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:

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 Section 54-125a of the 2014 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

years after the date of its decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A person is guilty of murder with special circumstances who is convicted of any of the following and was eighteen years of age or older when such person committed the murder: (1) Murder of a member of the Division of State Police within the Department of Emergency Services and Public Protection or of any local police department, a chief inspector or inspector in the Division of Criminal Justice, a state marshal who is exercising authority granted under any provision of the general statutes, a judicial marshal in performance of the duties of a judicial marshal, a constable who performs criminal law enforcement duties, a special policeman appointed under section 29-18, a conservation officer or special conservation officer appointed by the Commissioner of Energy and Environmental Protection under the provisions of section 26-5, an employee of the Department of Correction or a person providing services on behalf of said department when such employee or person is acting within the scope of such employee's or person's employment or duties in a correctional institution or facility and the actor is confined in such institution or facility, or any firefighter, while such victim was acting within the scope of such victim's 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) murder committed in the course of the commission of sexual assault in the first degree; (7) murder of two or more persons at the same time or in the course of a single transaction; or (8) murder of a person under sixteen years of age.

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

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

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

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

(c) Murder is punishable as a class A felony in accordance with subdivision (2) of section 53a-35a unless it is (1) a capital felony committed prior to April 25, 2012, by a person who was eighteen years of age or older at the time of the offense, punishable in accordance with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder with special circumstances committed on or after April 25, 2012, by a person who was eighteen years of age or older at the time of the offense, punishable as a class A felony in accordance with subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder under section 53a-54d, as amended by this act, committed by a person 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	*October 1, 2014, and applicable to any person convicted prior to, on or after said date*	53a-46a
Sec. 7	*October 1, 2014, and applicable to any person convicted prior to, on or after said date*	53a-54b
Sec. 8	*October 1, 2014, and applicable to any person convicted prior to, on or after said date*	53a-54d
Sec. 9	*October 1, 2014, and applicable to any person convicted prior to, on or after said date*	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.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 15 $	FY 16 $
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 2nd degree burglary. Someone convicted of the following crimes is ineligible for parole: murder, capital felony, murder with special circumstances, felony murder, arson murder, or 1st 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 1st 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

Felony	*Prison Term*	*Fine*
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)