



General Assembly

January Session, 2013

Raised Bill No. 1062

LCO No. 4177



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

**AN ACT CONCERNING THE RECOMMENDATIONS OF THE
CONNECTICUT SENTENCING COMMISSION REGARDING THE
SENTENCING OF A CHILD CONVICTED OF A FELONY OFFENSE.**

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

- 1 Section 1. (NEW) (*Effective October 1, 2013*) (a) If the case of a child,
2 as defined in section 46b-120 of the general statutes, charged with the
3 commission of a felony is transferred to the regular criminal docket of
4 the Superior Court pursuant to section 46b-127 of the general statutes,
5 as amended by this act, the court shall consider mitigating factors at
6 the time of sentencing, including, but not limited to, the following:
- 7 (1) The age and maturity of the child at the time of the offense;
- 8 (2) The child's history of trauma, abuse or neglect;
- 9 (3) The child's history of mental illness or substance abuse;
- 10 (4) The intellectual capacity and educational history of the child;
- 11 (5) The child's family and community environment, including the

- 12 child's ability to extricate himself or herself from such environment;
- 13 (6) The child's level of participation in the offense;
- 14 (7) The degree of peer or familial influence or pressure on the child;
- 15 (8) The impetuosity of the child;
- 16 (9) The ability of the child to appreciate the risks and consequences
17 of the child's conduct;
- 18 (10) The ability of the child to navigate the criminal justice system
19 and participate meaningfully in his or her defense;
- 20 (11) The scientific and psychological evidence showing the
21 differences between a child's brain development and an adult's brain
22 development; and
- 23 (12) The capacity for rehabilitation of such child and the
24 opportunities for rehabilitation of such child in the community and in
25 an adult prison environment.
- 26 (b) Notwithstanding the provisions of section 54-91a of the general
27 statutes, no presentence investigation or report may be waived with
28 respect to a child convicted of a class A or B felony. With respect to a
29 child convicted of a class C or D felony, the presentence investigation
30 and report may be waived by the child only upon approval by the
31 court. Any presentence report prepared with respect to a child shall
32 address the factors set forth in subdivisions (1) to (12), inclusive, of
33 subsection (a) of this section.
- 34 (c) The Court Support Services Division of the Judicial Branch shall
35 establish reference materials relating to adolescent psychological and
36 brain development to assist courts in sentencing children pursuant to
37 this section.
- 38 Sec. 2. Subsection (c) of section 46b-127 of the general statutes is

39 repealed and the following is substituted in lieu thereof (*Effective*
40 *October 1, 2013*):

41 (c) Upon the effectuation of the transfer, such child shall stand trial
42 and be sentenced, if convicted, as if such child were eighteen years of
43 age, subject to the requirements of section 1 of this act. Such child shall
44 receive credit against any sentence imposed for time served in a
45 juvenile facility prior to the effectuation of the transfer. A child who
46 has been transferred may enter a guilty plea to a lesser offense if the
47 court finds that such plea is made knowingly and voluntarily. Any
48 child transferred to the regular criminal docket who pleads guilty to a
49 lesser offense shall not resume such child's status as a juvenile
50 regarding such offense. If the action is dismissed or nolleed or if such
51 child is found not guilty of the charge for which such child was
52 transferred or of any lesser included offenses, the child shall resume
53 such child's status as a juvenile until such child attains the age of
54 eighteen years.

55 Sec. 3. Subsection (f) of section 46b-133c of the general statutes is
56 repealed and the following is substituted in lieu thereof (*Effective*
57 *October 1, 2013*):

58 (f) Whenever a proceeding has been designated a serious juvenile
59 repeat offender prosecution pursuant to subsection (b) of this section
60 and the child does not waive such child's right to a trial by jury, the
61 court shall transfer the case from the docket for juvenile matters to the
62 regular criminal docket of the Superior Court. Upon transfer, such
63 child shall stand trial and be sentenced, if convicted, as if such child
64 were eighteen years of age, subject to the requirements of section 1 of
65 this act, except that no such child shall be placed in a correctional
66 facility but shall be maintained in a facility for children and youths
67 until such child attains eighteen years of age or until such child is
68 sentenced, whichever occurs first. Such child shall receive credit
69 against any sentence imposed for time served in a juvenile facility
70 prior to the effectuation of the transfer. A child who has been

71 transferred may enter a guilty plea to a lesser offense if the court finds
72 that such plea is made knowingly and voluntarily. Any child
73 transferred to the regular criminal docket who pleads guilty to a lesser
74 offense shall not resume such child's status as a juvenile regarding
75 such offense. If the action is dismissed or nolleed or if such child is
76 found not guilty of the charge for which such child was transferred,
77 the child shall resume such child's status as a juvenile until such child
78 attains eighteen years of age.

79 Sec. 4. Subsection (f) of section 46b-133d of the general statutes is
80 repealed and the following is substituted in lieu thereof (*Effective*
81 *October 1, 2013*):

82 (f) When a proceeding has been designated a serious sexual
83 offender prosecution pursuant to subsection (c) of this section and the
84 child does not waive the right to a trial by jury, the court shall transfer
85 the case from the docket for juvenile matters to the regular criminal
86 docket of the Superior Court. Upon transfer, such child shall stand trial
87 and be sentenced, if convicted, as if such child were eighteen years of
88 age, subject to the requirements of section 1 of this act, except that no
89 such child shall be placed in a correctional facility but shall be
90 maintained in a facility for children and youths until such child attains
91 eighteen years of age or until such child is sentenced, whichever occurs
92 first. Such child shall receive credit against any sentence imposed for
93 time served in a juvenile facility prior to the effectuation of the
94 transfer. A child who has been transferred may enter a guilty plea to a
95 lesser offense if the court finds that such plea is made knowingly and
96 voluntarily. Any child transferred to the regular criminal docket who
97 pleads guilty to a lesser offense shall not resume such child's status as
98 a juvenile regarding such offense. If the action is dismissed or nolleed or
99 if such child is found not guilty of the charge for which such child was
100 transferred, the child shall resume such child's status as a juvenile until
101 such child attains eighteen years of age.

102 Sec. 5. Section 53a-46a of the general statutes is repealed and the

103 following is substituted in lieu thereof (*Effective October 1, 2013*):

104 (a) A person shall be subjected to the penalty of death for a capital
105 felony committed prior to April 25, 2012, under the provisions of
106 section 53a-54b, as amended by this act, in effect prior to April 25,
107 2012, only if (1) a hearing is held in accordance with the provisions of
108 this section, and (2) such person was eighteen years of age or older at
109 the time the offense was committed, regardless of the date of
110 conviction.

111 (b) For the purpose of determining the sentence to be imposed when
112 a defendant is convicted of or pleads guilty to a capital felony, the
113 judge or judges who presided at the trial or before whom the guilty
114 plea was entered shall conduct a separate hearing to determine the
115 existence of any mitigating factor concerning the defendant's character,
116 background and history, or the nature and circumstances of the crime,
117 and any aggravating factor set forth in subsection (i) of this section.
118 Such hearing shall not be held if the state stipulates that none of the
119 aggravating factors set forth in subsection (i) of this section exists or
120 that any factor set forth in subsection (h) of this section exists. Such
121 hearing shall be conducted (1) before the jury which determined the
122 defendant's guilt, or (2) before a jury impaneled for the purpose of
123 such hearing if (A) the defendant was convicted upon a plea of guilty;
124 (B) the defendant was convicted after a trial before three judges as
125 provided in subsection (b) of section 53a-45; or (C) if the jury which
126 determined the defendant's guilt has been discharged by the court for
127 good cause, or (3) before the court, on motion of the defendant and
128 with the approval of the court and the consent of the state.

129 (c) In such hearing the court shall disclose to the defendant or his
130 counsel all material contained in any presentence report which may
131 have been prepared. No presentence information withheld from the
132 defendant shall be considered in determining the existence of any
133 mitigating or aggravating factor. Any information relevant to any
134 mitigating factor may be presented by either the state or the defendant,

135 regardless of its admissibility under the rules governing admission of
136 evidence in trials of criminal matters, but the admissibility of
137 information relevant to any of the aggravating factors set forth in
138 subsection (i) of this section shall be governed by the rules governing
139 the admission of evidence in such trials. The state and the defendant
140 shall be permitted to rebut any information received at the hearing and
141 shall be given fair opportunity to present argument as to the adequacy
142 of the information to establish the existence of any mitigating or
143 aggravating factor. The burden of establishing any of the aggravating
144 factors set forth in subsection (i) of this section shall be on the state.
145 The burden of establishing any mitigating factor shall be on the
146 defendant.

147 (d) In determining whether a mitigating factor exists concerning the
148 defendant's character, background or history, or the nature and
149 circumstances of the crime, pursuant to subsection (b) of this section,
150 the jury or, if there is no jury, the court shall first determine whether a
151 particular factor concerning the defendant's character, background or
152 history, or the nature and circumstances of the crime, has been
153 established by the evidence, and shall determine further whether that
154 factor is mitigating in nature, considering all the facts and
155 circumstances of the case. Mitigating factors are such as do not
156 constitute a defense or excuse for the capital felony of which the
157 defendant has been convicted, but which, in fairness and mercy, may
158 be considered as tending either to extenuate or reduce the degree of his
159 culpability or blame for the offense or to otherwise constitute a basis
160 for a sentence less than death.

161 (e) The jury or, if there is no jury, the court shall return a special
162 verdict setting forth its findings as to the existence of any factor set
163 forth in subsection (h) of this section, the existence of any aggravating
164 factor or factors set forth in subsection (i) of this section and whether
165 any aggravating factor or factors outweigh any mitigating factor or
166 factors found to exist pursuant to subsection (d) of this section.

167 (f) If the jury or, if there is no jury, the court finds that (1) none of
168 the factors set forth in subsection (h) of this section exist, (2) one or
169 more of the aggravating factors set forth in subsection (i) of this section
170 exist and (3) (A) no mitigating factor exists or (B) one or more
171 mitigating factors exist but are outweighed by one or more
172 aggravating factors set forth in subsection (i) of this section, the court
173 shall sentence the defendant to death.

174 (g) If the jury or, if there is no jury, the court finds that (1) any of the
175 factors set forth in subsection (h) of this section exist, or (2) none of the
176 aggravating factors set forth in subsection (i) of this section exists, or
177 (3) one or more of the aggravating factors set forth in subsection (i) of
178 this section exist and one or more mitigating factors exist, but the one
179 or more aggravating factors set forth in subsection (i) of this section do
180 not outweigh the one or more mitigating factors, the court shall impose
181 a sentence of life imprisonment without the possibility of release.

182 (h) The court shall not impose the sentence of death on the
183 defendant if the jury or, if there is no jury, the court finds by a special
184 verdict, as provided in subsection (e) of this section, that at the time of
185 the offense (1) the defendant was [under the age of eighteen years, or
186 (2) the defendant was] a person with intellectual disability, as defined
187 in section 1-1g, or [(3)] (2) the defendant's mental capacity was
188 significantly impaired or the defendant's ability to conform the
189 defendant's conduct to the requirements of law was significantly
190 impaired but not so impaired in either case as to constitute a defense to
191 prosecution, or [(4)] (3) the defendant was criminally liable under
192 sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed
193 by another, but the defendant's participation in such offense was
194 relatively minor, although not so minor as to constitute a defense to
195 prosecution, or [(5)] (4) the defendant could not reasonably have
196 foreseen that the defendant's conduct in the course of commission of
197 the offense of which the defendant was convicted would cause, or
198 would create a grave risk of causing, death to another person.

199 (i) The aggravating factors to be considered shall be limited to the
200 following: (1) The defendant committed the offense during the
201 commission or attempted commission of, or during the immediate
202 flight from the commission or attempted commission of, a felony and
203 the defendant had previously been convicted of the same felony; or (2)
204 the defendant committed the offense after having been convicted of
205 two or more state offenses or two or more federal offenses or of one or
206 more state offenses and one or more federal offenses for each of which
207 a penalty of more than one year imprisonment may be imposed, which
208 offenses were committed on different occasions and which involved
209 the infliction of serious bodily injury upon another person; or (3) the
210 defendant committed the offense and in such commission knowingly
211 created a grave risk of death to another person in addition to the
212 victim of the offense; or (4) the defendant committed the offense in an
213 especially heinous, cruel or depraved manner; or (5) the defendant
214 procured the commission of the offense by payment, or promise of
215 payment, of anything of pecuniary value; or (6) the defendant
216 committed the offense as consideration for the receipt, or in
217 expectation of the receipt, of anything of pecuniary value; or (7) the
218 defendant committed the offense with an assault weapon, as defined
219 in section 53-202a; or (8) the defendant committed the offense set forth
220 in subdivision (1) of section 53a-54b, as amended by this act, to avoid
221 arrest for a criminal act or prevent detection of a criminal act or to
222 hamper or prevent the victim from carrying out any act within the
223 scope of the victim's official duties or to retaliate against the victim for
224 the performance of the victim's official duties.

225 Sec. 6. Section 53a-54b of the general statutes is repealed and the
226 following is substituted in lieu thereof (*Effective October 1, 2013, and*
227 *applicable to any person convicted prior to, on or after said date*):

228 A person is guilty of murder with special circumstances who is
229 convicted of any of the following, provided such person was eighteen
230 years of age or older when such person committed the murder: (1)
231 Murder of a member of the Division of State Police within the

232 Department of Emergency Services and Public Protection or of any
233 local police department, a chief inspector or inspector in the Division
234 of Criminal Justice, a state marshal who is exercising authority granted
235 under any provision of the general statutes, a judicial marshal in
236 performance of the duties of a judicial marshal, a constable who
237 performs criminal law enforcement duties, a special policeman
238 appointed under section 29-18, a conservation officer or special
239 conservation officer appointed by the Commissioner of Energy and
240 Environmental Protection under the provisions of section 26-5, an
241 employee of the Department of Correction or a person providing
242 services on behalf of said department when such employee or person
243 is acting within the scope of such employee's or person's employment
244 or duties in a correctional institution or facility and the actor is
245 confined in such institution or facility, or any firefighter, while such
246 victim was acting within the scope of such victim's duties; (2) murder
247 committed by a defendant who is hired to commit the same for
248 pecuniary gain or murder committed by one who is hired by the
249 defendant to commit the same for pecuniary gain; (3) murder
250 committed by one who has previously been convicted of intentional
251 murder or of murder committed in the course of commission of a
252 felony; (4) murder committed by one who was, at the time of
253 commission of the murder, under sentence of life imprisonment; (5)
254 murder by a kidnapper of a kidnapped person during the course of the
255 kidnapping or before such person is able to return or be returned to
256 safety; (6) murder committed in the course of the commission of sexual
257 assault in the first degree; (7) murder of two or more persons at the
258 same time or in the course of a single transaction; or (8) murder of a
259 person under sixteen years of age.

260 Sec. 7. Section 53a-54d of the general statutes is repealed and the
261 following is substituted in lieu thereof (*Effective October 1, 2013, and*
262 *applicable to any person convicted prior to, on or after said date*):

263 A person is guilty of murder when, acting either alone or with one
264 or more persons, he commits arson and, in the course of such arson,

265 causes the death of a person. Notwithstanding any other provision of
 266 the general statutes, any person convicted of murder under this
 267 section, except a person who was under eighteen years of age at the
 268 time of the offense, shall be punished by life imprisonment and shall
 269 not be eligible for parole.

270 Sec. 8. Subsection (c) of section 53a-54a of the general statutes is
 271 repealed and the following is substituted in lieu thereof (*Effective*
 272 *October 1, 2013, and applicable to any person convicted prior to, on or after*
 273 *said date*):

274 (c) Murder is punishable as a class A felony in accordance with
 275 subdivision (2) of section 53a-35a unless it is (1) a capital felony
 276 committed prior to April 25, 2012, by a person who was eighteen years
 277 of age or older at the time of the offense, punishable in accordance
 278 with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder
 279 with special circumstances committed on or after April 25, 2012, by a
 280 person who was eighteen years of age or older at the time of the
 281 offense, punishable as a class A felony in accordance with
 282 subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder
 283 under section 53a-54d, as amended by this act, committed by a person
 284 who was eighteen years of age or older at the time of the offense.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	46b-127(c)
Sec. 3	<i>October 1, 2013</i>	46b-133c(f)
Sec. 4	<i>October 1, 2013</i>	46b-133d(f)
Sec. 5	<i>October 1, 2013</i>	53a-46a
Sec. 6	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54b

Sec. 7	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54d
Sec. 8	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54a(c)

Statement of Purpose:

To enact the recommendations of the Connecticut Sentencing Commission with respect to the sentencing of persons for criminal offenses committed prior to attaining the age of eighteen in order to comply with the recent United States Supreme Court decision in *Miller v. Alabama*.

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