



OLR RESEARCH REPORT

November 19, 2007

2007-R-0656

PROPOSAL 2:

AN ACT CONCERNING BURGLARY AND PERSISTENT OFFENDERS.

By: George Coppolo, Chief Attorney

You asked us to summarize of Proposal 2, *An Act Concerning Burglary and Persistent Offenders*, for the Judiciary Committee public hearing scheduled for November 27, 2007.

SUMMARY

This bill creates the new crime of aggravated burglary in the first degree, and makes it a class A felony, which is punishable by a prison term of 10 to 25 years, a sentence of up to \$20,000, or both. The bill specifies that the offender must be sentenced to a mandatory minimum prison term of 10 years (§ 2).

The bill expands the crime of burglary in the first degree by, among other things, adding new conduct (two or more people entering or remaining unlawfully in a dwelling with intent to commit). It also adds conduct that is currently covered by burglary in the second degree. By doing so, it increases the possible maximum prison term from 10 years to 20 years for such conduct. It also imposes a mandatory minimum five year prison term for some of the conduct currently covered by burglary in the first degree or second degree (§ 1).

The bill expands the crime of burglary in the second degree to include any building, not just dwellings, and eliminates the requirement that the

offense be committed at night. It also adds the additional requirement that in the course of committing the offense, the offender threatens the use of, or displays or represents by his or her words or conduct, that he or she possesses a firearm.

The bill eliminates one way to commit this crime (entering or remaining unlawfully in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime), but it includes this conduct in the definition of burglary in the first degree.

It increases the penalty for a second or subsequent offense of burglary in the second degree from a class C to a class B felony, and imposes a mandatory minimum three year sentence for any violation of this offense (§ 3).

The bill increases the penalty for burglary in the third degree from a class D felony to a class C felony for a second conviction, and to a class B felony for a third or subsequent conviction (§ 4). It eliminates the crimes of burglary in the second or third degrees with a firearm but includes the conduct covered by these crimes in the crime of burglary in the second degree and generally increases the maximum penalty and the mandatory minimum sentence (§ 13).

The bill generally increases the penalty for a persistent dangerous felony offender, a persistent serious felony offender, and a persistent felony offender and makes it easier to apply these harsher penalties (§§ 7-12). The bill eliminates the requirement that the court conclude that the public interest will be served by extended incarceration in order to trigger these enhanced penalties. Instead it authorizes the enhanced penalties if the offender is found to be a persistent dangerous felony offender, a persistent serious felony offender, or a persistent felony offender based on his current conviction and his prior conviction or convictions (§§ 8, 10, & 12).

EFFECTIVE DATE: Upon passage

AGGRAVATED BURGLARY IN THE FIRST DEGREE (§ 2)

The bill creates the new crime of aggravated burglary in the first degree. A person is guilty of this offense when he or she enters or remains unlawfully in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime, and, in the course of committing the offense:

1. acting either alone or with one or more persons, he or she, or another participant in the crime, commits or attempts to commit a felony “against the person of another person” (apparently this involves a physical assault but it might also involve a an attempt or threat to do so) other than a participant in the crime who is actually present in such dwelling, or
2. he or she is armed with explosives, a deadly weapon, or a dangerous instrument.

The bill specifies that “in the course of committing” the offense includes what occurs while attempting to commit the offense or fleeing from the scene.

The bill makes aggravated burglary in the first degree a class A felony, which normally is punishable by a prison term of 10 to 25 years, and a sentence of up to \$20,000. The bill specifies that the offender must be sentenced to a mandatory minimum prison term of 25 years and that 10 years of the sentence may not be suspended by the court.

It is currently a class B felony to enter or remain unlawfully in any building with the intent to commit a crime while being armed with explosives or a deadly weapon or dangerous instrument. Thus for this behavior, the bill increases the mandatory minimum from five to 10 years, the maximum prison term from 20 to 25 years, and the maximum fine from \$15,000 to \$20,000.

BURGLARY IN THE FIRST DEGREE (§ 1)

Under current law a person commits burglary in the first degree if he or she enters or remains unlawfully in a building with intent to commit a crime:

1. is armed with explosives or a deadly weapon or dangerous instrument, or
2. in the course of committing the offense, intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone.

By law, burglary in the first degree is a class B felony, which is punishable by a sentence of up to 20 years in prison, a fine of up to \$15,000, or both. Those who commit this offense while armed with explosives or a deadly weapon or dangerous instrument are subject to a mandatory minimum sentence of five years in prison, which may not be suspended or reduced by the court.

This offense involves “buildings,” whereas the newly created offense of aggravated burglary in the first degree is limited to dwellings.

By law, a “building,” in addition to its ordinary meaning, includes any watercraft, aircraft, trailer, sleeping car, railroad car, or other structure or vehicle, or any building with a valid certificate of occupancy. By law, a “dwelling” means a building which is usually occupied by a person lodging at night, whether or not a person is actually present (CGS § 53a-100). Thus, the term “building” is much broader than the term “dwelling,” but a dwelling is within the definition of a building.

The bill adds to the crime of burglary in the first degree by including someone who enters or remains unlawfully in a dwelling with intent to commit a crime:

1. at night,
2. while a person other than the participant in the crime is actually present in the dwelling, or
3. and is aided by one or more persons actually present.

It is currently burglary in the second degree for someone to commit the offense described in numbers 1 and 2 immediately above (entering or remaining unlawfully in a dwelling at night with intent to commit a crime, or while a person other than the participant in the crime is actually present in such dwelling, with intent to commit a crime). Burglary in the second degree is a class C felony, which is punishable by a sentence of a prison term of up to 10 years, or a fine of up to \$10,000, or both. Thus, the bill increases the penalty for this conduct from a class C felony to a class B felony, and subjects the offender to a mandatory minimum five year prison term if someone other than the offender is in the dwelling.

The bill also requires a five year mandatory minimum sentence for those who commit this offense because the offender

1. is aided by one or more persons actually present, which is the new conduct the bill adds to this crime or
2. in the course of committing the offense, intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone.

BURGLARY IN THE SECOND DEGREE (§3)

Under current law, a person is guilty of burglary in the second degree when he or she enters or remains unlawfully in a dwelling at night with intent to commit a crime. The bill expands this to include any building, and eliminates the requirement that it be at night. It also adds the additional requirement that in the course of committing the offense, the offender threatens the use of, or displays or represents by words or conduct, that he or she person possesses a firearm.

The bill eliminates from the crime of burglary in the second degree entering or remaining unlawfully in a dwelling, while a person other than a participant in the crime is actually present in such dwelling, with intent to commit a crime.

The bill specifies that an act is deemed to be “in the course of committing” the offense if it occurs in an attempt to commit the offense or flight after the attempt or commission.

Under current law, burglary in the second degree is a class C felony. The bill instead makes a first offense a class C felony, and a class B felony for any subsequent offense. It also imposes a mandatory minimum three year sentence for any violation of burglary in the second degree.

BURGLARY IN THE THIRD DEGREE (§ 4)

By law, a person is guilty of burglary in the third degree when he or she enters or remains unlawfully in a building with intent to commit a crime. Under current law, burglary in the third degree is a class D felony, which is punishable by a sentence of up to five years in prison, a fine of up to \$5,000, or both. The bill instead makes it a class D felony for the first offense, a class C felony for a second offense, and a class B felony for any subsequent offense.

PAROLE ELIGIBILITY (§ 5)

The bill makes someone convicted of burglary in the first degree, or aggravated burglary in the first degree, ineligible for parole until he or she has served at least 85% of the sentence imposed. The law imposes this same 85% requirement on people convicted of an offense where the underlying facts and circumstances of the offense involve the use, attempted use, or threatened use of physical force against another person (See BACKGROUND-Parole Eligibility and Temporary Parole Policy).

DEFINITIONS RELATING TO BURGLARY (§ 6)

The bill makes certain definitions that currently apply to the burglary law to the newly created offense of aggravated burglary. These definitions include:

1. a “dwelling” means a building which is usually occupied by a person lodging at night, whether or not a person is actually present;
2. “night” means the period between thirty minutes after sunset and thirty minutes before sunrise; and
3. a person “enters or remains unlawfully” in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the actor is not otherwise licensed or privileged to do so.

The bill also makes this third definition apply to all burglary laws.

PERSISTENT DANGEROUS FELONY OFFENDERS (§§ 7 & 8)

Classification

The current law, under certain circumstances, authorizes courts to sentence people classified as a persistent dangerous felony offender to a longer prison term than the offense they are convicted of allows. To be classified as a persistent dangerous felony offender an offender has to (1) stand convicted of certain offenses (this is referred to as the current offense), and (2) have been convicted of, and imprisoned for, specified crimes under a sentence of at least one year in prison, or of death, in Connecticut, in any other state, or in a federal prison before he or she committed the current offense.

Separate Classification Pathways. There are two separate paths to be classified this way. Under the first path, the current offenses are manslaughter, arson, kidnapping, assault in the first degree, and robbery in the first or second degree.

First Path-Current Offenses. Regarding the first path, the bill adds to the current offenses that make an offender eligible for this classification murder, burglary in the first or second degree, burglary in the second degree with a firearm, or an attempt or conspiracy to commit

any of the crimes specified as current offenses. Thus courts may consider an enhanced sentence for people who stand convicted of, or who have previously been convicted of, these offenses or other specified felonies.

The bill also adds the crime of assault constituting a class B or C felony to the list of current offenses. Under current law, there are three class B assault offenses—assault in the first degree, (CGS § 53a-59); assault of an elderly, blind, disabled, pregnant, or mentally retarded person in the first degree, (CGS § 53-59a); and assault of an employee of the Department of Correction in the first degree, (CGS § 53a-59a). There are two class C felony assault offenses—assault of public safety or emergency medical personnel (CGS § 53a-167c), and assault of a prosecutor (CGS § 53a-167d). Current law already includes assault in the first degree.

First Path-Prior Convictions. The bill adds to the list of prior convictions that make someone eligible to be a persistent dangerous felony offender (1) the new crimes added to the current crime list, (2) attempt or conspiracy to commit any of the crimes specified as current offenses, and (3) conspiracy to commit certain sexual offenses (sexual assault in the first or third degree, aggravated sexual assault in the first degree, or sexual assault in the first degree with a firearm).

The bill eliminates the requirement that the prior conviction resulted in a sentence of imprisonment of at least one year or of death. Also it removes from the list of prior convictions that may be considered to determine whether someone is a persistent dangerous felony offender the specifically listed Connecticut crimes from the Revision of 1958, revised to 1975, and from the Revision of 1958, revised to 1968. (see BACKGROUND - Persistent Offender Law-Specified Predecessor Offenses)

Second Path-Current Offenses. Under current law, the second path to be classified as a persistent dangerous felony offender includes the current offenses of sexual assault in the first or third degree, aggravated sexual assault in the first degree, or sexual assault in the third degree with a firearm. The bill adds to the list of current offenses, attempt or conspiracy to commit any of the specified current offenses.

Second Path-Prior Convictions. The bill adds to the list of prior convictions for this path the new crimes added to the list of current offenses and attempt or conspiracy to commit any of the listed offenses. Also it adds to the list of prior convictions (1) assault constituting a class B or C felony, burglary in the first or second degree, or burglary in the

second degree with a firearm, (2) an attempt to commit any of these crimes, and (3) conspiracy to commit these crimes and manslaughter, arson, kidnapping, and robbery in the first or second degree.

Just as with the first path, it eliminates the requirement that the prior conviction resulted in a sentence of imprisonment of at least one year or of death. It also eliminates from the list of prior convictions, the specifically listed Connecticut crimes from the Revision of 1958, revised to 1968. (see BACKGROUND- Persistent Offender Law-Specified Predecessor Offenses)

Penalty

Under current law, when any person has been found to be a persistent dangerous felony offender because he has on one previous occasion been convicted and sentenced to a prison term of more than one year for a specified offense, and the court concludes that the offender's history and character and the nature and circumstances of the offender's criminal conduct indicate that extended incarceration and lifetime supervision will best serve the public interest, the court, instead of the sentence for the offense he or she stands convicted of, must sentence the offender to a term of imprisonment of up to 40 years.

Under current law, if the offender has, at separate times prior to the commission of the present crime, been twice convicted of and imprisoned for any of the specified crimes, and the court reaches the same conclusion about the offender's history and the offense, it must sentence the offender to a prison term of up to life imprisonment. (Apparently this means a 60 year sentence because the law defines a life sentence as 60 years unless the offense explicitly provides otherwise CGS § 53a-35h).

The bill eliminates the requirement that the court make the required conclusion in order to trigger the enhanced penalty. Instead it requires the enhanced penalty if the offender is found to be a persistent dangerous felony offender based on his current conviction and his prior conviction or convictions.

Finally the bill eliminates the court's duty to sentence the offender to up to 40 years if he has one prior conviction and up to 60 years if he has two prior convictions. Instead the bill requires the court to sentence people found to be a persistent dangerous felony offender, with one prior conviction:

1. for the class A felony of murder, a term of imprisonment of not less than 40 years or more than life (60 years), of which 10 years of the sentence imposed may not be suspended or reduced by the court,

2. for a class A felony other than murder, a term of imprisonment of not less than 20 years or more than 60 years, of which 10 years of the sentence imposed may not be suspended or reduced by the court; and
3. for a felony other than a class A felony, a term of imprisonment of not less than 10 years or more than 40 years, of which 10 years of the sentence imposed may not be suspended or reduced by the court.

The bill requires the court to sentence people found to be a persistent dangerous felony offender, with two prior convictions for the crimes listed as current offenses for to a term of imprisonment of not less than 45 years or more than 60 years, of which 45 years of the sentence imposed may not be suspended or reduced by the court.

The bill specifies that this law does not apply to anyone who stands convicted of a capital felony.

PERSISTENT SERIOUS FELONY OFFENDER LAW (§§ 9 & 10)

Classification

Under current law, a persistent serious felony offender is a person who

1. stands convicted of a felony; and
2. has been, before the commission of the present felony, convicted of and imprisoned under an imposed term of more than one year or of death, in this state or in any other state or in a federal correctional institution, for a crime.

Current law imposes a limitation on who can be considered for this classification by specifying that a person may not be classified as a persistent serious felony offender if:

- the present conviction is for manslaughter, assault in the first degree arson, kidnapping, robbery in the first and second degree, sexual assault in the first or third degree, aggravated sexual assault in the first degree, or sexual assault in the third degree with a firearm; and
- the prior conviction was for a crime other than those specified as current or prior offenses under the persistent dangerous felony offender law.

The bill retains the classification but it:

1. requires that the current offense be a class A, B, C, or D felony instead of any felony thus eliminating people convicted of unclassified felonies;
2. requires two prior felony convictions, instead of one, that occurred before the commission of the current felony;
3. eliminates the requirement that the offender was imprisoned under an imposed term of more than one year or of death, in this state or in any other state or in a federal correctional institution, for the prior offense;
4. eliminates the limitation regarding the nature of the first and prior offenses, thus apparently permitting the current and prior offenses to be the same as those specified for the persistent dangerous felony offender classification.

Penalty

Current law authorizes the court to impose an enhanced penalty for a person found to be a persistent serious felony offender if the court is of the opinion that the offender's history and character and the nature and circumstances of his or her criminal conduct indicate that extended incarceration will best serve the public interest. Under such circumstances current law authorizes the court, instead of imposing the sentence of imprisonment authorized by law for the current offense, to impose the sentence of imprisonment authorized by law for the next more serious degree of felony.

The bill (1) eliminates the requirement that the court make the finding that extended incarceration will best serve the public interest; and (2) requires, instead of permits, the court to impose a sentence authorized by the next higher degree of felony.

Also it requires the court to sentence a persistent serious felony offender who presently stands convicted of:

1. the class A felony of murder, to a term of imprisonment of not less than 40 years or more than life (apparently 60 years), of which 15 years of the sentence imposed may not be suspended or reduced by the court; and

2. a class A felony other than murder, to a term of imprisonment of not less than 15 years or more than 40 years, of which 15 years of the sentence imposed may not be suspended or reduced by the court.

Finally, the bill specifies that a person who presently stands convicted of a capital felony may not be sentenced under this classification.

PERSISTENT FELONY OFFENDER (§§ 11 & 12)

Classification

Under current law, a persistent felony offender is a person who (1) stands convicted of a felony, other than a class D felony; and (2) has been, at separate times prior to the commission of the present felony, twice been convicted of a felony other than a class D felony.

The bill retains this classification but it:

1. makes it apply to people who stand convicted of a class A, B, C, or D felony thus including people convicted of a class D felony and apparently excluding those convicted of an unclassified felony;
2. makes it apply to those with one, instead of two, prior felony convictions; and
3. specifies that the prior conviction could have occurred in Connecticut or in any other state.

Penalties

Current law authorizes the court to impose an enhanced penalty for a person found to be a persistent felony offender if the court is of the opinion that the offender's history and character and the nature and circumstances of his or her criminal conduct indicate that extended incarceration will best serve the public interest. Under such circumstances, current law authorizes the court, instead of imposing the sentence of imprisonment authorized by law for the current offense, to impose the sentence of imprisonment authorized by law for the next more serious degree of felony, and it requires that the sentence imposed may not be less than three years, and that three years of the sentence may not be suspended or reduced by the court.

The bill (1) eliminates the requirement that the court make the finding that extended incarceration will best serve the public interest; and (2) eliminates the three year mandatory minimum sentence requirement.

Also, it authorizes the court to sentence a persistent serious felony offender who presently stands convicted of:

1. the class A felony of murder, to a term of imprisonment of not less than 30 years or more than life (apparently 60 years); or
2. a class A felony other than murder, to a term of imprisonment of up to 30 years. (Apparently because these are class A felonies they carry a mandatory minimum of 10 years.)

Finally, the bill specifies that a person who presently stands convicted of a capital felony may not be sentenced under this classification.

BURGLARY IN THE SECOND DEGREE WITH A FIREARM (§ 13)

The bill eliminates the crime of burglary in the second degree with a firearm. Under current law, a person is guilty of this crime when he or she commits burglary in the second degree and in the commission of such offense (1) uses a firearm, (2) is armed with and threatens the use of a firearm, or (3) displays or represents by words or conduct that he or she possesses a firearm. Under current law, burglary in the second degree with a firearm is a class C felony, with a mandatory minimum of one year.

The bill expands the current crime of burglary in the second degree to include the conduct currently covered by burglary in the second degree with a firearm. The bill makes a first offense for this conduct a class C felony, and a class B felony for any subsequent offense. It also imposes a mandatory minimum three year sentence for any violation, thus increasing the mandatory minimum from one to three years.

BURGLARY IN THE THIRD DEGREE WITH A FIREARM (§ 13)

The bill eliminates the crime of burglary in the third degree with a firearm, which is a class D felony with a one year mandatory minimum sentence. A person commits this offense when he or she commits burglary of a building, and in the commission of such offense, (1) uses a firearm, (2) is armed with and threatens the use of a firearm, or (3) displays or represents by words or conduct that he or she possesses a firearm.

The bill expands the current crime of burglary in the second degree to include the conduct currently covered by burglary in the third degree with a firearm. Thus, the bill increases the penalty for a first offense from a class D to a class C felony, which increases the maximum possible sentence from five to 10 years. It makes any subsequent offense a class B felony, increasing the maximum possible sentence from five to

20 years. It also imposes a mandatory minimum three year sentence for any violation, thus increasing the mandatory minimum from one to three years.

BACKGROUND

Parole Eligibility

Normally a prisoner is ineligible to be considered for parole until he serves at least 50% of his sentence in prison (CGS § 54-154a(a)). But where the underlying facts and circumstances of the offense involve the use, attempted use, or threatened use of physical force against another person the inmate is ineligible for parole until he or she has served at least 85% of the sentence imposed (CGS § 54-124a(b)(2)).

By law people convicted of the following offenses are ineligible for parole: capital felony, felony murder, arson murder, murder, or aggravated sexual assault in the first degree (CGS § 54-154a(b)(1)).

Temporary Parole Policy

During September 2007, Governor Rell directed the Board of Pardons and Paroles to immediately suspend approval of future parole for any inmate serving a sentence involving a violent offense. Apparently, this policy will remain in place until reforms of the parole process are complete.

Related Case-Persistent Dangerous Felony Offender

The state Supreme Court recently held that the statute that mandates sentence enhancement when the defendant is found to be a persistent dangerous felony offender and the trial court, rather than the jury, determines that extended incarceration will best serve the public interest, given the defendant's history, character, and the nature and circumstances of his or criminal offenses, violates a defendant's federal constitutional right to trial by jury (*State v. Bell*, 283 Conn. 748, 2007 WL 2481026, (2007)).

The court ruled that the defendant was entitled to a new sentencing proceeding where the jury must make the determination, beyond a reasonable doubt, whether, upon consideration of the relevant factors specified in the persistent felony offender law, extended incarceration will best serve the public interest.

The court noted in its ruling that in those cases in which the defendant chooses to waive his right to a jury trial under the persistent felony offender law, the court may continue to make the requisite finding. Additionally, the court properly may impose an enhanced sentence if the defendant admits to the fact that extended incarceration is in the public interest.

Persistent Offender Laws-Jury Finding

The bill eliminates the requirement that the court make the required conclusions that trigger the enhanced penalty for three types of persistent offenders: persistent dangerous felony offender, serious felony offender, and the felony offender. But it does not make these changes to the provision that increases the penalty by one class for acts of terrorism and the other categories of persistent offenders, which all contain similar language to that considered by the court in its ruling. The other categories of persistent offenders are:

1. dangerous sexual offenders,
2. serious sexual offenders,
3. bigotry or bias offenders,
4. stalking and harassment-related offenders,
5. larceny offenders, and
6. operating under the influence felony offenders.

Persistent Dangerous Felony Offender Law-Specified Predecessor Offenses

The persistent dangerous felony offender law specifies certain predecessor statutes that make someone eligible to be considered a persistent dangerous felony offender. These are reflected in Table 2.

Table 2: Specified Predecessor Offenses

<i>Statutory Revision</i>	<i>Statute Section</i>	<i>Offense</i>
CGS Revision of 1958 revised to 1975	53a-72	Rape 1 st degree
	53a-75	Rape 2 ^d degree
	53a-78	Sexual contact 1 st degree
CGS revision of 1958 revised to 1968		
	54-117	Assault with intent to kill
	53-9	Murder
	53-10	First degree murder
	53-11	Homicide or serious assault
	53-12	Assault with intent to murder
	53-13	Manslaughter
	53-14	Maiming with intern to disfigure
	53-15	Assault with acid or other burning substance
	53-16	Aggravated assault
	53-19	Binding or administering drugs with intent to commit a crime
	53-21	Injury or risk of injury to a minor
	53-69	Burglary with personal violence
	53-79	Breaking and entering with violence
	53-79	Burglary with explosives
	53-80	Manufacturing, transporting, or disposing of explosives
	53-82	Arson of a vessel, dwelling, church, theatre, or other structure for public gatherings
	53-83	Arson of other buildings or vessels
	53-86	Burning of insured property
	53-238	Rape
	53-239	Assault with intent to commit rape

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