



# OLR RESEARCH REPORT

November 14, 2007

2007-R-0646

## PROPOSAL #6

### AN ACT CONCERNING OCCUPIED HOME INVASION

By: George Coppolo, Chief Attorney

You asked us to summarize Proposal 6, *An Act Concerning Occupied Home Invasion*, for the Judiciary Committee public hearing scheduled for November 27, 2007.

#### SUMMARY

This bill establishes the new crime of “occupied home invasion,” making a violation a class A felony, and eliminates the conduct specified in the new crime from the crime of burglary in the second degree, which is a class C felony. Thus the bill increases the penalty for entering or remaining unlawfully in a dwelling with intent to commit a crime in it, while a person other than a participant in the crime is actually present in the dwelling. A class A felony is punishable by a sentence of 10 to 25 years; a class C felony carries a sentence of up to 10 years (see BACKGROUND-Penalty for a Class A felony).

The bill requires people convicted of the new crime of “occupied home invasion” to serve at least 85% of their sentence before they are eligible to apply for a parole. Under current law, people convicted of this conduct are eligible to apply for parole after serving 50% of their sentence. (Under current law, people who commit a crime that involves the use or threat of violence must serve at least 85% of their sentence before being eligible for parole. Thus, under current law, people who are convicted of

first degree burglary, second degree burglary with a firearm, or third degree burglary with a firearm must serve 85% before being eligible for parole.)

The bill includes the new offense of occupied home invasion under the “persistent dangerous felony offender law,” thus allowing courts to consider an enhanced sentence for people who stand convicted of occupied home invasion, or who have previously been convicted of this offense or other specified felonies.

The bill eliminates the court’s authority to impose an enhanced sentence of up to 40 years for persistent dangerous felony offenders who have been convicted once and sentenced for certain specified felonies before they committed the offense they stand convicted of.

Under current law the court may sentence a persistent dangerous felony offender to a prison term of up to 60 years if (1) the persistent 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 (2) the court concludes, that extended incarceration serves the public interest. The bill instead requires the court to sentence the offender to 60 years, instead of up to 60 years. But the bill authorizes the court, when it is determining the number of prior convictions for sentencing purposes, in the interests of justice, to strike an allegation that the offender had previously been convicted of, and imprisoned for, one the specified crimes so that the offender has only one prior conviction. If this occurs, the bill requires the court to sentence the offender to a prison term that is twice the term otherwise provided as punishment for the crime of which the offender presently stands convicted.

Finally, the bill eliminates the requirement that the court must conclude that extended incarceration serves the public interest. Thus, in cases where the defendant opted for a jury trial, the jury would have to reach this conclusion before the court imposed the enhanced penalty (See BACKGROUND-Related Case and Other Persistent Offender Laws).

EFFECTIVE DATE: Upon passage

### **OCCUPIED HOME INVASION (§§ 1, 2 & 3)**

The bill increases, from a class C felony to a class A felony, the penalty for a person who enters or remains unlawfully in a dwelling with intent to commit a crime in it, while a person other than a participant in the crime is actually present in the dwelling. The penalty for a class C

felony is a prison term of up to 10 years, or a fine of up to \$10,000, or both; the penalty for a class A felony is a prison term of 10 to 25 years, and a fine of up to \$20,000 or both.

The bill does this by establishing the new crime of “occupied home invasion,” making a violation a class A felony, and eliminating the conduct specified in the new crime from the crime of burglary in the second degree, which is a class C felony.

Under current law, unchanged by the bill, it is a class C felony to enter or remain unlawfully in a dwelling at night with intent to commit a crime.

Under current law, unchanged by the bill, 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. A “dwelling” is a building which is usually occupied by a person lodging there at night, whether or not a person is actually present.

#### **REQUIREMENT TO SERVE 85% OF SENTENCE (§ 4)**

The bill requires people convicted of the new crime of “occupied home invasion” to serve at least 85% of their sentence in prison before they are eligible to apply for a parole. Under current law, people convicted of the behavior the new crime covers (entering or remaining 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) are eligible to apply for parole after serving 50% of their sentence.

Under current law, people who commit a crime that involves the use or threat of violence must serve at least 85% of their sentence before being eligible for parole. Thus, under current law, people who are convicted of first degree burglary, second degree burglary with a firearm, or third degree burglary with a firearm must serve 85% before being eligible for parole (see BACKGROUND - Parole Eligibility for Parole and Temporary Parole Policy).

#### **PERSISTENT DANGEROUS FELONY OFFENDER (§§ 5 & 6)**

The 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.

The bill includes the new offense of occupied home invasion under the persistent dangerous felony offender law classification, thus allowing courts to consider an enhanced sentence for people who stand convicted of occupied home invasion, and who have previously been convicted of this offense or other specified felonies.

Under current law, the court may sentence a persistent dangerous felony offender to up to 40 years in prison instead of to the term that applies to the crime he stands convicted of if:

1. the offender has been found to be a persistent dangerous felony offender because on one previous occasion he or she has been convicted and sentenced to a prison term of more than one year for a specified felony, and
2. 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.

This type of enhanced sentencing provision is sometimes referred to as two strikes—the current conviction and one previous conviction.

The bill eliminates the court's authority to impose this enhanced sentence for such offenders who have one prior offense.

Under current law, the court may sentence a persistent dangerous felony offender to up to 60 years in prison, instead of to the term that applies to the crime he or she stands convicted of, 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 conclusion about extended incarceration. Although the law specifies a sentence 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). This type of enhanced penalty law is often referred to as a three strikes law because it involves a current offense and two prior convictions.)

The bill instead requires the court to sentence the defendant to life imprisonment (60 years), instead of up to life imprisonment, for an offender with two prior convictions.

But the bill instead authorizes the court, when it is determining the number of prior convictions for sentencing purposes, in the interests of justice, to strike an allegation that the offender had previously been

convicted of, and imprisoned for, one the specified crimes so that the offender has only one prior conviction. If this occurs, the bill requires the court to sentence the offender to a prison term that is twice the term otherwise provided as punishment for the crime of which the offender currently stands convicted.

Table 1 lists the crimes and sentence enhancements under the persistent dangerous felony offender law, with the proposed changes in bold italics. The table reflects two separate paths to becoming a persistent dangerous felony offender. The first involves current offenses not involving sexual offenses; the second involves current offenses involving sexual offenses.

**Persistent Dangerous Felony Offender  
(Proposed changes in bold italics)**

CURRENT CONVICTION-NON-SEXUAL OFFENSE (§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>Occupied Home Invasion</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>Occupied Home Invasion</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 (See Background)		

**OR**

CURRENT CONVICTION- SEXUAL OFFENSE (§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>Occupied Home Invasion</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		

Finally, the bill eliminates the requirement that the court make the required conclusions that extended incarceration and lifetime supervision will best serve the public interest. Thus, in cases where the defendant opted for a jury trial, the jury would have to reach this conclusion before the court imposed the enhanced penalty (See BACKGROUND -Related Case and Persistent Offender Laws).

## **BACKGROUND**

### ***Penalty for a Class A Felony***

The law requires a court to impose a sentence of 10 to 25 years in prison for a class A felony other than murder (CGS § 53a-35a(3)). The court may only suspend a prison sentence entirely, or in part, if it couples the suspension with a period of probation or conditional discharge (CGS § 53a-28(b)). The court is not authorized to impose probation or conditional discharge on a person convicted of a class A felony (CGS § 53a-29(a) and (b)). Thus, the court must sentence a person convicted of a class A felony to a prison term of at least 10 years, and may not suspend any portion of the sentence it imposes.

### ***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.

## ***Related Case***

The state Supreme Court recently held that the statute that mandates sentence enhancement when the defendant is found to be a persistent 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 wherein 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 the persistent dangerous felony offender law. But it does not make this change 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 felony offenders,
3. serious sexual offenders,
4. felony offenders,
5. bigotry or bias offenders,
6. stalking and harassment-related offenders,

- 7. larceny offenders, and
- 8. operating under the influence felony offenders.

**Persistent 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 <sup>st</sup> degree
	53a-75	Rape in 2d degree
	53a-78	Sexual contact in the 1 <sup>st</sup> degree
CGS revision of 1958 revised to 1968	Statute	Offense
	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 intent to disfigure
	53-15	Assault with acid or other burning substance
	53-16	Aggravated assault
	53-19	Binding or administering of 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 if a vessel, dwelling, church, theatre, or other structure for public gathering
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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