



OLR RESEARCH REPORT

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PROPOSAL 3:

AN ACT CONCERNING HOME INVASION PROTECTION.

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You asked us to summarize Bill Proposal #3, *An Act Concerning Home Invasion Protection*, for the Judiciary Committee public hearing scheduled for November 27, 2007.

SUMMARY

This bill establishes the new offenses of home invasion in the first, second, third, and fourth degrees (§§ 1-4). Each offense involves entering or remaining unlawfully in a dwelling with the intent to commit a crime. The first degree offense requires the possession or use of explosives, deadly weapons, or dangerous instruments. The second offense requires the use or threatened use of physical force but, like the third and fourth degree offenses, does not have as an element the possession or use of any weapon or instrument. The third degree offense requires that the dwelling be occupied; the fourth degree offense involves an unoccupied dwelling.

All four offenses require a mandatory minimum sentence. The first degree offense requires a mandatory minimum sentence of 25 years; the second, 20 years; the third 10 years; and the fourth, five years. The bill requires that the sentence imposed for any home invasion crime run consecutively to any term of imprisonment imposed for conviction of any other offense arising from the same transaction

The bill makes people convicted of home invasion ineligible for parole (§ 5). It also makes them ineligible for (1) temporary leave, furlough, or any other early release program and (2) any credit that would reduce the mandatory minimum term of imprisonment the bill requires (§ 6). The behavior covered by these home invasion offenses is currently covered by burglary offenses that allow offenders to be considered for (1) parole after they either serve 85% or 50% of their sentence depending on whether the crime involved the use, attempted use, or threatened use of violence, and (2) temporary leave, furloughs, or other early release programs (See BACKGROUND- Parole Eligibility and Temporary Parole Policy).

EFFECTIVE DATE: Upon passage

HOME INVASION IN THE FIRST DEGREE (§§ 1, 7 & 8)

The bill establishes the new offense of home invasion in the first degree. A person commits this offense when he or she enters or remains unlawfully in a dwelling with intent to commit a crime therein and is either:

1. armed with explosives, a deadly weapon, or a dangerous instrument, or
2. in the course of committing the offense, intentionally, knowingly, or recklessly uses explosives, a deadly weapon, or a dangerous instrument that causes physical injury, serious physical injury, or death to a person lawfully present in the dwelling.

The bill makes home invasion in the first degree a class A felony, which is punishable by a prison term of 10 to 25 years and a fine of up to \$20,000. But the bill requires that any person found guilty of it must be sentenced to a term of imprisonment of 25 years to life. It requires that 25 years of the sentence imposed may not be suspended or reduced by the court.

This conduct is currently included in the crime of burglary in the first degree, a class B felony, punishable by a prison term of up to 20 years, or a fine of up to \$15,000, or both, with a five year mandatory minimum prison term. The bill eliminates this conduct from the crime of burglary in the first degree, and makes it the new crime of home invasion in the first degree. By doing so it limits burglary in the first degree to buildings other than dwellings.

The bill specifies that, for this and the other home invasion crimes the bill creates, 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 offender is not otherwise licensed or privileged to do so (§ 7).

It also specifies that for this and other home invasion offenses the bill creates, and for the current burglary offenses, the term “dwelling” means a building which is usually occupied by a person lodging therein at night, whether or not a person is actually present.

HOME INVASION IN THE SECOND DEGREE (§ 2)

The bill establishes the new offense of home invasion in the second degree. A person commits this offense when he or she enters or remains unlawfully in a dwelling with the intent to commit a crime, and uses, or threatens to use, physical force against a person lawfully present in the dwelling.

The bill makes home invasion in the second degree a class B felony, which carries a sentence of up to 20 years, a fine of up to \$15,000, or both. But the bill requires that any person found guilty be sentenced to a prison term of 20 years, which may not be suspended or reduced by the court.

The behavior covered by this home invasion offense is currently covered by the crime of burglary in the second degree, a class C felony, which is punishable by a prison term of up to 10 years, or a fine of up to \$10,000, or both, but which does not have any mandatory minimum sentence requirement. The bill removes this conduct from the crime of burglary in the second degree.

HOME INVASION IN THE THIRD DEGREE (§§ 3 & 9)

The bill establishes the new offense of home invasion in the third degree. A person commits this offense when he or she enters or remains unlawfully in a dwelling with the intent to commit a crime and another person is lawfully present in the dwelling.

The bill makes home invasion in the third degree a class C felony, and requires the offender to serve a mandatory minimum sentence of 10 years.

The behavior covered by this home invasion offense is currently covered by the crime of burglary in the second degree, which is also a Class C felony, but which does not have any mandatory minimum sentence requirement. The bill removes this behavior from the crime of burglary in the second degree.

HOME INVASION IN THE FOURTH DEGREE (§ 4)

The bill establishes the new offense of home invasion in the fourth degree. A person commits this offense when he or she enters or remains unlawfully in a dwelling with the intent to commit a crime in it. Apparently this offense involves situations where no one else is in the dwelling when the offense is committed.

The bill makes home invasion in the fourth degree a class D felony, which carries a prison sentence of up to 5 years, or a fine of up to \$5,000, or both. The bill requires the offender to serve a mandatory minimum sentence of five years.

This conduct is currently included in the crime of burglary in the second degree if the offender violates this law by entering an unoccupied dwelling at night. Burglary in the second degree is a class C felony but does not have any mandatory minimum sentence. The bill removes this conduct from the crime of burglary in the second degree.

DEADLY WEAPON AND DANGEROUS INSTRUMENTS (§ 7)

The bill specifies that for the home invasion offenses the bill creates, and for the burglary offenses, the term “deadly weapon” means any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy club, blackjack, bludgeon, or metal knuckles.

It also specifies that for these same offenses, the term “dangerous instrument” means any instrument, article, or substance which, under the circumstances in which it is used or attempted or threatened to be used, is capable of causing death or serious physical injury, and includes a vehicle and a dog that has been commanded to attack.

BURGLARY IN THE SECOND DEGREE (§ 9)

Under current law, a person commits burglary in the second degree when he or she enters or remains unlawfully in a dwelling at night with intent to commit a crime in it. The bill eliminates the requirement that

the offender enters or remains unlawfully at night, and limits the offense to buildings other than a dwelling (See BACKGROUND- Building Defined).

By law burglary in the second degree is a class C felony, which carries a sentence of up to 10 years in prison, or a fine of up to \$10,000, or both. The bill maintains this class C felony status, but imposes a mandatory minimum sentence of one year.

Under current law it is also burglary in the second degree for someone to enter or remain unlawfully in a dwelling, while a person other than a participant in the crime is actually present in the dwelling, with intent to commit a crime in it. The bill eliminates this conduct from the crime of burglary in the second degree and instead makes this conduct the new crime of home invasion in the third degree. By doing so, it requires that people convicted for this conduct be given a mandatory minimum 10 year sentence instead of a sentence of up to 10 years.

BURGLARY IN THE SECOND DEGREE WITH A FIREARM (§ 10)

By law, a person is guilty of burglary in the second degree with a firearm when he or she commits burglary in the second degree and in the commission of such offense (1) uses a firearm, or (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. A person cannot be convicted of burglary in the second degree and burglary in the second degree with a firearm upon the same transaction but may be charged and prosecuted for both offenses.

The bill limits this offense to buildings other than dwellings. Under current law, burglary of a building, other than a dwelling, with a firearm is a class D felony, which carries a prison sentence of up to 5 years, or a fine of up to \$5,000, or both, and which requires a one year mandatory minimum prison term. The bill instead makes this conduct a class C felony, and increases the mandatory minimum from one to two years.

BURGLARY IN THE THIRD DEGREE (§ 11)

The bill eliminates the crime of burglary in the third degree. A person commits this offense when he or she enters or remains unlawfully in a building with intent to commit a crime in it. Burglary in the third degree is a class D felony, with no mandatory minimum sentence required. The bill makes this conduct burglary in the second degree, thus increasing the penalty to a class C felony and it requires a one year mandatory minimum prison term.

BURGLARY IN THE THIRD DEGREE WITH A FIREARM (§ 11)

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 other than a dwelling, 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. A person cannot be convicted of burglary in the third degree and burglary in the third degree with a firearm for the same transaction but may be charged and prosecuted for both such offenses.

The bill increase the penalty for this conduct from a class D felony to a class C felony and increases the mandatory minimum prison term from one year to two years.

If the building were a dwelling, the conduct would be covered by the new offense of home invasion in the second degree, which carries a mandatory minimum sentence of 20 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 of 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.

Building Defined

The law defines the word “building” for purposes of the burglary offenses as, in addition to its ordinary meaning, any watercraft, aircraft, trailer, sleeping car, railroad car, or other structure or vehicle, or any building with a valid certificate of occupancy (CGS § 53a-100 (a)(1)). Apparently this term includes an automobile (*State v Baker*, 195 Conn. 598 (1985)).

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