§ 63-d. Attorney-general; death penalty prosecutions. 1. The attorney-general shall, whenever required by the governor or his designee after a request of the governor by a district attorney, direct that the resources and personnel of the department of law be used to provide assistance relating to the prosecution or appeal of any case where the defendant may be subject to the penalty of death. Such assistance shall include the use of any department resource or services, which the attorney-general deems proper, and may be performed or provided by the attorney-general or any employee of the department of law. Assistance pursuant to this section may only be provided with respect to proceedings where:

(i) the defendant is represented by counsel appointed pursuant to the provisions of section thirty-five-b of the judiciary law or the defendant is receiving expert, investigative or other services pursuant to such section, or

(ii) the defendant, through counsel retained privately by the defendant through his or her own means or through the means of a person other than the defendant, or through representation by pro bono counsel, is able to marshal substantially greater legal and investigatory resources than those reasonably available to the district attorney.

2. A request of the governor made by a district attorney for assistance in a death penalty case shall be accompanied by a certificate of need stating that as a result of cases where the defendant may be subject to the penalty of death additional resources or personnel are needed to supplement the district attorney's staff and available resources in order to fulfill such district attorney's responsibilities.