



# OLR RESEARCH REPORT

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## CONNECTICUT'S PERSISTENT OFFENDER LAWS

You asked for brief summaries of Connecticut's persistent offender laws.

### SUMMARY

Persistent offender laws are generally intended to combat recidivism by enhancing penalties for defendants who demonstrate a pattern of resistance to rehabilitation. Connecticut law authorizes judges to impose enhanced sentences on eight classes of repeat (persistent) offenders:

1. dangerous felony offenders,
2. dangerous sexual offenders,
3. serious felony offenders,
4. serious sexual offenders,
5. felony offenders,
6. bigotry or bias offenders,
7. stalking and harassment-related offenders, and

## 8. larceny offenders.

The Connecticut Supreme Court has interpreted the laws as requiring a sequence of offense, conviction, and punishment for each prior offense before a defendant may be subjected to an enhanced penalty as a persistent offender (*State v. Ledbetter*, 240 Conn. 317 (1997)). Under this rule, the prior convictions must have been for separate, independent offenses which were disposed of in separate criminal proceedings.

Prosecutors decide whether to charge a repeat offender under a persistent offender statute. If they do so, they must file a two part information, specifying the persistent offender charge and its factual basis in the second part (Part B). A persistent offender charge is not a separate offense, but puts the defendant on notice that a conviction for the underlying charge can subject him or her to enhanced penalties. Defendants who have been pardoned on the grounds of innocence for a prior offense on which the state is relying cannot be convicted as persistent offenders (CGS § 53a-40(g)).

Cases involving persistent offender charges are prosecuted in two parts. If the defendant pleads guilty or is convicted of the underlying criminal charge, the second phase requires the court to determine, by clear and convincing evidence, whether the statutory standards for sentence enhancement have been met. The law specifies that defendants may, and in some cases must, be sentenced as persistent offenders when the court determines that the person's history, character, and the nature and circumstances of the criminal conduct indicate that extended incarceration (and, under some statutes, extended community supervision) best serve the public interest. The defendant decides whether a judge or jury makes this determination.

Tables 1-8 show the criminal convictions and sentence enhancements under each of the persistent offender statutes. Table 9 shows Connecticut's statutory crime classifications and sentencing ranges; Table 10 shows the six larceny classifications.

### **PERSISTENT DANGEROUS FELONY OFFENDER**

A "persistent dangerous felony offender" is an individual awaiting sentencing for a violent felony who has previously been sentenced to more than one year in prison for the same or other specified violent crimes (CGS §§ 53a-40(a)(1) and -40(a)(2)). For the second, separate conviction, the law requires the court to impose a prison sentence of up to 40 years rather than the term statutorily specified for the underlying

crime. It must impose a sentence of up to life imprisonment (statutorily defined as 60 years) for a third conviction (CGS § 53a-40(h)).

Table 1 lists the crimes and sentence enhancements under the persistent dangerous felony offender law.

### **PERSISTENT DANGEROUS SEXUAL OFFENDER**

A “persistent dangerous sexual offender” is a person awaiting sentencing for sexual assault in the 1<sup>st</sup> or 3<sup>rd</sup> degree, aggravated sexual assault in the 1<sup>st</sup> degree, or sexual assault in the 3<sup>rd</sup> degree with a firearm who has previously been sentenced to at least one year in prison for a serious felony, including sex offenses (CGS § 53a-40(b)).

The court must impose a sentence of imprisonment and a period of special parole which together constitute a life sentence in lieu of the statutory sentence for the underlying crime (53a-40(i)).

Table 2 lists the crimes and sentence enhancements under the persistent dangerous sexual offender law.

### **PERSISTENT SERIOUS FELONY OFFENDER**

A “persistent serious felony offender” is a person awaiting sentencing for a felony who has previously been convicted of a crime for which he or she was sentenced to at least one year in prison (CGS § 53a-40(c)). Connecticut law defines a crime as a felony or misdemeanor (CGS § 53a-24(a)). The court may subject the offender to a sentence of imprisonment for the next more serious degree of felony in lieu of the statutory sentence for the underlying crime (CGS § 53a-40(j)).

Table 3 lists the crimes and sentence enhancements under the persistent serious felony offender law.

### **PERSISTENT SERIOUS SEXUAL OFFENDER**

A “persistent serious sexual offender” is a person awaiting sentencing for fondling a child or 1<sup>st</sup> or 2<sup>nd</sup> degree sexual assault who has previously been sentenced to imprisonment for more than one year for any of those crimes (CGS § 53a-40(d)). The court may impose a sentence of imprisonment and a period of special parole which together constitute the maximum sentence for the next more serious degree of felony (53a-40(k)).

Table 4 lists the crimes and sentence enhancements under the persistent serious sexual offender law.

### **PERSISTENT FELONY OFFENDER**

A “persistent felony offender” is a person awaiting sentencing for any A, B, C, or unclassified felony with two separate, prior convictions for A, B, C, or unclassified felonies (CGS § 53a-40(f)). The court may impose a sentence of imprisonment for the next more serious degree of felony. The sentence must include a three-year mandatory minimum period of incarceration (CGS § 53a-40(m)).

Table 5 lists the crimes and sentence enhancements under the persistent felony offender statute.

### **PERSISTENT OFFENDERS OF CRIMES INVOLVING BIGOTRY OR BIAS**

A “persistent offender of crimes involving bigotry or bias” is a person awaiting sentencing for (1) depriving another of their civil rights based on their religion, national origin, alienage, color, race, sex, blindness, or physical disability; (2) committing the previous offense while wearing a mask or hood; or (4) 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> degree intimidation based on bigotry or bias. The court must impose the sentence for the next most serious felony or misdemeanor, as the case may be. If the crime for which the sentence is to be imposed is a class A misdemeanor, the court must impose the sentence for a class D felony (CGS § 53a-40a).

Table 6 lists the crimes and sentencing enhancements under the statute.

### **PERSISTENT OFFENDERS OF CRIMES INVOLVING ASSAULT, STALKING, TRESPASS, THREATENING, HARASSMENT, OR CRIMINAL VIOLATIONS OF PROTECTIVE OR RESTRAINING ORDERS**

A “persistent offender of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order or criminal violation of a restraining order” is a person awaiting sentencing for 2<sup>nd</sup> degree threatening, stalking or harassment; 3<sup>rd</sup> degree assault; 1<sup>st</sup> or 2<sup>nd</sup> degree criminal trespass; or criminal violation of a protective or restraining order. The offender must have been convicted within the past five years or within five years of being released from prison for the prior conviction (whichever is later) for committing:

1. any offense listed above;

2. a capital or class A felony;
3. a class B felony, except 1<sup>st</sup> degree promoting prostitution and 1<sup>st</sup> degree larceny;
4. a class C felony, except 2<sup>nd</sup> degree promoting prostitution and bribing jurors;
5. 2<sup>nd</sup> or 3<sup>rd</sup> degree assault or criminal trespass, 3<sup>rd</sup> degree burglary or robbery, 3<sup>rd</sup> degree sexual assault, 2<sup>nd</sup> degree stalking or harassment; or
6. threatening, unlawful restraint, criminal use of a firearm, reckless burning, or violating a protective or restraining order.

The court must impose the sentence for the next most serious felony or misdemeanor, as the case may be. If the crime for which the sentence is to be imposed is a class A misdemeanor, the court must impose the sentence for a class D felony (CGS § 53a-40d).

Table 7 lists the crimes and sentencing enhancements under the statute.

### **PERSISTENT LARCENY OFFENDER**

A “persistent larceny offender” is a person awaiting sentencing for 4<sup>th</sup>, 5<sup>th</sup>, or 6<sup>th</sup> degree larceny who has two separate, prior larceny convictions. The court may impose the sentence for a class D felony. (The underlying larceny offenses are all misdemeanors.)

Table 8 lists the crimes and sentencing enhancements under the persistent larceny offender statute.

**Table 1: Persistent Dangerous Felony Offender**

<b><i>Current Conviction</i></b>	<b><i>Previous Conviction<sup>1</sup> (Court imposed sentence must exceed 1 yr.)</i></b>	<b><i>Sentence Enhancement (Mandatory)</i></b>
<b>CGS § 53a-40(a)(1)(A)</b>		
<ul style="list-style-type: none"> <li>• Manslaughter</li> <li>• Arson</li> <li>• Kidnapping</li> <li>• 1<sup>st</sup> or 2<sup>nd</sup> deg. robbery</li> <li>• 1<sup>st</sup> deg. assault</li> </ul>	<ul style="list-style-type: none"> <li>• Murder</li> <li>• Manslaughter</li> <li>• Arson</li> <li>• Kidnapping</li> <li>• 1<sup>st</sup> or 2<sup>nd</sup> deg. robbery</li> <li>• 1<sup>st</sup> deg. assault</li> <li>• 1<sup>st</sup> deg. sexual assault, including aggravated sexual assault</li> <li>• 3<sup>rd</sup> deg. deg. sexual assault, including with a firearm</li> </ul>	<ul style="list-style-type: none"> <li>• For second separate conviction: imprisonment for up to 40 years</li> <li>• For third separate conviction: imprisonment for up to life (60 years)</li> </ul>
<b>CGS § 53a-40(a)(2)(A)</b>		
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> deg. sexual assault, including aggravated sexual assault</li> <li>• 3<sup>rd</sup> deg. sexual assault, including with firearm</li> </ul>	<ul style="list-style-type: none"> <li>• Murder</li> <li>• Manslaughter</li> <li>• Arson</li> <li>• Kidnapping</li> <li>• 1<sup>st</sup> or 2<sup>nd</sup> deg. robbery</li> <li>• 1<sup>st</sup> deg. assault</li> </ul>	<ul style="list-style-type: none"> <li>• For second separate conviction: imprisonment for up to 40 years</li> <li>• For third separate conviction: imprisonment for up to life (60 years)</li> </ul>

<sup>1</sup> Includes criminal attempts and convictions under predecessor statutes or for substantially similar offenses prosecuted elsewhere.

**Table 2: Persistent Dangerous Sexual Offender**

<b><i>Current Conviction</i></b>	<b><i>Prior Conviction<sup>2</sup> (Court-imposed sentence must exceed 1 yr.)</i></b>	<b><i>Sentence Enhancement (Mandatory)</i></b>
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> deg. sexual assault, including aggravated sexual assault</li> <li>• 3<sup>rd</sup> deg. sexual assault, including with firearm</li> </ul>	<ul style="list-style-type: none"> <li>• Any crime listed at left</li> </ul>	<ul style="list-style-type: none"> <li>• Combined prison and special parole terms must equal life sentence (60 years)</li> </ul>

<sup>1</sup> Includes criminal attempts and convictions under predecessor statutes or for substantially similar offenses prosecuted elsewhere .

**Table 3: Persistent Serious Felony Offender<sup>3</sup>**

<b><i>Current Conviction</i></b>	<b><i>Prior Conviction<sup>4</sup> (Court-imposed sentence must exceed 1 yr.)</i></b>	<b><i>Sentence Enhancement (Discretionary)</i></b>
<ul style="list-style-type: none"> <li>• Any felony</li> </ul>	<ul style="list-style-type: none"> <li>• Any felony or misdemeanor</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment for next most serious deg. of felony</li> </ul>

<sup>2</sup> Includes criminal attempts and convictions under predecessor statutes or for substantially similar offenses prosecuted elsewhere

<sup>3</sup> Excludes situations in which the present conviction is for a crime covered under the persistent dangerous felony offender provision (CGS § 53a-40(a)(1)) but the prior conviction was not

<sup>4</sup> Includes criminal attempts and convictions under predecessor statutes or for substantially similar offenses prosecuted elsewhere

**Table 4: Persistent Serious Sexual Offender<sup>5</sup>**

<b><i>Current Conviction</i></b>	<b><i>Prior Conviction (Court-imposed sentence must exceed 1 yr.)<sup>6</sup></i></b>	<b><i>Sentence Enhancement (Discretionary)</i></b>
<ul style="list-style-type: none"> <li>• Risk of injury to a minor</li> <li>• 1<sup>st</sup> deg. sexual assault, including</li> <li>• aggravated sexual assault</li> <li>• Spousal rape</li> <li>• 2<sup>nd</sup> deg. sexual assault</li> <li>• 3<sup>rd</sup> deg. sexual assault, including with firearm</li> </ul>	<ul style="list-style-type: none"> <li>• Any qualifying offense under the persistent serious felony offender statute</li> </ul>	<ul style="list-style-type: none"> <li>• Combined prison and special parole periods equal maximum sentence for next most serious deg. of felony</li> </ul>

**Table 5: Persistent Felony Offenders**

<b><i>Current Conviction</i></b>	<b><i>Prior Conviction</i></b>	<b><i>Sentence Enhancement (Discretionary)</i></b>
<ul style="list-style-type: none"> <li>• Any A, B, C, or unclassified felony</li> </ul>	<ul style="list-style-type: none"> <li>• 2 separate prior convictions for any of the felonies listed at left</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment for the next more serious deg. of felony; 3 year mandatory minimum</li> </ul>

<sup>5</sup> Excludes defendants who qualify as persistent dangerous sexual offenders

<sup>6</sup> Includes convictions under predecessor statutes

**Table 6: Persistent Offenders Of Crimes Involving Bigotry or Bias**

<b><i>Current Conviction</i></b>	<b><i>Prior Conviction</i></b>	<b><i>Sentence Enhancement (Mandatory)</i></b>
<ul style="list-style-type: none"> <li>• Deprivation of civil rights based on religion, national origin, alienage, color, race, sex, blindness, or physical disability, including while wearing a hood or mask</li> <li>• 1<sup>st</sup>, 2<sup>nd</sup>, or 3<sup>rd</sup> deg. intimidation based on bigotry or bias</li> </ul>	<ul style="list-style-type: none"> <li>• Same as those listed at left, and including predecessor statutes</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment for the next most serious felony or misdemeanor, as the case may be</li> <li>• Imprisonment for class D felony if offense is class A misdemeanor</li> </ul>

**Table 7: Persistent Stalking and Related Offenses**

<b><i>Current Conviction</i></b>	<b><i>Prior Conviction (committed within 5 yrs. or within 5 yrs. of release, whichever is later)</i></b>	<b><i>Sentence Enhancement (Mandatory)</i></b>
<ul style="list-style-type: none"> <li>• 1<sup>st</sup> or 2<sup>nd</sup> deg. criminal trespass</li> <li>• 2<sup>nd</sup> deg. threatening, stalking, or harassment</li> <li>• 3<sup>rd</sup> deg. assault</li> <li>• Criminal violation of protective or restraining order</li> </ul>	<ul style="list-style-type: none"> <li>• Any offense listed at left</li> <li>• Any capital or class A felony</li> <li>• Class B felonies except 1<sup>st</sup> deg. (a) promoting prostitution and (b) larceny</li> <li>• Class C felonies except 2<sup>nd</sup> deg. promoting prostitution or jury bribes</li> <li>• 2<sup>nd</sup> deg. assault, including with a firearm or of victim who is elderly, blind, disabled, mentally retarded, or pregnant</li> <li>• 3<sup>rd</sup> deg. sex assault, including with a firearm</li> <li>• 1<sup>st</sup> deg. unlawful restraint</li> <li>• 3<sup>rd</sup> deg. burglary, including with a firearm</li> <li>• 3<sup>rd</sup> deg. robbery</li> <li>• Reckless burning</li> <li>• Criminal use of firearm or electronic defense weapon</li> </ul>	<ul style="list-style-type: none"> <li>• Imprisonment for the next most serious felony or misdemeanor, as the case may be</li> <li>• Imprisonment for class D felony if offense is class A misdemeanor</li> </ul>

**Table 8: Persistent Larceny Offenders**

<b><i>Current Conviction</i></b>	<b><i>Prior Conviction</i></b>	<b><i>Sentence Enhancement (Discretionary)</i></b>
<ul style="list-style-type: none"> <li>• 4<sup>th</sup>, 5<sup>th</sup>, or 6<sup>th</sup> deg. larceny</li> </ul>	<ul style="list-style-type: none"> <li>• 2 separate prior larceny convictions, including under predecessor statutes</li> </ul>	<ul style="list-style-type: none"> <li>• Class D felony</li> </ul>

**BACKGROUND**

***Crimes***

The law authorizes courts to impose fines, imprisonment, or both when sentencing a convicted criminal. They must specify the period of incarceration for anyone so sentenced. The prison terms below represent the range within which a judge must set the sentence. Some crimes have a mandatory minimum sentence or a minimum sentence higher than the minimum term specified in the table.

Repeated offenses may result in a higher maximum than specified here.

**Table 9: Crime Classifications and Sentencing Ranges**

<b><i>Classification of Crime</i></b>	<b><i>Prison Sentence Range</i></b>
Capital felony	Execution or life (60 years)
Class A felony (murder)	25 to 60 years
Class A felony	10 to 25 years
Class B felony	1 to 20 years
Class C felony	1 to 10 years
Class D felony	1 to 5 years
Class A misdemeanor	up to 1 year
Class B misdemeanor	up to 6 months
Class C misdemeanor	up to 3 months

***Larceny***

There are six different classifications of larceny, generally depending on the value of the property illegally obtained.

**Table 10: Larceny Offenses**

<b><i>Deg.</i></b>	<b><i>Value of Property</i></b>	<b><i>Classification of Crime</i></b>
First	Over \$10,000	Class B felony
Second	Over \$5,000	Class C felony
Third	Over \$1,000	Class D felony
Fourth	Over \$500	Class A misdemeanor
Fifth	Over \$250	Class B misdemeanor
Sixth	Up to \$250	Class C misdemeanor

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