



WORKING DRAFT

General Assembly

Raised Bill No.

No. 7

09951_____JUD

Referred to Committee on

Introduced by:
(JUD)

AN ACT CONCERNING CRIMINAL SENTENCING AND THE PAROLE PROCESS.

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

1 Section 1. (NEW) (*Effective from passage*) (a) Notwithstanding any
2 other provision of the general statutes, whenever a person (1) stands
3 convicted of manslaughter, arson, kidnapping, robbery in the first or
4 second degree, robbery involving an occupied motor vehicle, assault
5 constituting a felony, sexual assault in the first or third degree,
6 aggravated sexual assault in the first degree, sexual assault in the third
7 degree with a firearm, burglary in the first or second degree, stalking
8 in the first degree or stealing a firearm, and (2) has been, prior to the
9 commission of the present crime, two or more times convicted of and
10 imprisoned in this state or in any other state or in a federal correctional
11 institution for (A) any of the crimes enumerated in subdivision (1) of
12 this subsection or any predecessor statutes in this state, or an attempt
13 to commit any of said crimes, or (B) in any other state, any crimes the
14 essential elements of which are substantially the same as any of the
15 crimes enumerated in subdivision (1) of this subsection, the court shall
16 sentence such person to a term of life imprisonment without the

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17 possibility of release.

18 (b) It shall be an affirmative defense to a charge under this section
19 that (1) as to any prior conviction on which the state is relying the
20 defendant was pardoned on the ground of innocence, and (2) without
21 such conviction, the defendant was not two or more times convicted
22 and imprisoned as required by this section.

23 Sec. 2. Section 53a-40 of the general statutes is repealed and the
24 following is substituted in lieu thereof (*Effective from passage*):

25 (a) A persistent dangerous felony offender is a person who:

26 (1) (A) Stands convicted of manslaughter, arson, kidnapping,
27 robbery in the first or second degree, or assault in the first degree, and
28 (B) has been, prior to the commission of the present crime, convicted of
29 and imprisoned under a sentence to a term of imprisonment of more
30 than one year or of death, in this state or in any other state or in a
31 federal correctional institution, for any of the following crimes: (i) The
32 crimes enumerated in subparagraph (A) of this subdivision or an
33 attempt to commit any of said crimes; or (ii) murder, sexual assault in
34 the first or third degree, aggravated sexual assault in the first degree or
35 sexual assault in the third degree with a firearm, or an attempt to
36 commit any of said crimes; or (iii) prior to October 1, 1975, any of the
37 crimes enumerated in section 53a-72, 53a-75 or 53a-78 of the general
38 statutes, revision of 1958, revised to 1975, or prior to October 1, 1971, in
39 this state, assault with intent to kill under section 54-117, or any of the
40 crimes enumerated in sections 53-9, 53-10, 53-11, 53-12 to 53-16,
41 inclusive, 53-19, 53-21, 53-69, 53-78 to 53-80, inclusive, 53-82, 53-83, 53-
42 86, 53-238 and 53-239 of the general statutes, revision of 1958, revised
43 to 1968, or any predecessor statutes in this state, or an attempt to
44 commit any of said crimes; or (iv) in any other state, any crimes the
45 essential elements of which are substantially the same as any of the
46 crimes enumerated in subparagraph (A) of this subdivision or this
47 subparagraph; or

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48 (2) (A) Stands convicted of sexual assault in the first or third degree,
49 aggravated sexual assault in the first degree or sexual assault in the
50 third degree with a firearm, and (B) has been, prior to the commission
51 of the present crime, convicted of and imprisoned under a sentence to
52 a term of imprisonment of more than one year or of death, in this state
53 or in any other state or in a federal correctional institution, for any of
54 the following crimes: (i) Murder, manslaughter, arson, kidnapping,
55 robbery in the first or second degree or assault in the first degree, or an
56 attempt to commit any of said crimes; or (ii) prior to October 1, 1971, in
57 this state, assault with intent to kill under section 54-117, or any of the
58 crimes enumerated in sections 53-9, 53-10, 53-11, 53-12 to 53-16,
59 inclusive, 53-19, 53-21, 53-69, 53-78 to 53-80, inclusive, 53-82, 53-83 and
60 53-86 of the general statutes, revision of 1958, revised to 1968, or any
61 predecessor statutes in this state, or an attempt to commit any of said
62 crimes; or (iii) in any other state, any crimes the essential elements of
63 which are substantially the same as any of the crimes enumerated in
64 subparagraph (A) of this subdivision or this subparagraph.

65 (b) A persistent dangerous sexual offender is a person who (1)
66 stands convicted of sexual assault in the first or third degree,
67 aggravated sexual assault in the first degree or sexual assault in the
68 third degree with a firearm, and (2) has been, prior to the commission
69 of the present crime, convicted of and imprisoned under a sentence to
70 a term of imprisonment of more than one year, in this state or in any
71 other state or in a federal correctional institution, for (A) any of the
72 crimes enumerated in subdivision (1) of this subsection, or (B) prior to
73 October 1, 1975, any of the crimes enumerated in section 53a-72, 53a-75
74 or 53a-78 of the general statutes, revision of 1958, revised to 1975, or
75 prior to October 1, 1971, in this state, any of the crimes enumerated in
76 section 53-238 or 53-239 of the general statutes, revision of 1958,
77 revised to 1968, or any predecessor statutes in this state, or an attempt
78 to commit any of said crimes, or (C) in any other state, any crimes the
79 essential elements of which are substantially the same as any of the
80 crimes enumerated in subdivision (1) of this subsection or this
81 subdivision.

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82 (c) A persistent serious felony offender is a person who (1) stands
83 convicted of a felony, and (2) has been, prior to the commission of the
84 present felony, convicted of and imprisoned under an imposed term of
85 more than one year or of death, in this state or in any other state or in a
86 federal correctional institution, for a crime. This subsection shall not
87 apply where the present conviction is for a crime enumerated in
88 subdivision (1) of subsection (a) of this section and the prior conviction
89 was for a crime other than those enumerated in subsection (a) of this
90 section.

91 (d) A persistent serious sexual offender is a person, other than a
92 person who qualifies as a persistent dangerous sexual offender under
93 subsection (b) of this section, who qualifies as a persistent serious
94 felony offender under subsection (c) of this section and the felony of
95 which such person presently stands convicted is a violation of
96 subdivision (2) of subsection (a) of section 53-21, or section 53a-70, 53a-
97 70a, 53a-70b, 53a-71, 53a-72a or 53a-72b and the prior conviction is for
98 a violation of section 53-21 of the general statutes, revised to January 1,
99 1995, involving sexual contact, committed prior to October 1, 1995, a
100 violation of subdivision (2) of section 53-21 of the general statutes,
101 committed on or after October 1, 1995, and prior to October 1, 2000, a
102 violation of subdivision (2) of subsection (a) of section 53-21 or a
103 violation of section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b.

104 (e) A persistent larceny offender is a person who (1) stands
105 convicted of larceny in the third degree in violation of the provisions of
106 section 53a-124 in effect prior to October 1, 1982, or larceny in the
107 fourth, fifth or sixth degree, and (2) has been, at separate times prior to
108 the commission of the present larceny, twice convicted of the crime of
109 larceny.

110 (f) A persistent felony offender is a person who (1) stands convicted
111 of a felony other than a class D felony, and (2) has been, at separate
112 times prior to the commission of the present felony, twice convicted of
113 a felony other than a class D felony.

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114 (g) It shall be an affirmative defense to the charge of being a
115 persistent offender under this section that (1) as to any prior conviction
116 on which the state is relying the defendant was pardoned on the
117 ground of innocence, and (2) without such conviction, the defendant
118 was not two or more times convicted and imprisoned as required by
119 this section.

120 (h) When any person has been found to be a persistent dangerous
121 felony offender, and [the court is of the opinion that] such person's
122 history and character and the nature and circumstances of such
123 person's criminal conduct indicate that extended incarceration and
124 lifetime supervision will best serve the public interest, the court, in lieu
125 of imposing the sentence of imprisonment authorized by section
126 53a-35 for the crime of which such person presently stands convicted,
127 or authorized by section 53a-35a if the crime of which such person
128 presently stands convicted was committed on or after July 1, 1981,
129 shall sentence such person to a term of imprisonment of not more than
130 forty years and, if such person has, at separate times prior to the
131 commission of the present crime, been twice convicted of and
132 imprisoned for any of the crimes enumerated in subdivision (2) of
133 subsection (a) of this section, sentence such person to a term of
134 imprisonment of not more than life.

135 (i) When any person has been found to be a persistent dangerous
136 sexual offender, and [the court is of the opinion that] such person's
137 history and character and the nature and circumstances of such
138 person's criminal conduct indicate that extended incarceration and
139 lifetime supervision will best serve the public interest, the court, in lieu
140 of imposing the sentence of imprisonment authorized by section 53a-
141 35a for the crime of which such person presently stands convicted,
142 shall sentence such person to a term of imprisonment and a period of
143 special parole pursuant to subsection (b) of section 53a-28 which
144 together constitute a sentence of imprisonment for life, as defined in
145 section 53a-35b.

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146 (j) When any person has been found to be a persistent serious felony
147 offender, and [the court is of the opinion that] such person's history
148 and character and the nature and circumstances of such person's
149 criminal conduct indicate that extended incarceration will best serve
150 the public interest, the court in lieu of imposing the sentence of
151 imprisonment authorized by section 53a-35 for the crime of which such
152 person presently stands convicted, or authorized by section 53a-35a if
153 the crime of which such person presently stands convicted was
154 committed on or after July 1, 1981, may impose the sentence of
155 imprisonment authorized by said section for the next more serious
156 degree of felony.

157 (k) When any person has been found to be a persistent serious
158 sexual offender, and [the court is of the opinion that] such person's
159 history and character and the nature and circumstances of such
160 person's criminal conduct indicate that extended incarceration will best
161 serve the public interest, the court, in lieu of imposing the sentence of
162 imprisonment authorized by section 53a-35a for the crime of which
163 such person presently stands convicted, may impose a sentence of
164 imprisonment and a period of special parole pursuant to subsection (b)
165 of section 53a-28 which together constitute the maximum sentence
166 specified by section 53a-35a for the next more serious degree of felony.

167 (l) When any person has been found to be a persistent larceny
168 offender, and [the court is of the opinion that] such person's history
169 and character and the nature and circumstances of such person's
170 criminal conduct indicate that extended incarceration will best serve
171 the public interest, the court, in lieu of imposing the sentence
172 authorized by section 53a-36 for the crime of which such person
173 presently stands convicted, may impose the sentence of imprisonment
174 for a class D felony authorized by section 53a-35, if the crime of which
175 such person presently stands convicted was committed prior to July 1,
176 1981, or authorized by section 53a-35a, if the crime of which such
177 person presently stands convicted was committed on or after July 1,
178 1981.

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179 (m) When any person has been found to be a persistent felony
180 offender, and [the court is of the opinion that] such person's history
181 and character and the nature and circumstances of such person's
182 criminal conduct indicate that extended incarceration will best serve
183 the public interest, the court, in lieu of imposing the sentence
184 authorized by section 53a-35a for the crime of which such person
185 presently stands convicted, may impose the sentence of imprisonment
186 authorized by said section for the next more serious degree of felony;
187 provided the sentence imposed may not be less than three years, and
188 provided further three years of the sentence so imposed may not be
189 suspended or reduced by the court.

190 Sec. 3. Subsection (b) of section 53a-40a of the general statutes is
191 repealed and the following is substituted in lieu thereof (*Effective from*
192 *passage*):

193 (b) When any person has been found to be a persistent offender of
194 crimes involving bigotry or bias, and [the court is of the opinion that]
195 such person's history and character and the nature and circumstances
196 of such person's criminal conduct indicate that an increased penalty
197 will best serve the public interest, the court shall: (1) In lieu of
198 imposing the sentence authorized for the crime under section 53a-35a
199 if the crime is a felony, impose the sentence of imprisonment
200 authorized by said section for the next more serious degree of felony,
201 or (2) in lieu of imposing the sentence authorized for the crime under
202 section 53a-36 if the crime is a misdemeanor, impose the sentence of
203 imprisonment authorized by said section for the next more serious
204 degree of misdemeanor, except that if the crime is a class A
205 misdemeanor the court shall impose the sentence of imprisonment for
206 a class D felony as authorized by section 53a-35a.

207 Sec. 4. Subsection (b) of section 53a-40d of the general statutes is
208 repealed and the following is substituted in lieu thereof (*Effective from*
209 *passage*):

210 (b) When any person has been found to be a persistent offender of

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211 crimes involving assault, stalking, trespass, threatening, harassment,
212 criminal violation of a protective order or criminal violation of a
213 restraining order, and [the court is of the opinion that] such person's
214 history and character and the nature and circumstances of such
215 person's criminal conduct indicate that an increased penalty will best
216 serve the public interest, the court shall, in lieu of imposing the
217 sentence authorized for the crime under section 53a-36 or section 53a-
218 35a, as applicable, impose the sentence of imprisonment authorized by
219 said section 53a-36 or section 53a-35a for the next more serious degree
220 of misdemeanor or felony, except that if the crime is a class A
221 misdemeanor the court shall impose the sentence of imprisonment for
222 a class D felony, as authorized by section 53a-35a.

223 Sec. 5. Subsection (b) of section 53a-40f of the general statutes is
224 repealed and the following is substituted in lieu thereof (*Effective from*
225 *passage*):

226 (b) When any person has been found to be a persistent operating
227 while under the influence felony offender, and [the court is of the
228 opinion that his] such person's history and character and the nature
229 and circumstances of [his] such person's criminal conduct indicate that
230 extended incarceration will best serve the public interest, the court, in
231 lieu of imposing the sentence authorized by section 53a-35a for the
232 crime of which such person presently stands convicted, may impose
233 the sentence of imprisonment authorized by said section for the next
234 more serious degree of felony.

235 Sec. 6. Subsection (b) of section 53a-300 of the general statutes is
236 repealed and the following is substituted in lieu thereof (*Effective from*
237 *passage*):

238 (b) When any person has been found guilty of an act of terrorism,
239 and [the court is of the opinion that] such person's history and
240 character and the nature and circumstances of such person's criminal
241 conduct indicate that an increased penalty will best serve the public
242 interest, the court shall, in lieu of imposing the sentence authorized for

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243 the crime under section 53a-35a, impose the sentence of imprisonment
244 authorized by said section for the next more serious degree of felony.

245 Sec. 7. Section 53a-101 of the general statutes is repealed and the
246 following is substituted in lieu thereof (*Effective from passage*):

247 (a) A person is guilty of burglary in the first degree when [he] such
248 person enters or remains unlawfully in a building with intent to
249 commit a crime therein and: (1) [He] Such person is armed with
250 explosives or a deadly weapon or dangerous instrument, or (2) in the
251 course of committing the offense, [he] such person intentionally,
252 knowingly or recklessly inflicts or attempts to inflict bodily injury on
253 [anyone] another person.

254 (b) An act shall be deemed "in the course of committing" the offense
255 if it occurs in an attempt to commit the offense or flight after the
256 attempt or commission.

257 (c) Burglary in the first degree is a class B felony [provided any
258 person found guilty under subdivision (1) of subsection (a)] and any
259 person found guilty under this section shall be sentenced to a term of
260 imprisonment of which five years of the sentence imposed may not be
261 suspended or reduced by the court.

262 Sec. 8. Section 53a-102 of the general statutes is repealed and the
263 following is substituted in lieu thereof (*Effective from passage*):

264 (a) A person is guilty of burglary in the second degree when such
265 person (1) enters or remains unlawfully in a dwelling at night with
266 intent to commit a crime therein, or (2) enters or remains unlawfully in
267 a dwelling, while a person other than a participant in the crime is
268 actually present in such dwelling, with intent to commit a crime
269 therein.

270 (b) Burglary in the second degree is a class C felony and any person
271 found guilty under this section shall be sentenced to a term of
272 imprisonment of which five years of the sentence imposed may not be

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273 suspended or reduced by the court.

274 Sec. 9. Section 53a-102a of the general statutes is repealed and the
275 following is substituted in lieu thereof (*Effective from passage*):

276 (a) A person is guilty of burglary in the second degree with a
277 firearm when [he] such person commits burglary in the second degree
278 as provided in section 53a-102, as amended by this act, and in the
279 commission of such offense [he] such person uses or is armed with and
280 threatens the use of or displays or represents by [his] such person's
281 words or conduct that [he] such person possesses a pistol, revolver,
282 rifle, shotgun, machine gun or other firearm. No person shall be
283 convicted of burglary in the second degree and burglary in the second
284 degree with a firearm upon the same transaction but such person may
285 be charged and prosecuted for both such offenses upon the same
286 information.

287 (b) Burglary in the second degree with a firearm is a class C felony
288 [for which one year] and any person found guilty under this section
289 shall be sentenced to a term of imprisonment of which five years of the
290 sentence imposed shall not be suspended or reduced by the court.

291 Sec. 10. Subsection (b) of section 54-125a of the general statutes is
292 repealed and the following is substituted in lieu thereof (*Effective from*
293 *passage*):

294 (b) (1) No person convicted of any of the following offenses, which
295 was committed on or after July 1, 1981, shall be eligible for parole
296 under subsection (a) of this section: Capital felony, as provided in
297 section 53a-54b, felony murder, as provided in section 53a-54c, arson
298 murder, as provided in section 53a-54d, murder, as provided in section
299 53a-54a, or aggravated sexual assault in the first degree, as provided in
300 section 53a-70a. (2) A person convicted of (A) an offense, other than an
301 offense specified in subdivision (1) of this subsection, where the
302 underlying facts and circumstances of the offense involve the use,
303 attempted use or threatened use of physical force against another

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304 person, or (B) a violation of section 53a-102, as amended by this act,
305 shall be ineligible for parole under subsection (a) of this section until
306 such person has served not less than eighty-five per cent of the definite
307 sentence imposed.

308 Sec. 11. Subsection (a) of section 54-124a of the general statutes is
309 repealed and the following is substituted in lieu thereof (*Effective from*
310 *passage*):

311 (a) There shall be a Board of Pardons and Paroles within the
312 Department of [Correction] Public Safety, for administrative purposes
313 only. On and after [October 1, 2004] January 1, 2008, the board shall
314 consist of [thirteen] twenty members appointed by the Governor with
315 the advice and consent of either house of the General Assembly. In the
316 appointment of the members, the Governor shall endeavor to reflect
317 the racial diversity of the state. The Governor shall appoint a
318 chairperson from among the membership. The chairperson of the
319 board shall be qualified by education, experience and training in the
320 administration of community corrections, parole or pardons.

321 Sec. 12. Subsection (e) of section 54-124a of the general statutes is
322 repealed and the following is substituted in lieu thereof (*Effective*
323 *January 1, 2008*):

324 (e) The chairperson may serve on both pardons panels and parole
325 release panels and shall have the authority and responsibility for
326 assigning members to such panels. The chairperson shall assign
327 [seven] fourteen members exclusively to parole release hearings and
328 shall assign five members exclusively to pardons hearings. Except for
329 the chairperson, no member assigned to parole release hearings may
330 be assigned subsequently to pardons hearings and no member
331 assigned to pardons hearings may be assigned subsequently to parole
332 release hearings. Each parole release panel shall be composed of two
333 members and the chairperson or a member designated to serve
334 temporarily as chairperson, for each correctional institution. Such
335 parole release panels shall be the paroling authority for the institutions

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336 to which they are assigned and not less than two members shall be
337 present at each parole hearing. Each pardons panel shall be composed
338 of three members, one of whom may be the chairperson, except that
339 for hearings on commutations from the penalty of death, one member
340 of the panel shall be the chairperson.

341 Sec. 13. (NEW) (*Effective from passage*) No panel of the Board of
342 Pardons and Paroles shall hold a hearing to determine the suitability
343 for parole release of any person or hold a meeting to consider the
344 recommendation of an employee of the board made pursuant to
345 section 54-125b of the general statutes to grant parole to a person
346 unless the members of the panel are in the possession of the complete
347 file on such person including, but not limited to, a transcript of any
348 sentencing hearing required to be delivered to the board pursuant to
349 section 51-286f of the general statutes and a copy of any presentence
350 investigation report prepared pursuant to section 54-91a of the general
351 statutes. The board shall provide each member of such panel with such
352 complete file not later than three business days prior to the date
353 scheduled for such hearing or meeting.

354 Sec. 14. (NEW) (*Effective from passage*) Whenever a person is
355 convicted of a felony, the prosecuting attorney and the court shall
356 make a statement for the record at the sentencing hearing concerning
357 such person's history and character and the nature and circumstances
358 of such person's criminal conduct.

359 Sec. 15. (NEW) (*Effective from passage*) Any person convicted of
360 manslaughter, arson, kidnapping, robbery in the first or second
361 degree, robbery involving an occupied motor vehicle, assault
362 constituting a felony, sexual assault in the first or third degree,
363 aggravated sexual assault in the first degree, sexual assault in the third
364 degree with a firearm, burglary in the first or second degree, stalking
365 in the first degree or stealing a firearm who is released from
366 confinement in a correctional institution or facility into the community
367 shall, not later than seven days after such release, report to the

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368 organized local police department for the town in which such person
369 resides or, if such town does not have an organized local police
370 department, to the state police troop having jurisdiction for such town
371 and submit to the taking of a photographic image of such person.

372 Sec. 16. (NEW) (*Effective from passage*) Any person convicted of
373 manslaughter, arson, kidnapping, robbery in the first or second
374 degree, robbery involving an occupied motor vehicle, assault
375 constituting a felony, sexual assault in the first or third degree,
376 aggravated sexual assault in the first degree, sexual assault in the third
377 degree with a firearm, burglary in the first or second degree, stalking
378 in the first degree or stealing a firearm or a sexual assault offense
379 involving a minor who is released into the community on probation,
380 parole or any other community release program shall, as a condition of
381 such probation, parole or other release, be subject to electronic
382 monitoring by use of a global positioning system device for the
383 duration of such person's period of probation, parole or other release.

| | | |
|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>from passage</i> | New section |
| Sec. 2 | <i>from passage</i> | 53a-40 |
| Sec. 3 | <i>from passage</i> | 53a-40a(b) |
| Sec. 4 | <i>from passage</i> | 53a-40d(b) |
| Sec. 5 | <i>from passage</i> | 53a-40f(b) |
| Sec. 6 | <i>from passage</i> | 53a-300(b) |
| Sec. 7 | <i>from passage</i> | 53a-101 |
| Sec. 8 | <i>from passage</i> | 53a-102 |
| Sec. 9 | <i>from passage</i> | 53a-102a |
| Sec. 10 | <i>from passage</i> | 54-125a(b) |
| Sec. 11 | <i>from passage</i> | 54-124a(a) |
| Sec. 12 | <i>January 1, 2008</i> | 54-124a(e) |
| Sec. 13 | <i>from passage</i> | New section |
| Sec. 14 | <i>from passage</i> | New section |
| Sec. 15 | <i>from passage</i> | New section |
| Sec. 16 | <i>from passage</i> | New section |

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Statement of Purpose:

To revise the persistent offender law to address the Connecticut Supreme Court decision in *State v. Bell*, impose a five-year mandatory minimum prison sentence for first and second degree burglary, classify burglary of a residence as a violent offense for parole purposes, expand the use of electronic monitoring of parolees, provide the Board of Pardons and Paroles with the resources and information necessary to properly carry out its duties, and enact a "three strikes" law that would require a sentence of life imprisonment without the possibility of release for a third conviction of specified serious felonies.

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