



Senate

General Assembly

File No. 627

January Session, 2007

Substitute Senate Bill No. 1458

Senate, April 30, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING JESSICA'S LAW.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2007*) (a) A person is guilty of
2 aggravated sexual assault of a minor when such person commits a
3 violation of subdivision (2) of subsection (a) of section 53-21 or section
4 53a-70, 53a-70a, 53a-71, 53a-86, 53a-87 or 53a-196a of the general
5 statutes, as amended by this act, and the victim of such offense is
6 under thirteen years of age, and (1) such person kidnapped or illegally
7 restrained the victim, (2) such person stalked the victim, (3) such
8 person used violence to commit such offense against the victim, (4)
9 such person caused serious physical injury to or disfigurement of the
10 victim, (5) there was more than one victim of such offense under
11 thirteen years of age, (6) such person was not known to the victim, or
12 (7) such person has previously been convicted of a violent sexual
13 assault.

14 (b) Aggravated sexual assault of a minor is a class A felony and any
15 person found guilty under this section shall, for a first offense, be

16 sentenced to a term of imprisonment of twenty-five years which may
17 not be suspended or reduced by the court and, for any subsequent
18 offense, be sentenced to a term of imprisonment of fifty years which
19 may not be suspended or reduced by the court.

20 Sec. 2. Section 53-21 of the general statutes is repealed and the
21 following is substituted in lieu thereof (*Effective July 1, 2007*):

22 (a) Any person who (1) wilfully or unlawfully causes or permits any
23 child under the age of sixteen years to be placed in such a situation
24 that the life or limb of such child is endangered, the health of such
25 child is likely to be injured or the morals of such child are likely to be
26 impaired, or does any act likely to impair the health or morals of any
27 such child, or (2) has contact with the intimate parts, as defined in
28 section 53a-65, of a child under the age of sixteen years or subjects a
29 child under sixteen years of age to contact with the intimate parts of
30 such person, in a sexual and indecent manner likely to impair the
31 health or morals of such child, or (3) permanently transfers the legal or
32 physical custody of a child under the age of sixteen years to another
33 person for money or other valuable consideration or acquires or
34 receives the legal or physical custody of a child under the age of
35 sixteen years from another person upon payment of money or other
36 valuable consideration to such other person or a third person, except in
37 connection with an adoption proceeding that complies with the
38 provisions of chapter 803, shall be guilty of a class C felony for a
39 violation of subdivision (1) or (3) of this subsection and a class B felony
40 for a violation of subdivision (2) of this subsection, except that, if the
41 violation is of subdivision (2) of this subsection and the victim of the
42 offense is under thirteen years of age, such person shall be sentenced
43 to a term of imprisonment of which five years of the sentence imposed
44 may not be suspended or reduced by the court.

45 (b) The act of a parent or agent leaving an infant thirty days or
46 younger with a designated employee pursuant to section 17a-58 shall
47 not constitute a violation of this section.

48 Sec. 3. Section 53a-90a of the general statutes is repealed and the

49 following is substituted in lieu thereof (*Effective July 1, 2007*):

50 (a) A person is guilty of enticing a minor when such person uses an
51 interactive computer service to knowingly persuade, induce, entice or
52 coerce any person under sixteen years of age to engage in prostitution
53 or sexual activity for which the actor may be charged with a criminal
54 offense. For purposes of this section, "interactive computer service"
55 means any information service, system or access software provider
56 that provides or enables computer access by multiple users to a
57 computer server, including specifically a service or system that
58 provides access to the Internet and such systems operated or services
59 offered by libraries or educational institutions.

60 (b) [Enticing] (1) Except as provided in subdivision (2) of this
61 subsection, enticing a minor is a class D felony for a first offense, a
62 class C felony for a second offense and a class B felony for any
63 subsequent offense.

64 (2) Enticing a minor is a class B felony if the victim of the offense is
65 under thirteen years of age and any person found guilty of such class B
66 felony shall, for a first offense, be sentenced to a term of imprisonment
67 of which five years of the sentence imposed may not be suspended or
68 reduced by the court and, for any subsequent offense, be sentenced to
69 a term of imprisonment of which ten years of the sentence imposed
70 may not be suspended or reduced by the court.

71 Sec. 4. Section 53a-196a of the general statutes is repealed and the
72 following is substituted in lieu thereof (*Effective July 1, 2007*):

73 (a) A person is guilty of employing a minor in an obscene
74 performance when [(1) he] such person (1) employs any minor,
75 whether or not such minor receives any consideration, for the purpose
76 of promoting any material or performance which is obscene as to
77 minors, notwithstanding that such material or performance is intended
78 for an adult audience, or (2) [he] permits any such minor to be
79 employed, whether or not such minor receives any consideration, in
80 the promotion of any material or performance which is obscene as to

81 minors, notwithstanding that such material or performance is intended
82 for an adult audience, and [he] such person is the parent or guardian
83 of such minor or otherwise responsible for the general supervision of
84 such minor's welfare.

85 (b) Employing a minor in an obscene performance is a class A felony
86 and any person found guilty under this section shall be sentenced to a
87 term of imprisonment of which ten years of the sentence imposed may
88 not be suspended or reduced by the court.

89 Sec. 5. Section 53a-196c of the general statutes is repealed and the
90 following is substituted in lieu thereof (*Effective July 1, 2007*):

91 (a) A person is guilty of importing child pornography when, with
92 intent to promote child pornography, such person knowingly imports
93 or causes to be imported into the state three or more visual depictions
94 of child pornography of known content and character.

95 (b) Importing child pornography is a class B felony and any person
96 found guilty under this section shall be sentenced to a term of
97 imprisonment of which five years of the sentence imposed may not be
98 suspended or reduced by the court.

99 Sec. 6. Section 53a-196d of the general statutes is repealed and the
100 following is substituted in lieu thereof (*Effective July 1, 2007*):

101 (a) A person is guilty of possessing child pornography in the first
102 degree when such person knowingly possesses fifty or more visual
103 depictions of child pornography.

104 (b) Possessing child pornography in the first degree is a class B
105 felony and any person found guilty under this section shall be
106 sentenced to a term of imprisonment of which five years of the
107 sentence imposed may not be suspended or reduced by the court.

108 Sec. 7. Section 53a-196e of the general statutes is repealed and the
109 following is substituted in lieu thereof (*Effective July 1, 2007*):

110 (a) A person is guilty of possessing child pornography in the second
111 degree when such person knowingly possesses twenty or more but
112 fewer than fifty visual depictions of child pornography.

113 (b) Possessing child pornography in the second degree is a class C
114 felony and any person found guilty under this section shall be
115 sentenced to a term of imprisonment of which two years of the
116 sentence imposed may not be suspended or reduced by the court.

117 Sec. 8. Section 53a-196f of the general statutes is repealed and the
118 following is substituted in lieu thereof (*Effective July 1, 2007*):

119 (a) A person is guilty of possessing child pornography in the third
120 degree when such person knowingly possesses fewer than twenty
121 visual depictions of child pornography.

122 (b) Possessing child pornography in the third degree is a class D
123 felony and any person found guilty under this section shall be
124 sentenced to a term of imprisonment of which one year of the sentence
125 imposed may not be suspended or reduced by the court.

126 Sec. 9. (NEW) (*Effective July 1, 2007*) Notwithstanding any other rule
127 of evidence or provision of law, a statement by a child under thirteen
128 years of age relating to a sexual offense committed against that child,
129 or an offense involving physical abuse committed against that child by
130 a person or persons who had authority or apparent authority over the
131 child, shall be admissible in a criminal, juvenile or civil proceeding if
132 (1) the court finds, on the basis of the time, content and circumstances
133 of the statement, there is a probability that the statement is
134 trustworthy, (2) the proponent of the statement makes known to the
135 adverse party an intention to offer the statement and the particulars of
136 the statement at such time as to provide the adverse party with a fair
137 opportunity to prepare to meet it, and (3) either (A) the child testifies
138 at the proceeding, or (B) the child is unavailable as a witness and there
139 is independent nontestimonial admissible evidence of the alleged act.
140 For the purposes of this section, "child" includes a person who is
141 chronologically thirteen years of age or older, but who has a mental or

142 developmental age of less than thirteen years because of mental
143 retardation or developmental disability.

144 Sec. 10. Section 53a-35a of the general statutes is repealed and the
145 following is substituted in lieu thereof (*Effective July 1, 2007*):

146 For any felony committed on or after July 1, 1981, the sentence of
147 imprisonment shall be a definite sentence and the term shall be fixed
148 by the court as follows: (1) For a capital felony, a term of life
149 imprisonment without the possibility of release unless a sentence of
150 death is imposed in accordance with section 53a-46a; (2) for the class A
151 felony of murder, a term not less than twenty-five years nor more than
152 life; (3) for the class A felony of aggravated sexual assault of a minor
153 under section 1 of this act, a term not less than twenty-five years nor
154 more than fifty years; (4) for a class A felony other than [murder] an
155 offense specified in subdivision (2) or (3) of this section, a term not less
156 than ten years nor more than twenty-five years; [(4)] (5) for the class B
157 felony of manslaughter in the first degree with a firearm under section
158 53a-55a, a term not less than five years nor more than forty years; [(5)]
159 (6) for a class B felony other than manslaughter in the first degree with
160 a firearm under section 53a-55a, a term not less than one year nor more
161 than twenty years, except that for a conviction under section 53a-
162 59(a)(1), 53a-59a, 53a-70a, 53a-94a, 53a-101(a)(1) or 53a-134(a)(2), the
163 term shall be not less than five years nor more than twenty years; [(6)]
164 (7) for a class C felony, a term not less than one year nor more than ten
165 years, except that for a conviction under section 53a-56a, the term shall
166 be not less than three years nor more than ten years; [(7)] (8) for a class
167 D felony, a term not less than one year nor more than five years, except
168 that for a conviction under section 53a-60b or 53a-217, the term shall be
169 not less than two years nor more than five years, for a conviction
170 under section 53a-60c, the term shall be not less than three years nor
171 more than five years, and for a conviction under section 53a-216, the
172 term shall be five years; [(8)] (9) for an unclassified felony, a term in
173 accordance with the sentence specified in the section of the general
174 statutes that defines the crime.

175 Sec. 11. Subsection (b) of section 53a-55a of the general statutes is
 176 repealed and the following is substituted in lieu thereof (*Effective July*
 177 *1, 2007*):

178 (b) Manslaughter in the first degree with a firearm is a class B felony
 179 and any person found guilty under this section shall be sentenced to a
 180 term of imprisonment in accordance with subdivision [(4)] (5) of
 181 section 53a-35a, as amended by this act, of which five years of the
 182 sentence imposed may not be suspended or reduced by the court.

183 Sec. 12. Subsection (b) of section 54-125e of the general statutes is
 184 repealed and the following is substituted in lieu thereof (*Effective*
 185 *October 1, 2007*):

186 (b) When sentencing a person to a period of special parole, the court
 187 may, as a condition of the sentence, order such person to comply with
 188 any or all of the requirements of subsection (a) of section 53a-30. The
 189 court shall cause a copy of any such order to be delivered to such
 190 person and to the Department of Correction. The Board of Pardons and
 191 Paroles may require that such person comply with any or all of the
 192 requirements of subsection (a) of section 53a-30 which the court could
 193 have imposed and which are not inconsistent with any condition
 194 actually imposed by the court. Any person sentenced to a period of
 195 special parole shall also be subject to such rules and conditions as may
 196 be established by the Board of Pardons and Paroles or its chairperson
 197 pursuant to section 54-126.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2007</i>	New section
Sec. 2	<i>July 1, 2007</i>	53-21
Sec. 3	<i>July 1, 2007</i>	53a-90a
Sec. 4	<i>July 1, 2007</i>	53a-196a
Sec. 5	<i>July 1, 2007</i>	53a-196c
Sec. 6	<i>July 1, 2007</i>	53a-196d
Sec. 7	<i>July 1, 2007</i>	53a-196e
Sec. 8	<i>July 1, 2007</i>	53a-196f

Sec. 9	<i>July 1, 2007</i>	New section
Sec. 10	<i>July 1, 2007</i>	53a-35a
Sec. 11	<i>July 1, 2007</i>	53a-55a(b)
Sec. 12	<i>October 1, 2007</i>	54-125e(b)

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Correction, Dept.; Judicial Department (Probation)	GF - Cost	Potential	Potential
Judicial Dept.	GF - Revenue Gain	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

This bill establishes a new crime of aggravated sexual assault of a minor and increases penalties for enticing a child under the age of 13. Additionally, the bill imposes mandatory minimums for various sexual crimes related to children (and specifically to children under 13).

To the extent that these changes increase the likelihood that violent offenders would be prosecuted or receive harsher penalties, a revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state \$2,500 to supervise an offender on probation in the community as compared to \$41,600 to incarcerate the offender (note that both figures include fringe benefits).

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation. Potential revenues would

continue into the future, subject to the rate of violations.

OLR Bill Analysis**sSB 1458*****AN ACT CONCERNING JESSICA'S LAW.*****SUMMARY:**

This bill:

1. establishes a new crime of aggravated sexual assault of a minor;
2. enhances the penalty for enticing children under age 13;
3. imposes mandatory minimum terms of imprisonment for enticing a child under age 13, having sexual or indecent contact with a child under age 13, employing a minor in an obscene performance, and importing or possessing child pornography;
4. creates an exception to the hearsay rule for statements of victims of sexual or physical assault who are under age 13; and
5. permits courts to set the same conditions for special parole that they may currently set for probation or conditional discharge and allows the Board of Pardons and Paroles to set conditions that are not inconsistent with those set by courts.

EFFECTIVE DATE: July 1, 2007, except that the provision on special parole is effective on October 1, 2007.

AGGRAVATED SEXUAL ASSAULT OF A MINOR

Under the bill, a person commits this crime when he or she commits certain crimes against a child under age 13 and:

1. kidnaps, illegally restrains, stalks, disfigures, cause serious injury to, or uses violence against the victim;
2. commits the same offense against more than one victim under

age 13;

3. does not know the victim; or
4. has been previously convicted of a violent sexual assault.

The covered crimes are contact with the intimate parts of a child under age 13 in a sexual or indecent manner likely to impair the child's health or morals, 1st or 2nd degree sexual assault, 1st degree aggravated sexual assault, 1st or 2nd degree promoting prostitution, and employing a minor in an obscene performance.

Aggravated sexual assault of a minor is a class A felony, punishable by 25 to 50 years in prison, a fine of up to \$20,000, or both. For first offenders, the mandatory minimum prison term is 25 years. For subsequent offenders, it is 50 years.

ENHANCED PENALTIES

The bill enhances penalties, including imposing mandatory minimum sentences for certain crimes against children. Table 1 shows the crimes, the current penalties for violations, and the bill's enhancements.

Offense	Current Penalty	Additional Penalty Under the Bill
Risk of Injury/Impairing Morals: Sexual contact with intimate parts of a victim under age 13 CGS § 53-21(a)(2)	B Felony, punishable by 1-20 years in prison, a fine of up to \$15,000, or both	Mandatory minimum term of 5 years
Employing Minor in Obscene Performance: Actor employs minor to promote any material or performance that is obscene as to minors CGS § 53a-196a	A Felony, punishable by 10-25 years in prison, a fine of up to \$20,000, or both.	Mandatory minimum term of 10 years
Enticing a Minor:	D Felony, for 1st	B Felony, punishable by

<p>Actor uses interactive computer service to knowingly persuade or entice victim under age 13 to engage in prostitution or other sexual activity which would subject the actor to criminal prosecution</p> <p>CGS § 53a-90a</p>	<p>offense, C Felony for 2nd offense, and B Felony for 3rd and subsequent offenses</p>	<p>1-20 years in prison, a fine of up to \$15,000, or both. The sentence includes a 5-year mandatory minimum sentence for a first offense and a 10-year mandatory minimum for each subsequent offense.</p>
<p>Importing Child Pornography: Intentionally and knowingly imports or causes to be imported into this state three or more visual depictions of child pornography</p> <p>CGS § 53a-196c</p>	<p>B Felony, punishable by 1-20 years in prison, a fine of up to \$15,000, or both</p>	<p>Mandatory minimum term of 5 years</p>
<p>1st Degree Possession of Child Pornography: Actor knowingly possesses 50 or more visual depictions of child pornography</p> <p>CGS § 53a-196d</p>	<p>B Felony, punishable by 1-20 years in prison, a fine of up to \$15,000, or both</p>	<p>Mandatory minimum term of 5 years</p>
<p>2nd Degree Possession of Child Pornography: Actor knowingly possesses 20 to 49 visual depictions of child pornography</p> <p>CGS § 53a-196e</p>	<p>C Felony, punishable by one to 10 years in prison, a fine of up to \$10,000, or both</p>	<p>Mandatory minimum term of 2 years</p>
<p>3rd Degree Possession of Child Pornography: Actor knowingly possesses fewer than 20 visual depictions of child pornography</p> <p>CGS § 53a-196f</p>	<p>D Felony, punishable by one to five years in prison, up to a \$5,000 fine, or both</p>	<p>Mandatory minimum term of 1 year</p>

ADMISSIBILITY OF EVIDENCE

The bill creates an exception to Connecticut's hearsay rule for statements of young children about their sexual or physical assault by someone with authority or apparent authority over them. It requires courts to accept these statements as evidence in criminal, juvenile, or civil proceedings if:

1. the court finds, based on the time, content, and circumstances of the statement, a probability that the statement is trustworthy;
2. the proponent of the statement tells the adverse party what the statement contains, that he or she intends to offer it as evidence, and gives the opponent fair opportunity to counter it; and
3. either (A) the child testifies at the proceeding or (B) the child is unavailable as a witness and there is independent nontestimonial admissible evidence of the alleged act.

The requirement applies to statements by children under age 13 and older children who are mentally or developmentally younger than age 13 because of mental retardation or developmental disability.

SPECIAL PAROLE

By law, a court can suspend a portion of a prison sentence and order the defendant to spend it on probation or special parole (parole ordered by the court as part of the sentence). Anyone on special parole is subject to the rules and conditions of the Board of Pardons and Paroles.

The bill permits a court that orders special parole to impose the same conditions that it may impose for probation or conditional discharge. The court must have a copy of the order delivered to the defendant and the Department of Correction. The Board of Pardons and Paroles may require the person to comply with conditions that the court could have imposed; however, these conditions cannot be inconsistent with any the court imposed.

BACKGROUND***Hearsay Rule***

“Hearsay” is a statement made out of court that is offered in court to establish the truth of the facts contained in the statement (§ 8-1, Ct. Evidence Code). The general rule is that hearsay is inadmissible in a court of law unless the evidence code, the General Statutes, or the Practice Book provide otherwise (§ 8-2, Ct. Evidence Code). Currently, there is no so-called “tender age” exception to the hearsay rule.

Conditions of Probation or Conditional Discharge

As a condition of probation or conditional discharge a court may order a defendant to:

1. work faithfully at a suitable employment or faithfully pursue a course of study or vocational training that will equip him or her for suitable employment;
2. undergo medical or psychiatric treatment and remain in a specified institution, when required for that purpose;
3. support his or her dependents and meet other family obligations;
4. make restitution in an amount he or she can afford to pay, or provide in some other way, for the loss or damage caused with the court allowed to fix the amount and the manner of performance;
5. refrain from violating any criminal law;
6. post a bond or other surety for performing any conditions;
7. reside in a residential community center or halfway house the parole board’s chairperson approves and contribute to the cost of such residence;
8. participate in a program of community service;

9. if convicted of a violation of specified sexual assault offenses, undergo specialized sexual offender treatment and register as a sex offender;
10. be electronically monitored;
11. participate in anti-bias crime or animal cruelty prevention education programs if convicted on hate crimes or crimes against animals; and
12. satisfy any other conditions reasonably related to his rehabilitation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (04/12/2007)