except that (1) they were performed by justices of the peace who did not have valid certificates of qualification or (2) they were not performed in the town that issued the marriage license.

**EFFECTIVE DATE:** Upon passage

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PA 95-16—SB 855  
*Judiciary Committee*

### AN ACT CONCERNING LETHAL INJECTION, PROPORTIONALITY REVIEW OF DEATH SENTENCES AND MURDER OF A CHILD

**SUMMARY:** This act:

1. eliminates as a ground for the Supreme Court to vacate a death sentence—that it is excessive or disproportionate compared to the penalty in similar cases,
2. makes murder of a child under age 16 a capital felony, and
3. requires that execution be by intravenous injection rather than electrocution.

**EFFECTIVE DATE:** October 1, 1995, but the provision eliminating the Supreme Court's proportionality review of death sentences takes effect upon passage.

## FURTHER EXPLANATION

### *Proportionality Review*

By law, the Supreme Court must review every death sentence and affirm or vacate it. (When it vacates a death sentence, it sends the case back to the trial court to impose life imprisonment without the possibility of release.) The Court must affirm the death sentence unless a specified ground for vacating it exists.

The act eliminates as a ground that the sentence is excessive or disproportionate compared to the penalty imposed in similar cases. The two remaining grounds are that (1) the sentence resulted from passion, prejudice, or other arbitrariness or (2) the finding of an aggravating factor is unsupported by the evidence. By eliminating the "excessive or disproportionate" ground, the act eliminates the requirement that the Supreme Court specifically review every sentence to determine if this ground exists.

### *Murder of a Child*

By making the murder of a child under age 16 a capital felony, the act increases the penalty from a prison sentence of between 25 and 60 years to a death sentence or life imprisonment without the possibility of release (natural life).

### *Lethal Injection Requirement*

The act requires the commissioner of correction, in consultation with the commissioner of public health and addiction services, to establish procedures to follow in lethal injection executions. It allows the correction commissioner to select an appropriate correctional institution for the executions, rather than requiring that they be done at the Somers institution. At the commissioner's direction, the warden of the institution selected must appoint a person to perform the injections, and this person's compensation is determined by the commissioner, rather than the institution's directing body. The act also adds the commissioner to the list of people who may witness the execution and requires that the lethal injection method be used for all those executed on or after October 1, 1995.

## BACKGROUND

### *Constitutional Requirements of Proportionality Review*

In *Pulley v. Harris*, 104 S. Ct. 871 (1984), the U.S. Supreme Court held that the U.S. Constitution's Eighth Amendment prohibition on cruel and unusual punishment does not require that an appellate court conduct a comparative proportionality review in every death penalty case. Furthermore, a comparative proportionality review is not a required component of a capital sentencing system that includes other adequate safeguards to minimize the risk of arbitrary or capricious sentences. The Connecticut Supreme Court has not ruled on whether the state constitution requires a comparative proportionality review.

### *List of Capital Felonies*

A person commits a capital felony if he:

1. murders a law enforcement officer or firefighter acting within the scope of his duties;
2. murders for pay or hires someone to murder;
3. murders and was previously convicted of intentional murder or murder while a felony was committed;
4. murders while sentenced to life imprisonment;
5. murders a kidnapped person and is the kidnapper;
6. illegally sells cocaine, heroin, or methadone for financial gain to a person who dies as a direct result of using the drug;
7. murders while committing first degree sexual assault; or
8. murders two or more people at the same time or in the course of a single transaction.

### *Penalty for Capital Felonies*

A person found guilty of a capital felony must be sentenced to life imprisonment without the possibility of release if the judge or jury determines that the mitigating factors outweigh or are of equal weight to the aggravating factors or any of four automatic bars to the death penalty exist. Otherwise, the person must be sentenced to death. The law defines what the automatic bars and aggravating and mitigating factors are.

### *Related Act*

PA 95-19 requires the death penalty if one or more aggravating factors outweigh one or more mitigating factors. Prior law did not require the judge or jury considering whether the court should impose the penalty to weigh aggravating against mitigating factors and prohibited the penalty if at least one mitigating factor existed.

### PA 95-19—SB 852 *Judiciary Committee*

## AN ACT CONCERNING THE DEATH PENALTY

**SUMMARY:** This act requires a judge or jury considering whether the court should impose the death penalty to determine, and state in a special verdict, whether one or more aggravating factors outweigh one or more mitigating factors. If the mitigating factors outweigh the aggravating factors or are of equal weight, the court must sentence the defendant to life imprisonment without the possibility of release. If the aggravating factors outweigh mitigating factors, the sentence must be death. Prior law required the judge or jury to determine whether there were aggravating and mitigating factors but did not require them to weigh the factors against each other. Under prior law, if the judge or jury found no aggravating factors or at least one mitigating factor, the court could not impose the death penalty.

The act also eliminates one of five automatic bars to the death penalty, that the defendant acted under unusual and substantial duress. Instead, it allows the judge or jury to determine if the defendant acted under unusual and substantial duress and if this duress should be considered a mitigating factor.

EFFECTIVE DATE: October 1, 1995

### FURTHER EXPLANATION

#### *Special Verdict*

The act requires the sentencing jury or judge to state their findings on whether aggravating outweigh mitigating factors in a special verdict. By law, they also must state in the special verdict their findings on the existence of any (1) automatic bars to the death penalty and (2) aggravating factors. (A "special verdict" declares findings on specific factual issues or