



# OLR RESEARCH REPORT

November 9, 2007

2007-R-0648

## PROPOSAL 5:

### **AN ACT CONCERNING REFORM OF CRIMINAL SENTENCING, PAROLE RELEASE, COMMUNITY SUPERVISION AND DEATH PENALTY APPEAL PROCEDURES**

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You asked us to summarize Proposal 5, *AAC Reform of Criminal Sentencing, Parole Release, Community Supervision and Death Penalty Appeal Procedures* for the Judiciary Committee public hearing scheduled for November 27, 2007.

#### **SUMMARY**

This bill makes a number of changes in the criminal statutes. It:

1. requires certain dangerous three-time offenders to serve life sentences;
2. requires consideration of 1<sup>st</sup> and 2<sup>nd</sup> degree burglary convictions in sentencing proceedings under the persistent dangerous felony offender statute;
3. enhances prison sentences for burglary convictions and requires global positioning system monitoring for certain burglary offenders released on probation or conditionally discharged into the community;
4. prohibits parole release of people incarcerated for certain nonviolent burglary offenses without a full Parole Board hearing;

5. creates the presumption that a person who used deadly force to defend his or her dwelling reasonably believed that this was necessary to prevent or terminate an unlawful, forced entry;
6. directs death penalty litigants and the Connecticut Supreme Court to complete appeal-related procedures within specified time limits;
7. establishes a deadline for filing habeas corpus petitions in capital felony cases;
8. limits the circumstances under which a prisoner sentenced to death can file successive habeas petitions and directs the chief court administrator to assign one judge to handle all death penalty habeas proceedings; and
9. loosens the standards governing death row prisoners' requests for DNA testing.

The bill also conforms the persistent dangerous felony offender statute to a recent Connecticut Supreme Court holding which found a portion of the statute unconstitutional. In *State v. Bell*, the Court ordered language authorizing “the court” to decide whether persistent dangerous felony offenders should be subjected to enhanced sentencing and post-release supervision be excised from the statute because offenders have the constitutional right to have a jury make this determination (283 Conn. 748, 812 (2007)).

The bill also excises identical language from the terrorism and other repeat offender statutes.

The bill is effective upon passage.

### **§ 7— MANDATORY LIFE SENTENCE FOR 3<sup>RD</sup> DANGEROUS FELONY**

The bill mandates life prison sentences without the possibility of release for people convicted of a dangerous felony after having two or more prior convictions for dangerous felonies, including predecessor crimes and substantially the same crimes committed in other states. Table 1 shows the elements required for the enhanced penalty.

**Table 1: Enhanced Penalty for Dangerous Felony Convictions**

<i>Current Conviction:</i>		
Murder, other than capital murder	Manslaughter	Arson
Kidnapping	1 <sup>st</sup> or 2 <sup>nd</sup> degree burglary	1 <sup>st</sup> or 2 <sup>nd</sup> degree robbery
Robbery involving an occupied vehicle	Felony assault (i.e., 1 <sup>st</sup> or 2 <sup>nd</sup> degree assault)	1 <sup>st</sup> or 3 <sup>rd</sup> degree sexual assault
1 <sup>st</sup> degree aggravated sexual assault	3 <sup>rd</sup> degree sexual assault with a firearm	1 <sup>st</sup> degree stalking
Stealing a firearm		
<i>2 Or More Prior Convictions For:</i>		
Any crime listed above, including attempts and predecessor and crimes in other states with substantially the same essential elements		
<i>Sentence Enhancement:</i>		
Life (60 years) without possibility of release		

Repeat offenders who would otherwise be subject to life imprisonment may avoid it by proving that they were pardoned on the ground of innocence for an offense which is being counted as a prior dangerous felony conviction.

Under the bill, three-time dangerous felony offenders would not be eligible for consideration under the persistent dangerous felony law.

**§ 6 — PERSISTENT DANGEROUS FELONY OFFENDER STATUS**

The bill adds 1<sup>st</sup> and 2<sup>nd</sup> degree burglary to the list of felonies that can form the basis for a finding of persistent dangerous felony offender status, thus increasing the number of repeat offenders who may be subject to enhanced periods of jail and community supervision. By law, persistent dangerous felony offenders are those convicted of specified felonies with prior convictions for specified felonies.

Judges must follow the persistent dangerous felony offender statute’s enhanced sentencing rules when the jury finds that the offender meets the statutory requirements and that his or her history and character and the nature and circumstances of the criminal conduct indicate that extended incarceration and lifetime supervision will best serve the public interest (CGS § 53a-40(h); *State v. Bell*, 283 Conn. 748 (2007)).

Table 2 describes the persistent dangerous felony offender criteria under current law and under the bill.

**Table 2: Persistent Dangerous Felony Offender  
(proposed changes in bold italics)**

Current Conviction (§53a-40(a)(1))		
Manslaughter	Arson	Kidnapping
1 <sup>st</sup> or 2 <sup>nd</sup> degree robbery	1 <sup>st</sup> degree assault	<i>1<sup>st</sup> or 2<sup>nd</sup> degree burglary</i>
Prior Conviction (Sentenced To At Least 1 Yr.)		
Murder	Manslaughter	Arson
Kidnapping	1 <sup>st</sup> or 2 <sup>nd</sup> degree robbery	1 <sup>st</sup> degree assault
1 <sup>st</sup> degree sexual assault, including aggravated	3 <sup>rd</sup> degree sexual assault, including with a firearm	<i>1<sup>st</sup> or 2<sup>nd</sup> degree burglary</i>
Attempts to commit any of the above crimes and convictions under predecessor statutes or for crimes under laws of other states that have substantially the same essential elements		

OR

Current Conviction (§53(a)(40)(a)(2))		
1 <sup>st</sup> degree sexual assault, including aggravated	3 <sup>rd</sup> degree sexual assault, including with firearm	
Prior Conviction (Sentenced To At Least 1 Yr.)		
Murder	Manslaughter	Arson
Kidnapping	1 <sup>st</sup> or 2 <sup>nd</sup> degree robbery	1 <sup>st</sup> degree assault
<i>1<sup>st</sup> or 2<sup>nd</sup> degree burglary</i>		
Attempts to commit any of the above crimes and convictions under predecessor statutes or for crimes under laws of other states that have substantially the same essential elements		

Sentence Enhancement		
Current conviction is strike 2: Up to 40 yrs.		
Current conviction is strike 3: Up to life		

Three-time offenders whose convictions qualify them for mandatory life sentences under Section 7 of the bill must be given that sentence, even though they would otherwise qualify for consideration as persistent dangerous felony offenders.

**§§ 8-12 — BURGLARY OFFENSES**

The bill also increases the mandatory minimum sentences associated with 1<sup>st</sup> and 2<sup>nd</sup> degree burglary and 3<sup>rd</sup> degree burglary with a firearm. It establishes a mandatory minimum sentence for simple 3<sup>rd</sup> degree burglary.

Table 3 shows the elements of each of the burglary crimes, current sentence ranges, and the sentence ranges under the bill.

**Table 3: Burglary Offenses and Sentences Compared**

<i>Burglary Offense</i>	<i>Current Sentence</i>	<i>LCO 9967 Sentence</i>
<p><i>1<sup>st</sup> degree:</i> entering or remaining unlawfully in a building with intent to commit a crime therein and</p> <ol style="list-style-type: none"> <li>actor is armed with explosives, a deadly weapon, or dangerous instrument or</li> <li>in the course of committing offense, actor intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone</li> </ol> <p>(CGS §53a-101)</p>	<p><i>Actor armed:</i> at least 5 and up to 20 yrs.</p> <p><i>Actor unarmed; injury attempted or inflicted:</i> 1-20 yrs.</p>	<p><i>Actor armed:</i> at least 6 and up to 20 yrs.</p> <p><i>Actor unarmed; injury attempted or inflicted:</i> at least 5 and up to 20 yrs.</p>
<p><i>2<sup>nd</sup> Degree:</i></p> <ol style="list-style-type: none"> <li>entering or remaining unlawfully in a dwelling at night with intent to commit a crime or</li> <li>entering or remaining unlawfully in a dwelling with intent to commit a crime while a person other than a participant in the crime is actually present in such dwelling</li> </ol> <p>(CGS §53a-102)</p>	1-10 yrs.	At least 2 and up to 10 yrs.
<p><i>2<sup>nd</sup> degree with a firearm:</i> same as above and actor (a) uses, (b) is armed with and threatens to use, or (c) displays or represents by words or conduct that he or she possesses a pistol, revolver, shotgun, machine gun, or other firearm</p> <p>(CGS §53a-102a)</p>	At least 1 and up to 10 yrs.	At least 3 and up to 10 yrs.
<p><i>3<sup>rd</sup> degree:</i> Entering or remaining unlawfully in a building with intent to commit crime therein</p> <p>(53a-103)</p>	1- 5 yrs.	At least 1, and up to 5 yrs.
<p><i>3<sup>rd</sup> degree with firearm:</i> same as above and actor (a) uses, (b) is armed with and threatens to use, or (c) displays or represents by words or conduct that he or she possesses a pistol, revolver, shotgun, machine gun, or other firearm</p> <p>(53a-103a)</p>	At least 1 and up to 5 yrs.	At least 2 and up to 5 yrs.

**§ 15 — Electronic Monitoring Throughout Probation or Conditional Release**

The law authorizes courts to order electronic monitoring, including using global positioning systems (GPS), for people they release on probation or discharge conditionally into the community (i.e., without probation supervision). The bill makes GPS monitoring mandatory for offenders convicted of (1) 1<sup>st</sup> degree burglary or (2) that portion of the 2<sup>nd</sup>

degree burglary offense that does not involve weapons possession or use. The monitoring must continue throughout the probation or conditional release period.

By law, courts can order the person being monitored to pay some or all of the monitoring costs, up to \$6 a day.

### **§§ 13-14 — Parole Restrictions**

The bill increases, from 50% to 85%, the portion of prison sentences that offenders convicted of nonviolent 2<sup>nd</sup> and 3<sup>rd</sup> degree burglaries must serve before they can qualify for parole consideration. The 85% rule already applies to burglaries and other non-capital offenses where the actor used, or attempted or threatened to use physical force against another person (CGS § 54-125a).

By law, the Board of Pardons and Parole must conduct full hearings to determine the parole suitability of offenders subject to the 85% rule. Currently, parole release decisions involving those incarcerated for nonviolent 2<sup>nd</sup> or 3<sup>rd</sup> burglary can be made without a hearing if a board employee has reviewed the inmate's case and recommends it and at least two members of a board panel approve it.

Administrative parole decisions can still be made under the bill for those who are eligible for consideration after serving 50% of their sentences.

### **§ 16 — USE OF DEADLY FORCE**

The law permits a person to use deadly physical force when he or she reasonably believes this is necessary to prevent or terminate an unlawful, forced entry into his or her dwelling (the "Castle Doctrine"). The bill lessens the amount of evidence the actor must present to establish the defense of justification when his or her use of deadly force under such circumstances gives rise to a criminal prosecution. Currently, the actor must prove by a preponderance of evidence that his or her belief was reasonable. The bill creates an evidentiary presumption that the person's belief was reasonable.

### **§17—DEATH PENALTY APPEALS**

The bill requires that direct Supreme Court appeals be filed within 21 days after a court sentences a capital felon to death. Current law requires criminal defendants, including those sentenced to death, to give

the court oral or written notice within two weeks after the court enters its final judgment (CGS § 54-95). The bill directs the Court to consolidate the appeal with the statutorily-required sentence review hearing (CGS § 53a-46b(c)).

The bill also requires that the defendant's and state's appeal and reply briefs be filed according to a schedule that ensures that all are submitted to the Court within four months after the date on which sentence was imposed. And it directs the Court to schedule oral argument within six months after sentencing.

## **§ 18 — HABEAS CORPUS**

Among other things, the writ of habeas corpus is a remedy for prisoners who claim that the state is unconstitutionally detaining them. Currently, there are no special procedures or rules for petitioners who have been imprisoned or sentenced to death for capital felonies, nor is there a statute of limitations for filing petitions or holding court hearings concerning them.

The bill requires habeas petitions, involving capital felony convictions resulting in either death or life imprisonment without possibility of release sentences, to be filed within 180 days after the date the court imposed the sentence. It directs the court to hold a hearing on the petition within 180 days of its filing.

The bill requires this petition to include all legal claims that could support the defendant's position that the conviction or sentence is unconstitutional or in violation of state or federal law. The bill bars filing additional petitions unless (1) the facts underlying the claim were unknown to the defendant or the defendant's attorney and could not have been ascertained by the exercise of due diligence prior to the filing of the first writ and (2) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would have reasonably led to a not guilty verdict or sentence other than death. The bill directs courts to hold hearings on these subsequent petitions within 180 days after they are filed.

Current law does not limit the number of petitions a prisoner can file, although it bars petitions seeking the same legal relief as was sought in an earlier petition unless the petitioner includes new facts that were not reasonably available at the time the earlier petition was filed. This will continue to be the rule for prisoners not convicted of capital felonies.

The bill also directs the Judicial Department's chief court administrator to appoint one judge to handle all death row habeas petitions.

### **§ 19 — DNA TESTING**

The bill requires courts to grant petitions for DNA testing, without holding hearings, whenever a person sentenced to death requests this and states under oath that the (1) test is related to the investigation or prosecution that resulted in the conviction and (2) evidence he or she wants to test contains biological evidence. Current law governing DNA testing requests has no special provisions for requests from death row inmates. It conditions the granting of the request on the court holding a hearing and finding that:

1. a reasonable probability exists that the requested testing will produce DNA results which would have altered the verdict or reduced the petitioner's sentence if the results had been available at the prior proceedings leading to the judgment of conviction;
2. the evidence is still in existence and is capable of being subjected to DNA testing;
3. the evidence, or a specific portion of the evidence identified by the petitioner was never previously subjected to DNA testing, or the testing requested by the petitioner may resolve an issue that was never previously resolved by previous testing; and
4. the petition was filed in order to demonstrate the petitioner's innocence and not to delay the administration of justice.

By law, the court must determine whether the state or the petitioner pays for the test, but cannot deny a test request because the petitioner is unable to pay for it. The court must also appoint counsel to represent indigent defendants who are seeking DNA testing.

## **§§1-5 — JURY DETERMINATIONS REGARDING ENHANCED SENTENCING**

In *State v. Bell*, the Connecticut Supreme Court ruled that a person convicted as a persistent dangerous felony offender had a constitutional right to have the jury, rather than the judge, decide whether his or her character and the nature and circumstances of the criminal conduct indicate that extended incarceration and lifetime supervision will best serve the public interest (283 Conn. 748, 812 (2007)). It ordered that language giving “the court” the authority to make this determination be excised from the statute.

This bill excises that language from following statutes, all of which require that the above finding be made:

1. persistent dangerous felony offender;
2. persistent dangerous sexual offender;
3. persistent serious felony offender;
4. persistent serious sexual offender;
5. persistent larceny offender;
6. persistent felony offender;
7. persistent offender of crimes involving bigotry or bias;
8. persistent offender of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order, or criminal violation of a restraining order;
9. persistent operating while under the influence felony offender; and
10. terrorism.

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