



# House of Representatives

General Assembly

**File No. 147**

February Session, 2014

Substitute House Bill No. 5221

*House of Representatives, March 27, 2014*

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES.***

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

1 Section 1. Section 54-125a of the 2014 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2014*):

4 (a) A person convicted of one or more crimes who is incarcerated on  
5 or after October 1, 1990, who received a definite sentence or aggregate  
6 sentence of more than two years, and who has been confined under  
7 such sentence or sentences for not less than one-half of the aggregate  
8 sentence less any risk reduction credit earned under the provisions of  
9 section 18-98e or one-half of the most recent sentence imposed by the  
10 court less any risk reduction credit earned under the provisions of  
11 section 18-98e, whichever is greater, may be allowed to go at large on

12 parole in the discretion of the panel of the Board of Pardons and  
13 Paroles for the institution in which the person is confined, if (1) it  
14 appears from all available information, including any reports from the  
15 Commissioner of Correction that the panel may require, that there is a  
16 reasonable probability that such inmate will live and remain at liberty  
17 without violating the law, and (2) such release is not incompatible with  
18 the welfare of society. At the discretion of the panel, and under the  
19 terms and conditions as may be prescribed by the panel including  
20 requiring the parolee to submit personal reports, the parolee shall be  
21 allowed to return to the parolee's home or to reside in a residential  
22 community center, or to go elsewhere. The parolee shall, while on  
23 parole, remain under the jurisdiction of the board until the expiration  
24 of the maximum term or terms for which the parolee was sentenced  
25 less any risk reduction credit earned under the provisions of section  
26 18-98e. Any parolee released on the condition that the parolee reside in  
27 a residential community center may be required to contribute to the  
28 cost incidental to such residence. Each order of parole shall fix the  
29 limits of the parolee's residence, which may be changed in the  
30 discretion of the board and the Commissioner of Correction. Within  
31 three weeks after the commitment of each person sentenced to more  
32 than two years, the state's attorney for the judicial district shall send to  
33 the Board of Pardons and Paroles the record, if any, of such person.

34 (b) (1) No person convicted of any of the following offenses, which  
35 was committed on or after July 1, 1981, shall be eligible for parole  
36 under subsection (a) of this section: (A) Capital felony, as provided  
37 under the provisions of section 53a-54b, as amended by this act, in  
38 effect prior to April 25, 2012, (B) murder with special circumstances, as  
39 provided under the provisions of section 53a-54b, as amended by this  
40 act, in effect on or after April 25, 2012, (C) felony murder, as provided  
41 in section 53a-54c, (D) arson murder, as provided in section 53a-54d, as  
42 amended by this act, (E) murder, as provided in section 53a-54a, as  
43 amended by this act, or (F) aggravated sexual assault in the first  
44 degree, as provided in section 53a-70a. (2) A person convicted of (A) a  
45 violation of section 53a-100aa or 53a-102, or (B) an offense, other than  
46 an offense specified in subdivision (1) of this subsection, where the

47 underlying facts and circumstances of the offense involve the use,  
48 attempted use or threatened use of physical force against another  
49 person shall be ineligible for parole under subsection (a) of this section  
50 until such person has served not less than eighty-five per cent of the  
51 definite sentence imposed.

52 (c) The Board of Pardons and Paroles shall, not later than July 1,  
53 1996, adopt regulations in accordance with chapter 54 to ensure that a  
54 person convicted of an offense described in subdivision (2) of  
55 subsection (b) of this section is not released on parole until such person  
56 has served eighty-five per cent of the definite sentence imposed by the  
57 court. Such regulations shall include guidelines and procedures for  
58 classifying a person as a violent offender that are not limited to a  
59 consideration of the elements of the offense or offenses for which such  
60 person was convicted.

61 (d) The Board of Pardons and Paroles may hold a hearing to  
62 determine the suitability for parole release of any person whose  
63 eligibility for parole release is not subject to the provisions of  
64 subsection (b) of this section upon completion by such person of  
65 seventy-five per cent of such person's definite or aggregate sentence  
66 less any risk reduction credit earned under the provisions of section  
67 18-98e. An employee of the board or, if deemed necessary by the  
68 chairperson, a panel of the board shall assess the suitability for parole  
69 release of such person based on the following standards: (1) Whether  
70 there is reasonable probability that such person will live and remain at  
71 liberty without violating the law, and (2) whether the benefits to such  
72 person and society that would result from such person's release to  
73 community supervision substantially outweigh the benefits to such  
74 person and society that would result from such person's continued  
75 incarceration. If a hearing is held, and if the board determines that  
76 continued confinement is necessary, the board shall articulate for the  
77 record the specific reasons why such person and the public would not  
78 benefit from such person serving a period of parole supervision while  
79 transitioning from incarceration to the community. If a hearing is not  
80 held, the board shall document the specific reasons for not holding a

81 hearing and provide such reasons to such person. No person shall be  
82 released on parole without receiving a hearing. The decision of the  
83 board under this subsection shall not be subject to appeal.

84 (e) The Board of Pardons and Paroles may hold a hearing to  
85 determine the suitability for parole release of any person whose  
86 eligibility for parole release is subject to the provisions of subdivision  
87 (2) of subsection (b) of this section upon completion by such person of  
88 eighty-five per cent of such person's definite or aggregate sentence. An  
89 employee of the board or, if deemed necessary by the chairperson, a  
90 panel of the board shall assess the suitability for parole release of such  
91 person based on the following standards: (1) Whether there is a  
92 reasonable probability that such person will live and remain at liberty  
93 without violating the law, and (2) whether the benefits to such person  
94 and society that would result from such person's release to community  
95 supervision substantially outweigh the benefits to such person and  
96 society that would result from such person's continued incarceration. If  
97 a hearing is held, and if the board determines that continued  
98 confinement is necessary, the board shall articulate for the record the  
99 specific reasons why such person and the public would not benefit  
100 from such person serving a period of parole supervision while  
101 transitioning from incarceration to the community. If a hearing is not  
102 held, the board shall document the specific reasons for not holding a  
103 hearing and provide such reasons to such person. No person shall be  
104 released on parole without receiving a hearing. The decision of the  
105 board under this subsection shall not be subject to appeal.

106 (f) (1) Notwithstanding the provisions of subsections (a) to (e),  
107 inclusive, of this section, a person convicted of one or more crimes  
108 committed while such person was under eighteen years of age, who is  
109 incarcerated on or after October 1, 2014, and who received a definite  
110 sentence or aggregate sentence of more than ten years for such crimes  
111 prior to, on or after October 1, 2014, may be allowed to go at large on  
112 parole in the discretion of the panel of the Board of Pardons and  
113 Paroles for the institution in which such person is confined. If such  
114 person is serving a sentence of fifty years or less, such person shall be

115 eligible for parole after serving sixty per cent of the sentence or twelve  
116 years, whichever is greater. If such person is serving a sentence of  
117 more than fifty years, such person shall be eligible for parole after  
118 -serving thirty years. Nothing in this subsection shall limit a person's  
119 eligibility for parole release under the provisions of subsections (a) to  
120 (e), inclusive, of this section if such person would be eligible for parole  
121 release at an earlier date under any of such provisions.

122 (2) The board shall apply the parole eligibility rules of this  
123 subsection only with respect to the sentence for a crime or crimes  
124 committed while a person was under eighteen years of age. Any  
125 portion of a sentence that is based on a crime or crimes committed  
126 while a person was eighteen years of age or older shall be subject to  
127 the applicable parole eligibility, suitability and release rules set forth in  
128 subsections (a) to (e), inclusive, of this section.

129 (3) Whenever a person becomes eligible for parole release pursuant  
130 to this subsection, the board shall hold a hearing to determine such  
131 person's suitability for parole release. At least twelve months prior to  
132 such hearing, the board shall notify the office of Chief Public Defender,  
133 the appropriate state's attorney, the Victim Services Unit within the  
134 Department of Correction, the Office of the Victim Advocate and the  
135 Office of Victim Services within the Judicial Department of such  
136 person's eligibility for parole release pursuant to this subsection. The  
137 office of Chief Public Defender shall assign counsel for such person  
138 pursuant to section 51-296 if such person is indigent. At any hearing to  
139 determine such person's suitability for parole release pursuant to this  
140 subsection, the board shall permit (A) such person to make a statement  
141 on such person's behalf, (B) counsel for such person and the state's  
142 attorney to submit reports and other documents, and (C) any victim of  
143 the crime or crimes to make a statement pursuant to section 54-126a.  
144 The board may request testimony from mental health professionals or  
145 other relevant witnesses, and reports from the Commissioner of  
146 Correction or other persons, as the board may require. The board shall  
147 use validated risk assessment and needs assessment tools and its risk-  
148 based structured decision making and release criteria established

149 pursuant to subsection (d) of section 54-124a in making a  
150 determination pursuant to this subsection.

151 (4) After such hearing, the board may allow such person to go at  
152 large on parole with respect to any portion of a sentence that was  
153 based on a crime or crimes committed while such person was under  
154 eighteen years of age if the board finds that such parole release would  
155 be consistent with the factors set forth in subdivisions (1) to (4),  
156 inclusive, of subsection (c) of section 54-300 and if it appears, from all  
157 available information, including, but not limited to, any reports from  
158 the Commissioner of Correction, that (A) there is a reasonable  
159 probability that such person will live and remain at liberty without  
160 violating the law; (B) the benefits to such person and society that  
161 would result from such person's release to community supervision  
162 substantially outweigh the benefits to such person and society that  
163 would result from such person's continued incarceration; and (C) such  
164 person has demonstrated substantial rehabilitation since the date such  
165 crime or crimes were committed considering such person's character,  
166 background and history, as demonstrated by factors, including, but  
167 not limited to, such person's correctional record, the age and  
168 circumstances of such person as of the date of the commission of the  
169 crime or crimes, whether such person has demonstrated remorse and  
170 increased maturity since the date of the commission of the crime or  
171 crimes, such person's contributions to the welfare of other persons  
172 through service, such person's efforts to overcome substance abuse,  
173 addiction, trauma, lack of education or obstacles that such person may  
174 have faced as a child or youth in the adult correctional system, the  
175 opportunities for rehabilitation in the adult correctional system and the  
176 overall degree of such person's rehabilitation considering the nature  
177 and circumstances of the crime or crimes.

178 (5) After such hearing, the board shall articulate for the record its  
179 decision and the reasons for its decision. If the board determines that  
180 continued confinement is necessary, the board may reassess such  
181 person's suitability for a new parole hearing at a later date to be  
182 determined at the discretion of the board, but not earlier than two

183 years after the date of its decision.

184 (6) The decision of the board under this subsection shall not be  
185 subject to appeal.

186 ~~[(f)]~~ (g) Any person released on parole under this section shall  
187 remain in the custody of the Commissioner of Correction and be  
188 subject to supervision by personnel of the Department of Correction  
189 during such person's period of parole.

190 Sec. 2. (NEW) (Effective October 1, 2014) (a) If the case of a child, as  
191 defined in section 46b-120 of the general statutes, is transferred to the  
192 regular criminal docket of the Superior Court pursuant to section 46b-  
193 127 of the general statutes, as amended by this act, and the child is  
194 convicted of a class A, B or C felony pursuant to such transfer, at the  
195 time of sentencing, the court shall:

196 (1) Consider, in addition to any other information relevant to  
197 sentencing, any scientific and psychological evidence showing the  
198 differences between a child's brain development and an adult's brain  
199 development, including, but not limited to, evidence showing, as  
200 compared to an adult: (A) A child's lack of maturity and  
201 underdeveloped sense of responsibility, including evidence showing a  
202 child's recklessness, impulsivity and risk-taking tendencies; (B) a  
203 child's vulnerability to negative influences and outside pressures from  
204 peers or family members, or both; (C) a child's increased capacity for  
205 change and rehabilitation; and (D) a child's reduced competency in (i)  
206 appreciating the risks and consequences of his or her own actions, (ii)  
207 negotiating the complexities of the criminal justice system, and (iii)  
208 assisting in his or her own defense; and

209 (2) Consider, if the court proposes to sentence the child to a lengthy  
210 sentence under which it is likely that the child will die while  
211 incarcerated, how the scientific and psychological evidence described  
212 in subdivision (1) of this subsection counsels against such a sentence.

213 (b) Notwithstanding the provisions of section 54-91a of the general

214 statutes, no presentence investigation or report may be waived with  
215 respect to a child convicted of a class A or B felony. With respect to a  
216 child convicted of a class C felony, the presentence investigation and  
217 report may be waived by the child only upon approval by the court.  
218 Any presentence report prepared with respect to a child convicted of a  
219 class A, B or C felony shall address the factors set forth in  
220 subparagraphs (A) to (D), inclusive, of subdivision (1) of subsection (a)  
221 of this section.

222 (c) The Court Support Services Division of the Judicial Branch shall  
223 establish reference materials relating to adolescent psychological and  
224 brain development to assist courts in sentencing children pursuant to  
225 this section.

226 Sec. 3. Subsection (c) of section 46b-127 of the 2014 supplement to  
227 the general statutes is repealed and the following is substituted in lieu  
228 thereof (*Effective October 1, 2014*):

229 (c) Upon the effectuation of the transfer, such child shall stand trial  
230 and be sentenced, if convicted, as if such child were eighteen years of  
231 age, subject to the requirements of section 2 of this act. Such child shall  
232 receive credit against any sentence imposed for time served in a  
233 juvenile facility prior to the effectuation of the transfer. A child who  
234 has been transferred may enter a guilty plea to a lesser offense if the  
235 court finds that such plea is made knowingly and voluntarily. Any  
236 child transferred to the regular criminal docket who pleads guilty to a  
237 lesser offense shall not resume such child's status as a juvenile  
238 regarding such offense. If the action is dismissed or nolleed or if such  
239 child is found not guilty of the charge for which such child was  
240 transferred or of any lesser included offenses, the child shall resume  
241 such child's status as a juvenile until such child attains the age of  
242 eighteen years.

243 Sec. 4. Subsection (f) of section 46b-133c of the general statutes is  
244 repealed and the following is substituted in lieu thereof (*Effective*  
245 *October 1, 2014*):



246 (f) Whenever a proceeding has been designated a serious juvenile  
247 repeat offender prosecution pursuant to subsection (b) of this section  
248 and the child does not waive such child's right to a trial by jury, the  
249 court shall transfer the case from the docket for juvenile matters to the  
250 regular criminal docket of the Superior Court. Upon transfer, such  
251 child shall stand trial and be sentenced, if convicted, as if such child  
252 were eighteen years of age, subject to the requirements of section 2 of  
253 this act, except that no such child shall be placed in a correctional  
254 facility but shall be maintained in a facility for children and youths  
255 until such child attains eighteen years of age or until such child is  
256 sentenced, whichever occurs first. Such child shall receive credit  
257 against any sentence imposed for time served in a juvenile facility  
258 prior to the effectuation of the transfer. A child who has been  
259 transferred may enter a guilty plea to a lesser offense if the court finds  
260 that such plea is made knowingly and voluntarily. Any child  
261 transferred to the regular criminal docket who pleads guilty to a lesser  
262 offense shall not resume such child's status as a juvenile regarding  
263 such offense. If the action is dismissed or nolleed or if such child is  
264 found not guilty of the charge for which such child was transferred,  
265 the child shall resume such child's status as a juvenile until such child  
266 attains eighteen years of age.

267 Sec. 5. Subsection (f) of section 46b-133d of the general statutes is  
268 repealed and the following is substituted in lieu thereof (*Effective*  
269 *October 1, 2014*):

270 (f) When a proceeding has been designated a serious sexual  
271 offender prosecution pursuant to subsection (c) of this section and the  
272 child does not waive the right to a trial by jury, the court shall transfer  
273 the case from the docket for juvenile matters to the regular criminal  
274 docket of the Superior Court. Upon transfer, such child shall stand trial  
275 and be sentenced, if convicted, as if such child were eighteen years of  
276 age, subject to the requirements of section 2 of this act, except that no  
277 such child shall be placed in a correctional facility but shall be  
278 maintained in a facility for children and youths until such child attains  
279 eighteen years of age or until such child is sentenced, whichever occurs

280 first. Such child shall receive credit against any sentence imposed for  
281 time served in a juvenile facility prior to the effectuation of the  
282 transfer. A child who has been transferred may enter a guilty plea to a  
283 lesser offense if the court finds that such plea is made knowingly and  
284 voluntarily. Any child transferred to the regular criminal docket who  
285 pleads guilty to a lesser offense shall not resume such child's status as  
286 a juvenile regarding such offense. If the action is dismissed or nolle or  
287 if such child is found not guilty of the charge for which such child was  
288 transferred, the child shall resume such child's status as a juvenile until  
289 such child attains eighteen years of age.

290 Sec. 6. Section 53a-46a of the general statutes is repealed and the  
291 following is substituted in lieu thereof (*Effective October 1, 2014, and*  
292 *applicable to any person convicted prior to, on or after said date*):

293 (a) A person shall be subjected to the penalty of death for a capital  
294 felony committed prior to April 25, 2012, under the provisions of  
295 section 53a-54b, as amended by this act, in effect prior to April 25,  
296 2012, only if (1) a hearing is held in accordance with the provisions of  
297 this section, and (2) such person was eighteen years of age or older at  
298 the time the offense was committed.

299 (b) For the purpose of determining the sentence to be imposed when  
300 a defendant is convicted of or pleads guilty to a capital felony, the  
301 judge or judges who presided at the trial or before whom the guilty  
302 plea was entered shall conduct a separate hearing to determine the  
303 existence of any mitigating factor concerning the defendant's character,  
304 background and history, or the nature and circumstances of the crime,  
305 and any aggravating factor set forth in subsection (i) of this section.  
306 Such hearing shall not be held if the state stipulates that none of the  
307 aggravating factors set forth in subsection (i) of this section exists or  
308 that any factor set forth in subsection (h) of this section exists. Such  
309 hearing shall be conducted (1) before the jury which determined the  
310 defendant's guilt, or (2) before a jury impaneled for the purpose of  
311 such hearing if (A) the defendant was convicted upon a plea of guilty;  
312 (B) the defendant was convicted after a trial before three judges as

313 provided in subsection (b) of section 53a-45; or (C) if the jury which  
314 determined the defendant's guilt has been discharged by the court for  
315 good cause, or (3) before the court, on motion of the defendant and  
316 with the approval of the court and the consent of the state.

317 (c) In such hearing the court shall disclose to the defendant or his  
318 counsel all material contained in any presentence report which may  
319 have been prepared. No presentence information withheld from the  
320 defendant shall be considered in determining the existence of any  
321 mitigating or aggravating factor. Any information relevant to any  
322 mitigating factor may be presented by either the state or the defendant,  
323 regardless of its admissibility under the rules governing admission of  
324 evidence in trials of criminal matters, but the admissibility of  
325 information relevant to any of the aggravating factors set forth in  
326 subsection (i) of this section shall be governed by the rules governing  
327 the admission of evidence in such trials. The state and the defendant  
328 shall be permitted to rebut any information received at the hearing and  
329 shall be given fair opportunity to present argument as to the adequacy  
330 of the information to establish the existence of any mitigating or  
331 aggravating factor. The burden of establishing any of the aggravating  
332 factors set forth in subsection (i) of this section shall be on the state.  
333 The burden of establishing any mitigating factor shall be on the  
334 defendant.

335 (d) In determining whether a mitigating factor exists concerning the  
336 defendant's character, background or history, or the nature and  
337 circumstances of the crime, pursuant to subsection (b) of this section,  
338 the jury or, if there is no jury, the court shall first determine whether a  
339 particular factor concerning the defendant's character, background or  
340 history, or the nature and circumstances of the crime, has been  
341 established by the evidence, and shall determine further whether that  
342 factor is mitigating in nature, considering all the facts and  
343 circumstances of the case. Mitigating factors are such as do not  
344 constitute a defense or excuse for the capital felony of which the  
345 defendant has been convicted, but which, in fairness and mercy, may  
346 be considered as tending either to extenuate or reduce the degree of his

347 culpability or blame for the offense or to otherwise constitute a basis  
348 for a sentence less than death.

349 (e) The jury or, if there is no jury, the court shall return a special  
350 verdict setting forth its findings as to the existence of any factor set  
351 forth in subsection (h) of this section, the existence of any aggravating  
352 factor or factors set forth in subsection (i) of this section and whether  
353 any aggravating factor or factors outweigh any mitigating factor or  
354 factors found to exist pursuant to subsection (d) of this section.

355 (f) If the jury or, if there is no jury, the court finds that (1) none of  
356 the factors set forth in subsection (h) of this section exist, (2) one or  
357 more of the aggravating factors set forth in subsection (i) of this section  
358 exist, and (3) (A) no mitigating factor exists, or (B) one or more  
359 mitigating factors exist but are outweighed by one or more  
360 aggravating factors set forth in subsection (i) of this section, the court  
361 shall sentence the defendant to death.

362 (g) If the jury or, if there is no jury, the court finds that (1) any of the  
363 factors set forth in subsection (h) of this section exist, or (2) none of the  
364 aggravating factors set forth in subsection (i) of this section exists, or  
365 (3) one or more of the aggravating factors set forth in subsection (i) of  
366 this section exist and one or more mitigating factors exist, but the one  
367 or more aggravating factors set forth in subsection (i) of this section do  
368 not outweigh the one or more mitigating factors, the court shall impose  
369 a sentence of life imprisonment without the possibility of release.

370 (h) The court shall not impose the sentence of death on the  
371 defendant if the jury or, if there is no jury, the court finds by a special  
372 verdict, as provided in subsection (e) of this section, that at the time of  
373 the offense (1) the defendant was [under the age of eighteen years, or  
374 (2) the defendant was] a person with intellectual disability, as defined  
375 in section 1-1g, or [(3)] (2) the defendant's mental capacity was  
376 significantly impaired or the defendant's ability to conform the  
377 defendant's conduct to the requirements of law was significantly  
378 impaired but not so impaired in either case as to constitute a defense to  
379 prosecution, or [(4)] (3) the defendant was criminally liable under

380 sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed  
381 by another, but the defendant's participation in such offense was  
382 relatively minor, although not so minor as to constitute a defense to  
383 prosecution, or [(5)] (4) the defendant could not reasonably have  
384 foreseen that the defendant's conduct in the course of commission of  
385 the offense of which the defendant was convicted would cause, or  
386 would create a grave risk of causing, death to another person.

387 (i) The aggravating factors to be considered shall be limited to the  
388 following: (1) The defendant committed the offense during the  
389 commission or attempted commission of, or during the immediate  
390 flight from the commission or attempted commission of, a felony and  
391 the defendant had previously been convicted of the same felony; or (2)  
392 the defendant committed the offense after having been convicted of  
393 two or more state offenses or two or more federal offenses or of one or  
394 more state offenses and one or more federal offenses for each of which  
395 a penalty of more than one year imprisonment may be imposed, which  
396 offenses were committed on different occasions and which involved  
397 the infliction of serious bodily injury upon another person; or (3) the  
398 defendant committed the offense and in such commission knowingly  
399 created a grave risk of death to another person in addition to the  
400 victim of the offense; or (4) the defendant committed the offense in an  
401 especially heinous, cruel or depraved manner; or (5) the defendant  
402 procured the commission of the offense by payment, or promise of  
403 payment, of anything of pecuniary value; or (6) the defendant  
404 committed the offense as consideration for the receipt, or in  
405 expectation of the receipt, of anything of pecuniary value; or (7) the  
406 defendant committed the offense with an assault weapon, as defined  
407 in section 53-202a; or (8) the defendant committed the offense set forth  
408 in subdivision (1) of section 53a-54b, as amended by this act, to avoid  
409 arrest for a criminal act or prevent detection of a criminal act or to  
410 hamper or prevent the victim from carrying out any act within the  
411 scope of the victim's official duties or to retaliate against the victim for  
412 the performance of the victim's official duties.

413 Sec. 7. Section 53a-54b of the general statutes is repealed and the

414 following is substituted in lieu thereof (*Effective October 1, 2014, and*  
415 *applicable to any person convicted prior to, on or after said date*):

416 A person is guilty of murder with special circumstances who is  
417 convicted of any of the following and was eighteen years of age or  
418 older when such person committed the murder: (1) Murder of a  
419 member of the Division of State Police within the Department of  
420 Emergency Services and Public Protection or of any local police  
421 department, a chief inspector or inspector in the Division of Criminal  
422 Justice, a state marshal who is exercising authority granted under any  
423 provision of the general statutes, a judicial marshal in performance of  
424 the duties of a judicial marshal, a constable who performs criminal law  
425 enforcement duties, a special policeman appointed under section 29-  
426 18, a conservation officer or special conservation officer appointed by  
427 the Commissioner of Energy and Environmental Protection under the  
428 provisions of section 26-5, an employee of the Department of  
429 Correction or a person providing services on behalf of said department  
430 when such employee or person is acting within the scope of such  
431 employee's or person's employment or duties in a correctional  
432 institution or facility and the actor is confined in such institution or  
433 facility, or any firefighter, while such victim was acting within the  
434 scope of such victim's duties; (2) murder committed by a defendant  
435 who is hired to commit the same for pecuniary gain or murder  
436 committed by one who is hired by the defendant to commit the same  
437 for pecuniary gain; (3) murder committed by one who has previously  
438 been convicted of intentional murder or of murder committed in the  
439 course of commission of a felony; (4) murder committed by one who  
440 was, at the time of commission of the murder, under sentence of life  
441 imprisonment; (5) murder by a kidnapper of a kidnapped person  
442 during the course of the kidnapping or before such person is able to  
443 return or be returned to safety; (6) murder committed in the course of  
444 the commission of sexual assault in the first degree; (7) murder of two  
445 or more persons at the same time or in the course of a single  
446 transaction; or (8) murder of a person under sixteen years of age.

447 Sec. 8. Section 53a-54d of the general statutes is repealed and the

448 following is substituted in lieu thereof (*Effective October 1, 2014, and*  
449 *applicable to any person convicted prior to, on or after said date*):

450 A person is guilty of murder when, acting either alone or with one  
451 or more persons, he commits arson and, in the course of such arson,  
452 causes the death of a person. Notwithstanding any other provision of  
453 the general statutes, any person convicted of murder under this section  
454 who was eighteen years of age or older at the time of the offense shall  
455 be punished by life imprisonment and shall not be eligible for parole.

456 Sec. 9. Subsection (c) of section 53a-54a of the general statutes is  
457 repealed and the following is substituted in lieu thereof (*Effective*  
458 *October 1, 2014, and applicable to any person convicted prior to, on or after*  
459 *said date*):

460 (c) Murder is punishable as a class A felony in accordance with  
461 subdivision (2) of section 53a-35a unless it is (1) a capital felony  
462 committed prior to April 25, 2012, by a person who was eighteen years  
463 of age or older at the time of the offense, punishable in accordance  
464 with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder  
465 with special circumstances committed on or after April 25, 2012, by a  
466 person who was eighteen years of age or older at the time of the  
467 offense, punishable as a class A felony in accordance with  
468 subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder  
469 under section 53a-54d, as amended by this act, committed by a person  
470 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	October 1, 2014	54-125a
Sec. 2	October 1, 2014	New section
Sec. 3	October 1, 2014	46b-127(c)
Sec. 4	October 1, 2014	46b-133c(f)
Sec. 5	October 1, 2014	46b-133d(f)

Sec. 6	<i>October 1, 2014, and applicable to any person convicted prior to, on or after said date</i>	53a-46a
Sec. 7	<i>October 1, 2014, and applicable to any person convicted prior to, on or after said date</i>	53a-54b
Sec. 8	<i>October 1, 2014, and applicable to any person convicted prior to, on or after said date</i>	53a-54d
Sec. 9	<i>October 1, 2014, and applicable to any person convicted prior to, on or after said date</i>	53a-54a(c)

**JUD**      *Joint Favorable Subst.*



The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the 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 chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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**OFA Fiscal Note**

**State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 15 \$</b>	<b>FY 16 \$</b>
Correction, Dept.	GF - Potential Savings	See Below	See Below

**Municipal Impact:** None

**Explanation**

Expanding parole eligibility for inmates convicted for a crime committed when they were under the age of 18 and sentenced to more than 10 years in prison may result in savings to the Department of Correction. To the extent that more inmates are granted parole, the agency will shift costs from incarceration to supervision in the community. On average, it saves approximately \$30,000 per inmate annually to supervise an inmate under parole instead of incarcerating them. There are currently approximately 200 inmates who fit the criteria of this bill.

In addition, the bill requires a parole hearing for inmates who meet the eligibility requirement, and a counsel to be appointed by the Office of the Chief Public Defender for indigent clients. It is anticipated that the Public Defender Services will be able to comply with this provision without additional resources and does not result in a fiscal impact.

This bill requires the court to consider certain factors when sentencing a juvenile and the Judicial Department Court Support Services Division (CSSD) to create reference materials on adolescent psychology and brain development to assist courts at sentencing. It is anticipated that CSSD can do so with current resources and does not

result in a fiscal impact.

Retroactively eliminating life sentences without parole for juveniles for specific offenses are anticipated to result in a minimal savings to the Department of Correction because there are few current inmates to whom the change applies and future offenders will receive shorter sentences.

### ***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sHB 5221*****AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES.*****SUMMARY:**

This bill makes a number of changes related to sentencing and parole release of offenders who were under age 18 at the time of committing their crimes. Among other things, it:

1. retroactively eliminates (a) life sentences for capital felony and arson murder, and (b) convictions for murder with special circumstances, for offenders who committed these crimes when they were under age 18;
2. requires criminal courts to consider certain factors when sentencing someone convicted of a class A, B, or C felony committed when he or she was between ages 14 and 18;
3. establishes alternative parole eligibility rules that can make someone eligible for parole sooner if he or she (a) committed a crime when he or she was under age 18 and (b) was sentenced to more than 10 years in prison; and
4. (a) prohibits a child convicted of a class A or B felony from waiving a presentence investigation or report, (b) requires court approval before a child convicted of a class C felony can waive such an investigation or report, and (c) requires such an investigation or report for a child convicted of a class A, B, or C felony to consider the same sentencing factors the bill requires a criminal court to consider. (In practice, defendants can waive

these investigations and reports.)

The bill also makes technical and conforming changes (§§ 3-5).

EFFECTIVE DATE: October 1, 2014, and the provisions regarding capital felony, murder with special circumstances, and arson murder apply regardless of when an offender is or was convicted.

### **§§ 6-9 — SENTENCES FOR OFFENDERS UNDER AGE 18**

The bill prohibits sentencing someone for a capital felony if he or she was under age 18 when the crime was committed and overturns prior sentences of this type. By law, capital felony punishes crimes committed before April 25, 2012 with death or life imprisonment without possibility of release. The law prohibits sentencing to death offenders who were under age 18 at the time of the crime.

The bill prohibits convicting someone of murder with special circumstances unless the offender was at least age 18 at the time of the offense. It overturns any prior convictions of this crime for these offenders. By law, this crime is punishable by life imprisonment without the possibility of release.

The bill lowers the penalty for arson murder when the offender is under age 18 from life imprisonment, statutorily defined as 60 years without parole, to 25 to 60 years. It applies this change retroactively to decrease the prison sentence of any offender previously convicted of committing this crime when under age 18.

The bill also makes conforming changes.

### **§ 2 — CONSIDERATIONS AT SENTENCING**

The bill requires a criminal court to consider certain factors when sentencing someone convicted of a class A, B, or C felony committed when he or she was between ages 14 and 18. In addition to other information relevant to sentencing, the bill requires the court to consider scientific and psychological evidence showing the differences between a child's and an adult's brain development, including

evidence showing that a child, as compared to an adult:

1. lacks maturity and has an underdeveloped sense of responsibility, including evidence of recklessness, impulsivity, and risk-taking tendencies;
2. is vulnerable to negative influences and outside pressures from peers, family members, or both;
3. has an increased capacity for change and rehabilitation; and
4. has reduced competency to appreciate the risks and consequences of actions, negotiate the criminal justice system's complexities, and assist in his or her defense.

If the court proposes a lengthy sentence under which it is likely the child will die in prison, the bill requires the court to consider how this evidence counsels against such a sentence.

The bill requires the Judicial Branch's Court Support Services Division to create reference material on adolescent psychology and brain development to help courts sentence children.

### **§ 1 — PAROLE ELIGIBILITY**

Currently, someone is generally eligible for parole after serving (1) 50% of his or her sentence minus any risk reduction credits earned if convicted of a nonviolent crime and (2) 85% of his or her sentence if convicted of a violent crime, home invasion, or 2<sup>nd</sup> degree burglary. Someone convicted of the following crimes is ineligible for parole: murder, capital felony, murder with special circumstances, felony murder, arson murder, or 1<sup>st</sup> degree aggravated sexual assault.

The bill establishes alternative parole eligibility rules that can make someone eligible for parole sooner if he or she (1) commits a crime when he or she is under age 18 and (2) is sentenced to more than 10 years in prison. The eligibility rules do not apply to any portion of a sentence imposed for a crime committed when the person was age 18 or older. Existing parole eligibility rules apply to such a sentence.

The rules apply if they make someone eligible for parole sooner than under existing law and they also apply to someone convicted of a crime who would otherwise be ineligible for parole. Under these rules, someone sentenced to:

1. up to 50 years in prison is eligible for parole after serving the greater of 12 years or 60% of his or her sentence or
2. more than 50 years in prison is eligible for parole after serving 30 years.

The bill applies to offenders incarcerated on and after October 1, 2014 regardless of when the crime was committed or the offender sentenced.

### ***Required Hearing***

The bill requires (1) a parole hearing when someone becomes parole-eligible under the bill's provisions and (2) the board to notify, at least 12 months before the hearing, the Chief Public Defender's Office, appropriate state's attorney, Department of Correction's (DOC) Victim Services Unit, Office of Victim Advocate, and Judicial Branch's Office of Victim Services. The Chief Public Defender's Office must provide counsel for an indigent person.

At the hearing, the bill requires the board to permit:

1. the inmate to make a statement;
2. the inmate's counsel and state's attorney to submit reports and documents; and
3. a victim of the person's crime to make a statement, as with other parole hearings.

The board may also request (1) testimony from mental health professionals and relevant witnesses and (2) reports from the DOC or others. The board must use a validated risk and needs assessment tool and risk-based structured decision making and release criteria.

(Existing law requires the board's chairwoman to adopt policies on these topics.)

***Release Decisions***

After the hearing, the bill allows the board to release someone on parole if:

1. the release (a) holds the offender accountable to the community without compromising public safety, (b) reflects the offense's seriousness and makes the sentence proportional to the harm to victims and the community, (c) uses the most appropriate sanctions available, including prison, community punishment, and supervision, (d) could reduce criminal activity, impose just punishment, and provide the offender with meaningful and effective rehabilitation and reintegration, and (e) is fair and promotes respect for the law;
2. it appears from all available information, including DOC reports, that (a) there is a reasonable probability the offender will not violate the law again and (b) the benefits of release to the offender substantially outweigh the benefits from continued confinement; and
3. it appears from all available information, including DOC reports, that the offender is substantially rehabilitated considering his or her character, background, and history, including (a) the person's prison record, age, and circumstances at the time of committing the crime, (b) whether he or she has shown remorse and increased maturity since committing the crime, (c) his or her contributions to others' welfare through service, (d) his or her efforts to overcome substance abuse, addiction, trauma, lack of education, or obstacles he or she faced as a child or youth in prison, (e) the opportunities for rehabilitation in prison, and (f) the overall degree of his or her rehabilitation considering the nature and circumstances of the crime.

The bill requires the board to articulate reasons for its decision on

the record. If the board denies parole, the bill allows the board to reassess the person's suitability for a hearing at a later time determined by the board but no sooner than two years after the board's denial.

The bill specifies that the board's decisions under these provisions are not appealable.

## **BACKGROUND**

### ***Related Cases — U.S. Supreme Court***

In *Graham v. Florida*, the U.S. Supreme Court ruled that the Eighth Amendment's prohibition against cruel and unusual punishment prohibits states from sentencing defendants under age 18 to life without parole for non-homicide crimes. The Court stated that there must be "some meaningful opportunity" for release based on a defendant's demonstrated maturity and rehabilitation. The Court stated that the Eighth Amendment does not prohibit a juvenile who commits a non-homicide crime from being kept in prison for life but it prohibits making the judgment "at the outset that those offenders never will be fit to re-enter society" (130 S.Ct. 2011 (2010)).

In *Miller v. Alabama*, the U.S. Supreme Court held that the Eighth Amendment prohibits courts from automatically imposing life without parole sentences on offenders who committed homicides while they were juveniles (under age 18). The Court did not categorically bar life without parole sentences for juveniles but stated that a court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" (132 S.Ct. 2455 (2012)).

### ***Cases in Juvenile Court and Superior Court***

By law, juvenile courts have jurisdiction to hear criminal cases of offenders under age 18. Depending on the circumstances, offenders alleged to have committed felonies when they were between ages 14 and 18 may be transferred to the Superior Court criminal docket.

### ***Capital Felony and Murder with Special Circumstances***



A person commits a capital felony, before April 25, 2012, or murder with special circumstances, after that date, if he or she murders:

1. certain officers while performing their duties, such as a police officer, state marshal, special conservation officer, or DOC employee;
2. for pay or hires someone to murder;
3. after a previous conviction for intentional murder or murder while a felony was committed;
4. while sentenced to life imprisonment;
5. someone that he or she kidnapped;
6. while committing 1<sup>st</sup> degree sexual assault;
7. two or more people at the same time or in the course of a single transaction; or
8. a person under age 16.

### ***Presentence Investigation Report***

The law requires a presentence investigation for anyone convicted of a felony for the first time in Connecticut. The court may request it for any crime or offense other than a capital felony or murder with special circumstances. Probation officers prepare the report, which includes information on the circumstances of the offense; the victim's attitude; and the defendant's criminal record, social history, and present condition.

### ***Felony Classifications***

The law classifies felonies as A, B, C, D, or E and establishes penalties for each classification. There are also unclassified felonies that have different penalties. Table 1 displays the penalties for felony classifications.

**Table 1: Penalties for Felony Classifications**

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<i>Felony</i>	<i>Prison Term</i>	<i>Fine</i>
Class A felony of murder with special circumstances	Life without the possibility of release	Up to \$20,000
Class A felony of murder	25 to 60 years	Up to \$20,000
Class A felony of aggravated sexual assault of a minor	25 to 50 years	Up to \$20,000
Class A felony	10 to 25 years	Up to \$20,000
Class B felony of 1st degree manslaughter with a firearm	Five to 40 years	Up to \$15,000
Class B felony	One to 20 years	Up to \$15,000
Class C felony	One to 10 years	Up to \$10,000
Class D felony	Up to 5 years	Up to \$5,000
Class E felony	Up to 3 years	Up to \$3,500

### COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 7 (03/10/2014)