



OLR RESEARCH REPORT

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**PROPOSAL 8:
AN ACT STRENGTHENING CRIMINAL LAWS CONCERNING
PERSISTENT OFFENDERS, BURGLARY, THE JUSTIFIABLE USE OF
DEADLY FORCE AND PAROLE RELEASE**

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You asked us to summarize Proposal 8: *AA Strengthening Criminal Laws Concerning Persistent Offenders, Burglary, The Justifiable Use Of Deadly Force and Parole Release* 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 repeat offenders to serve life sentences;
2. requires consideration of 1st and 2nd 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 (GPS) 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; and
6. requires the Department of Public Safety to establish and maintain a public registry of offenders on parole.

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 is effective upon passage, except the provision requiring parolees to register is effective January 1, 2008.

§ 1 — MANDATORY LIFE SENTENCES FOR REPEAT OFFENDERS

The bill mandates life prison sentences (statutorily defined as 60 years) without the possibility of release for people convicted of a “dangerous felony” who were incarcerated for two prior “predicate offenses,” attempts to commit predicate offenses, or crimes in other states with substantially the same essential elements as predicate offenses. Under the bill, a predicate offense is (1) a dangerous felony, (2) two class A misdemeanors, or (3) three class B misdemeanors.

By law, a class A misdemeanor is a crime punishable by imprisonment for up to one year, a fine of up to \$2,000, or both. A class B misdemeanor is punishable by imprisonment for up to six months, a fine of up to \$1,000, or both.

Table 1 below shows the offenses that are classified as dangerous felonies.

Table 1: Dangerous Felonies

Murder, other than a capital felony	Manslaughter	Arson
Kidnapping	1 st or 2 nd degree robbery	Robbery involving an occupied motor vehicle
Felony assault	1 st or 3 rd degree sexual assault	1 st degree aggravated sexual assault
3 rd degree sexual assault with a firearm	1 st or 2 nd degree burglary	1 st degree stalking
Stealing a firearm		

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 conviction.

§§ 2 AND 3 — PERSISTENT DANGEROUS FELONY OFFENDER STATUS

The bill also adds 1st and 2nd 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 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 compares the persistent dangerous felony offender classification under current law and the bill.

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

CURRENT CONVICTION (§ 53a-40(a)(1))		
Manslaughter	Arson	Kidnapping
1 st or 2 nd degree robbery	1 st degree assault	<i>1st or 2nd degree burglary</i>
PRIOR CONVICTION (SENTENCED TO AT LEAST 1 YR.)		
Murder	Manslaughter	Arson
Kidnapping	1 st or 2 nd degree robbery	1 st degree assault
1 st degree sexual assault, including aggravated	3 rd degree sexual assault, including with a firearm	<i>1st or 2nd 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 st degree sexual assault, including aggravated	3 rd degree sexual assault, including with firearm	
PRIOR CONVICTION (SENTENCED TO AT LEAST 1 YR.)		
Murder	Manslaughter	Arson
Kidnapping	1 st or 2 nd degree robbery	1 st degree assault
<i>1st or 2nd 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		

§§ 4-8 — BURGLARY OFFENSES

The bill increases the mandatory minimum sentences associated with 1st and 2nd degree burglary and 3rd degree burglary with a firearm. It also expands the weapons that can give rise to 2nd or 3rd degree armed burglary. But under both current law and the bill, the elements of the crimes of 2nd and 3rd degree armed burglary are identical to those for the crime of 1st degree armed burglary.

The bill also establishes a mandatory minimum sentence for simple 3rd degree burglary (i.e., when no weapon is involved).

Deadly Weapons and Dangerous Instruments

The law defines a deadly weapon as “any weapon, whether loaded or unloaded, from which a shot may be discharged, or a switchblade knife, gravity knife, billy, blackjack, bludgeon, or metal knuckles” (CGS § 53a-3(6)). It defines a dangerous instrument as “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”. It includes vehicles and dogs (other than police dogs acting under an officer’s direction) who have been given orders to attack (CGS § 53a-3(7)).

Table 3 compares the current and proposed elements of each of the burglary crimes and sentence ranges.

Table 3: Burglary Offenses and Sentences Compared
(proposed changes to elements of burglary offenses in bold italics)

Burglary Offense	Current Sentence	LCO 9965 Sentence
<p><i>1st degree:</i> entering or remaining unlawfully in a building with intent to commit a crime therein and</p> <ol style="list-style-type: none"> actor is armed with explosives, a deadly weapon, or dangerous instrument or <i>firearm</i> or in the course of committing offense, actor intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone <p><i>(CGS §53a-101)</i></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>2nd Degree:</i></p> <ol style="list-style-type: none"> entering or remaining unlawfully in a dwelling at night with intent to commit a crime or 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 <p><i>(CGS §53a-102)</i></p>	<p>1-10 yrs.</p>	<p>At least 2 and up to 10 yrs.</p>

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Burglary Offense	Current Sentence	LCO 9965 Sentence
<i>2nd degree with firearm, deadly weapon, or dangerous instrument: 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 or deadly weapon or dangerous instrument (CGS §53a-102a)</i>	At least 1 and up to 10 yrs.	At least 3 and up to 10 yrs.
<i>3rd degree: Entering or remaining unlawfully in a building with intent to commit crime therein (53a-103)</i>	1- 5 yrs.	At least 1 and up to 5 yrs.
<i>3rd degree with firearm, deadly weapon, or dangerous instrument: 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 or deadly weapon or dangerous instrument (53a-103a)</i>	At least 1 and up to 5 yrs.	At least 2 and up to 5 yrs.

§ 11 — 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) 1st degree burglary or (2) 2nd degree burglary (except 2nd degree burglary with a firearm, deadly weapon, or dangerous weapon). 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.

§§ 9 and 10 — Parole Restrictions

The bill increases, from 50% to 85%, the portion of prison sentences that offenders convicted of nonviolent 2nd and 3rd degree burglaries must serve before they can qualify for parole consideration. The 85% rule already applies to these 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 2d and 3rd degree 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.

§§ 13-15 — PAROLEE REGISTRY

The bill requires all people released on parole to register their names and identifying factors (defined by law as fingerprints, photographic images, and descriptions of any other identifying characteristics the Department of Public Safety (DPS) commissioner requires), criminal records, and home addresses with DPS and keep the information up-to-date until their parole ends. The DPS commissioner must establish a registry and procedures for updating it, and make information available to the public and law enforcement agencies. Many provisions in the bill mirror those in the existing sex offender registration law.

Parolees released after the bill is enacted must register before the Department of Correction (DOC) commissioner can release them. The commissioner must provide them with written summaries of their registration obligations. She must also forward the completed registration packages to the DPS commissioner for inclusion in the registry.

People already on supervised parole when the bill is passed must register within 10 days after passage unless the DPS commissioner establishes a phase-in procedure for them. Any phase-in must be completed within three months.

Registrant's Responsibilities

Registrants must notify the DPS commissioner in writing of name or address changes without undue delay. They must also periodically complete and return verification forms and be re-photographed at the DPS commissioner's request.

Failing to register on time or report name and address changes within five business days is a class D felony, punishable by imprisonment for up to five years, a fine of up to \$5,000, or both.

DPS Responsibilities

DPS must establish and maintain the registry. The registry must include information in the registration packet and the most recent photo taken by DPS, DOC, a law enforcement agency, or the Judicial Department's Court Support Services Division. DPS must notify the local police department or state police troop having jurisdiction over the area where the registrant lives or plans to live that the individual is a registered parolee. DPS must update the registry with name and address changes and re-photograph registrants at least once every five years.

The department must also verify the address of each in-state registrant by mailing a non-forwardable verification form to his or her last reported address every 90 days after the initial registration date. It need not do this during periods when the registrant is incarcerated, under a civil commitment order, or living out of state.

DPS must notify the local police department or state police barracks if a registrant fails to return the form within 10 days of the date it was mailed. The police, in turn, must seek an arrest warrant, charging the registrant with failure to comply with registration mandates.

The bill states that the registry is a public record that must be accessible to the public during normal business hours. It directs DPS to make registry information available on the Internet. DPS must also issue notices to all print and electronic media in the state at least every three months regarding the availability and means of accessing the registry.

DPS must also develop a protocol to notify other state agencies, the Judicial Department, and police when a registrant gives it notice that he or she has a name change or when notified by the superior or probate court that a registrant's name change request has been granted.

DPS must notify the local law enforcement agency having jurisdiction over the registrant's last reported address when his or her parole term ends; both the department and law enforcement must remove the name and identifying information from the registry.

Disclosure of Registry Information

The bill permits state agencies, the Judicial Department, and any state police troop or local department to notify government agencies, private organizations, or individuals about registrants and information on the registry when they believe that notification is necessary to protect the public or any person from a registrant.

Confidentiality

The bill prohibits state agencies, the Judicial Department, and state and local police from disclosing the identity of any victim of a crime committed by the registrant except to government agencies for legitimate law enforcement or security purposes.

Civil Immunity

The bill states that the state and its political subdivisions and their respective officers and employees cannot be held civilly liable to registrants for releasing or disclosing information in accordance with its provisions. The state and political subdivisions are immune from liability for good faith conduct in notifying government agencies, private organizations, or individuals of registration information when they believe this is necessary to protect the public or an individual from any registrant. State and political subdivision officers and employees may be held civilly liable for notifications involving wanton, reckless, or malicious conduct.

§ 12 — 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.

SP:ts