

Referred to Committee on

Introduced by:

AN ACT CONCERNING JUDICIAL DISCRETION FOR CERTAIN OFFENSES WITH MANDATORY MINIMUM SENTENCES.

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

1 Section 1. Subsection (i) of section 14-36 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective October*
3 *1, 2023*):

4 (i) Penalties. (1) Any person who violates any provision of this section
5 shall, for a first offense, be deemed to have committed an infraction and
6 be fined not less than seventy-five dollars or more than ninety dollars
7 and, for any subsequent offense, shall be fined not less than two
8 hundred fifty dollars or more than three hundred fifty dollars or be
9 imprisoned not more than thirty days, or both.

10 (2) In addition to the penalty prescribed under subdivision (1) of this
11 subsection, any person who violates any provision of this section who
12 (A) has, prior to the commission of the present violation, committed a
13 violation of this section or subsection (a) of section 14-215, shall be fined
14 not more than five hundred dollars or sentenced to perform not more
15 than one hundred hours of community service, or (B) has, prior to the
16 commission of the present violation, committed two or more violations
17 of this section or subsection (a) of section 14-215, or any combination
18 thereof, shall be sentenced to a term of imprisonment of one year, and,
19 in the absence of any mitigating circumstances as determined by the

20 court, ninety days of [which may] the sentence imposed may not be
21 suspended or reduced in any manner.

22 Sec. 2. Subsection (b) of section 14-215 of the general statutes is
23 repealed and the following is substituted in lieu thereof (*Effective October*
24 *1, 2023*):

25 (b) (1) Except as provided in subsection (c) of this section, any person
26 who violates any provision of subsection (a) of this section shall, for a
27 first offense, be fined not less than one hundred fifty dollars or more
28 than two hundred dollars or imprisoned not more than three months,
29 or be both fined and imprisoned, and, for any subsequent offense, be
30 fined not less than two hundred dollars or more than six hundred
31 dollars or imprisoned not more than one year, or be both fined and
32 imprisoned.

33 (2) Except as provided in subsection (c) of this section, in addition to
34 the penalty prescribed under subdivision (1) of this subsection, any
35 person who violates any provision of subsection (a) of this section who
36 (A) has, prior to the commission of the present violation, committed a
37 violation of subsection (a) of this section or section 14-36 shall be fined
38 not more than five hundred dollars or sentenced to perform not more
39 than one hundred hours of community service, or (B) has, prior to the
40 commission of the present violation, committed two or more violations
41 of subsection (a) of this section or section 14-36, or any combination
42 thereof, shall be sentenced to a term of imprisonment of one year, and,
43 in the absence of any mitigating circumstances as determined by the
44 court, ninety days of [which] the sentence may not be suspended or
45 reduced in any manner.

46 Sec. 3. Subsection (o) of section 53a-40 of the general statutes is
47 repealed and the following is substituted in lieu thereof (*Effective October*
48 *1, 2023*):

49 (o) When any person has been found to be a persistent felony
50 offender, the court, in lieu of imposing the sentence authorized by
51 section 53a-35a for the crime of which such person presently stands

52 convicted, may impose the sentence of imprisonment authorized by said
53 section for the next more serious degree of felony; provided the sentence
54 imposed may not be less than three years, and provided further (1) three
55 years of the sentence so imposed prior to October 1, 2023, may not be
56 suspended or reduced by the court, and (2) in the absence of any
57 mitigating circumstances as determined by the court, three years of the
58 sentence so imposed on or after October 1, 2023, may not be suspended
59 or reduced by the court. If the court suspends or reduces a sentence
60 under subdivision (2) of this subsection, the court shall specifically state
61 for the record the mitigating circumstance found.

62 Sec. 4. Section 53a-71 of the general statutes is repealed and the
63 following is substituted in lieu thereof (*Effective October 1, 2023*):

64 (a) A person is guilty of sexual assault in the second degree when
65 such person engages in sexual intercourse with another person and: (1)
66 Such other person is thirteen years of age or older but under sixteen
67 years of age and the actor is more than three years older than such other
68 person; or (2) such other person is impaired because of mental disability
69 or disease to the extent that such other person is unable to consent to
70 such sexual intercourse; or (3) such other person is physically helpless;
71 or (4) such other person is less than eighteen years old and the actor is
72 such person's guardian or otherwise responsible for the general
73 supervision of such person's welfare; or (5) such other person is in
74 custody of law or detained in a hospital or other institution and the actor
75 has supervisory or disciplinary authority over such other person; or (6)
76 the actor is a psychotherapist and such other person is (A) a patient of
77 the actor and the sexual intercourse occurs during the psychotherapy
78 session, (B) a patient or former patient of the actor and such patient or
79 former patient is emotionally dependent upon the actor, or (C) a patient
80 or former patient of the actor and the sexual intercourse occurs by means
81 of therapeutic deception; or (7) the actor accomplishes the sexual
82 intercourse by means of false representation that the sexual intercourse
83 is for a bona fide medical purpose by a health care professional; or (8)
84 the actor is a school employee and such other person is a student
85 enrolled in a school in which the actor works or a school under the

86 jurisdiction of the local or regional board of education which employs
87 the actor; or (9) the actor is a coach in an athletic activity or a person who
88 provides intensive, ongoing instruction and such other person is a
89 recipient of coaching or instruction from the actor and (A) is a secondary
90 school student and receives such coaching or instruction in a secondary
91 school setting, or (B) is under eighteen years of age; or (10) the actor is
92 twenty years of age or older and stands in a position of power, authority
93 or supervision over such other person by virtue of the actor's
94 professional, legal, occupational or volunteer status and such other
95 person's participation in a program or activity, and such other person is
96 under eighteen years of age; or (11) such other person is placed or
97 receiving services under the direction of the Commissioner of
98 Developmental Services in any public or private facility or program and
99 the actor has supervisory or disciplinary authority over such other
100 person.

101 (b) Sexual assault in the second degree is a class C felony or, if the
102 victim of the offense is under sixteen years of age, a class B felony, and
103 any person found guilty under this section shall be sentenced to a term
104 of imprisonment of which nine months of the sentence imposed may not
105 be suspended or reduced by the court in the absence of any mitigating
106 circumstances as determined by the court and specifically stated for the
107 record.

108 Sec. 5. Section 53a-196d of the general statutes is repealed and the
109 following is substituted in lieu thereof (*Effective October 1, 2023*):

110 (a) A person is guilty of possessing child pornography in the first
111 degree when such person knowingly possesses (1) fifty or more visual
112 depictions of child pornography, or (2) one or more visual depictions of
113 child pornography that depict the infliction or threatened infliction of
114 serious physical injury, or (3) (A) a series of images in electronic, digital
115 or other format, which is intended to be displayed continuously,
116 consisting of two or more frames, or a film or videotape, consisting of
117 two or more frames, that depicts (i) more than one child engaging in
118 sexually explicit conduct, or (ii) more than one act of sexually explicit

119 conduct by one or more children, or (B) any combination of a (i) series
120 of images in electronic, digital or other format, which is intended to be
121 displayed continuously, (ii) film, or (iii) videotape, which series, film or
122 videotape each consists of two or more frames and depicts a single act
123 of sexually explicit conduct by one child.

124 (b) In any prosecution for an offense under this section, it shall be an
125 affirmative defense that the acts of the defendant, if proven, would
126 constitute a violation of section 53a-196h.

127 (c) Possessing child pornography in the first degree is a class B felony
128 and any person found guilty under this section shall be sentenced to a
129 term of imprisonment of which five years of the sentence imposed may
130 not be suspended or reduced by the court, except as provided in
131 subsection (d) of this section.

132 (d) The court may suspend or reduce the five year sentence under
133 subsection (c) of this section if the court finds and states on the record
134 mitigating circumstances based on the following: (1) Evidence of
135 significant psychological impairment or other evidence that supports a
136 finding that the defendant is not at risk of escalating behavior, and (2)
137 documentation providing that the defendant is capable of and amenable
138 to complying with community-based monitoring and oversight. The
139 court shall specifically state such suspension or reduction of sentence on
140 the record at the time of sentencing.

141 Sec. 6. Section 53a-196e of the general statutes is repealed and the
142 following is substituted in lieu thereof (*Effective October 1, 2023*):

143 (a) A person is guilty of possessing child pornography in the second
144 degree when such person knowingly possesses (1) twenty or more but
145 fewer than fifty visual depictions of child pornography, or (2) a series of
146 images in electronic, digital or other format, which is intended to be
147 displayed continuously, consisting of twenty or more frames, or a film
148 or videotape, consisting of twenty or more frames, that depicts a single
149 act of sexually explicit conduct by one child.

150 (b) In any prosecution for an offense under this section, it shall be an
151 affirmative defense that the acts of the defendant, if proven, would
152 constitute a violation of section 53a-196h.

153 (c) Possessing child pornography in the second degree is a class C
154 felony and any person found guilty under this section shall be sentenced
155 to a term of imprisonment of which two years of the sentence imposed
156 may not be suspended or reduced by the court, except as provided in
157 subsection (d) of this section.

158 (d) The court may suspend or reduce the five year sentence under
159 subsection (c) of this section if the court finds and states on the record
160 mitigating circumstances based on the following: (1) Evidence of
161 significant psychological impairment or other evidence that supports a
162 finding that the defendant is not at risk of escalating behavior, and (2)
163 documentation providing that the defendant is capable of and amenable
164 to complying with community-based monitoring and oversight. The
165 court shall specifically state such suspension or reduction of sentence on
166 the record at the time of sentencing.

167 **Statement of Purpose:**

168 To allow a judge to depart from certain mandatory minimum sentences
169 after considering mitigating circumstances.

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