



OLR RESEARCH REPORT

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PROPOSAL 7:

AN ACT CONCERNING CRIMINAL SENTENCING AND THE PAROLE PROCESS

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You asked us to summarize Proposal 7, *An Act Concerning Criminal Sentencing And The Parole Process*, for the Judiciary Committee public hearing scheduled for November 27, 2007.

SUMMARY:

This bill creates a new enhanced penalty law that requires the court to sentence someone to life in prison (statutorily defined as 60 years) without possibility of release if the person (1) is convicted of one of the following crimes and (2) has at least two convictions and imprisonment in any state or any federal institution for one of these crimes, any of their predecessor crimes, an attempt to commit one of these crimes, or a crime in any state that has substantially the same essential elements as one of these crimes:

1. manslaughter,
2. arson,
3. kidnapping,

4. 1st or 2nd degree robbery,

5. robbery involving an occupied motor vehicle,
6. assault constituting a felony,
7. 1st or 3rd degree sexual assault and 3rd degree sexual assault with a firearm,
8. 1st degree aggravated sexual assault,
9. 1st or 2nd degree burglary,
10. 1st degree stalking, and
11. stealing a firearm.

It permits a person convicted of a third one of these crimes to avoid the life sentence by showing that he has been pardoned for one of the earlier crimes on the ground of innocence.

The bill expands an existing five year mandatory minimum sentence for certain types of 1st degree burglaries to all types of 1st degree burglaries. It also imposes a five year mandatory minimum sentence for 2nd degree burglary and increases the mandatory minimum sentence for 2nd degree burglary with a firearm from one to five years.

The bill also responds to a recent Connecticut Supreme Court ruling that convicted offenders have the right to have a jury determine whether they should be subject to the more stringent penalties associated with the persistent dangerous felony offender classification (see BACKGROUND). The bill codifies this ruling by removing the requirement that the court make certain findings and thus leaves it to the jury to make these findings. A judge could still make these findings if the defendant waived the right to a jury. The bill also makes this change to the other persistent offender statutes and the provision that increases the penalty one class for acts of terrorism, which all contain similar language to that considered by the court in its ruling.

The bill:

1. requires people convicted of 2nd degree burglary to serve 85% of their sentence before being eligible for parole;

2. increases the membership of the Board of Pardons and Paroles from 13 to 20 on January 1, 2008 and requires that the additional members be assigned to parole panels;
3. prohibits the board from holding a hearing or meeting about an inmate's release unless the panel members have the person's complete file;
4. requires the prosecutor and court to make a statement for the record about the person's history and character and the nature and circumstances of the criminal conduct at the sentencing hearing of anyone convicted of a felony (§ 14);
5. requires anyone convicted of one of the crimes subject to the new enhanced penalty who is released from prison into the community to report to and have his or her photo taken at the police department or resident state troop for the town where the person resides within seven days of release (§ 15); and
6. requires anyone convicted of one of the crimes subject to the new enhanced penalty or sexual assault involving a minor to be subject to electronic monitoring by global positioning system for any time the person is on probation, parole, or other community release program, with electronic monitoring as a condition of release (§ 16).

EFFECTIVE DATE: Upon passage, except the increase in Board of Pardons and Paroles membership takes effect January 1, 2008.

MANDATORY MINIMUM SENTENCES FOR BURGLARY (§§ 7-9)

The bill imposes a mandatory minimum five year sentence for someone who commits 1st degree burglary by entering or remaining unlawfully in a building with intent to commit a crime and in the course of committing the offense, intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on someone. Under current law, unchanged by the bill, a five year mandatory minimum sentence already applies if someone commits 1st degree burglary by entering or remaining unlawfully in a building with intent to commit a crime and the person is armed with explosives, a deadly weapon, or dangerous instrument. By law, 1st degree burglary is a class B felony punishable by up to 20 years in prison, a fine of up to \$15,000, or both.

The bill imposes a mandatory minimum five year sentence for someone who commits 2nd degree burglary. By law, a person commits 2nd degree burglary, a class C felony, by entering or remaining unlawfully in a dwelling with intent to commit a crime (1) at night or (2) while someone other than a participant in the crime is in the dwelling. A class C felony is punishable by up to 10 years in prison, a fine of up to \$10,000, or both.

The bill increases the mandatory minimum sentence for 2nd degree burglary with a firearm from one to five years. By law, a person commits this crime by committing 2nd degree burglary and using, being armed with and threatening the use of, displaying, or representing by words or conduct that he or she possess, a pistol, revolver, rifle, shotgun, machine gun, or other firearm. By law, this crime is a class C felony.

PERSISTENT OFFENDER STATUTES AND SUPREME COURT RULING (SS 2-6)

The bill responds to a recent Connecticut Supreme Court ruling that convicted offenders have the right to have a jury determine whether they should be subject to the more stringent penalties associated with the persistent dangerous felony offender classification (see BACKGROUND). The bill codifies this ruling by removing the requirement that the court make certain findings and thus leaving it to the jury to make these findings. A judge could still make these findings if the defendant waived the right to a jury.

The bill also applies these changes to the provision that increases the penalty 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.

PAROLE ELIGIBILITY FOR 2ND DEGREE BURGLARY (§ 10)

By law, a person's eligibility for parole is based on the crime he or she is convicted of. A person is ineligible for parole if convicted of some serious crimes. Crimes where the underlying facts and circumstances involved the use, attempted use, or threatened use of force require the person to serve 85% of the sentence before becoming eligible for parole. For other crimes, a person is eligible after serving 50% of the sentence.

The bill requires people convicted of 2nd degree burglary to serve 85% rather than 50% of their sentence before being eligible for parole.

BOARD OF PARDONS AND PAROLES (§§ 11-13)

The bill increases the membership of the Board of Pardons and Paroles from 13 to 20 on January 1, 2008. It requires the board's chairman to assign 14 members, instead of seven, exclusively to parole hearings. As under current law, five members are assigned to pardons hearings and the chairman can serve on both parole and pardon hearings.

The bill places the board within the Department of Public Safety, instead of in the Department of Correction, for administrative purposes.

Complete File Requirement

The bill prohibits the board from holding a hearing on someone's suitability for parole release or holding a meeting to consider a board employee's recommendations for release based on the employee's administrative review unless the panel members have the person's complete file including any:

1. sentencing hearing transcript that the law requires prosecutors to deliver to the board and

2. presentence investigation report prepared by a probation officer for the court before sentencing.

The bill requires the board to give each panel member the complete file at least three business days before the scheduled hearing or meeting date.

ENHANCED PENALTY, REPORT TO POLICE, AND ELECTRONIC MONITORING—LIST OF CRIMES (§§ 1, 15, 16)

The bill uses the same list of crimes to (1) subject someone to the new enhanced penalty law, (2) require a person released into the community to report to the police, and (3) subject a person to electronic monitoring. The list uses the terms “manslaughter,” “arson,” “kidnapping,” and “assault constituting a felony.” It appears that these terms refer to the following specific crimes:

1. manslaughter 1st degree, including 1st degree with a firearm;
2. manslaughter 2nd degree, including 2nd degree with a (a) firearm or (b) motor vehicle;
3. arson 1st, 2nd, and 3rd degree;
4. kidnapping 1st and 2nd degree including with a firearm;
5. assault 1st degree including when the victim is (a) elderly, blind, disabled, pregnant, or mentally retarded or (b) a corrections employee;
6. assault terminating pregnancy;
7. assault 2nd degree including (a) with a firearm, (b) when the victim is elderly, blind, disabled, pregnant, or mentally retarded, (c) with a firearm when the victim is elderly, blind, disabled, pregnant, or mentally retarded, and (d) with a motor vehicle;
8. assault of (a) public safety or emergency medical personnel or (b) a prosecutor;

In addition, the list includes the crimes of 1st or 2nd degree burglary. (It is unclear whether this would also include 2nd degree burglary with a firearm.)

For electronic monitoring, the bill applies to sexual assault offenses involving a minor which could apply to a number of different statutes depending on the circumstances.

BACKGROUND

State v. Bell

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)).

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.

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