



# Senate

General Assembly

**File No. 636**

January Session, 2011

Substitute Senate Bill No. 1035

*Senate, April 27, 2011*

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## ***AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.***

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

1 Section 1. Section 53a-54b of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage and*  
3 *applicable to crimes committed on or after said date*):

4 A person is guilty of [a capital felony] murder with special  
5 circumstances who is convicted of any of the following: (1) Murder of a  
6 member of the Division of State Police within the Department of Public  
7 Safety or of any local police department, a chief inspector or inspector  
8 in the Division of Criminal Justice, a state marshal who is exercising  
9 authority granted under any provision of the general statutes, a  
10 judicial marshal in performance of the duties of a judicial marshal, a  
11 constable who performs criminal law enforcement duties, a special  
12 policeman appointed under section 29-18, a conservation officer or  
13 special conservation officer appointed by the Commissioner of  
14 Environmental Protection under the provisions of section 26-5, an  
15 employee of the Department of Correction or a person providing

16 services on behalf of said department when such employee or person  
17 is acting within the scope of such employee's or person's employment  
18 or duties in a correctional institution or facility and the actor is  
19 confined in such institution or facility, or any firefighter, while such  
20 victim was acting within the scope of such victim's duties; (2) murder  
21 committed by a defendant who is hired to commit the same for  
22 pecuniary gain or murder committed by one who is hired by the  
23 defendant to commit the same for pecuniary gain; (3) murder  
24 committed by one who has previously been convicted of intentional  
25 murder or of murder committed in the course of commission of a  
26 felony; (4) murder committed by one who was, at the time of  
27 commission of the murder, under sentence of life imprisonment; (5)  
28 murder by a kidnapper of a kidnapped person during the course of the  
29 kidnapping or before such person is able to return or be returned to  
30 safety; (6) murder committed in the course of the commission of sexual  
31 assault in the first degree; (7) murder of two or more persons at the  
32 same time or in the course of a single transaction; or (8) murder of a  
33 person under sixteen years of age.

34 Sec. 2. Section 53a-35a of the general statutes is repealed and the  
35 following is substituted in lieu thereof (*Effective from passage*):

36 For any felony committed on or after July 1, 1981, the sentence of  
37 imprisonment shall be a definite sentence and, unless the section of the  
38 general statutes that defines the crime specifically provides otherwise,  
39 the term shall be fixed by the court as follows: (1) (A) For a capital  
40 felony committed prior to the effective date of this section under  
41 section 53a-54b in effect prior to the effective date of this section, a  
42 term of life imprisonment without the possibility of release unless a  
43 sentence of death is imposed in accordance with section 53a-46a, as  
44 amended by this act, or (B) for the class A felony of murder with  
45 special circumstances committed on or after the effective date of this  
46 section under section 53a-54b in effect on or after the effective date of  
47 this act, a term of life imprisonment without the possibility of release;  
48 (2) for the class A felony of murder, a term not less than twenty-five  
49 years nor more than life; (3) for the class A felony of aggravated sexual

50 assault of a minor under section 53a-70c, a term not less than twenty-  
51 five years or more than fifty years; (4) for a class A felony other than an  
52 offense specified in subdivision (2) or (3) of this section, a term not less  
53 than ten years nor more than twenty-five years; (5) for the class B  
54 felony of manslaughter in the first degree with a firearm under section  
55 53a-55a, a term not less than five years nor more than forty years; (6)  
56 for a class B felony other than manslaughter in the first degree with a  
57 firearm under section 53a-55a, a term not less than one year nor more  
58 than twenty years; (7) for a class C felony, a term not less than one year  
59 nor more than ten years; (8) for a class D felony, a term not less than  
60 one year nor more than five years; and (9) for an unclassified felony, a  
61 term in accordance with the sentence specified in the section of the  
62 general statutes that defines the crime.

63 Sec. 3. Section 53a-35b of the general statutes is repealed and the  
64 following is substituted in lieu thereof (*Effective from passage*):

65 A sentence of [imprisonment for life shall mean] life imprisonment  
66 means a definite sentence of sixty years, unless the sentence is life  
67 imprisonment without the possibility of release, imposed pursuant to  
68 [subsection (g) of section 53a-46a] subparagraph (A) or (B) of  
69 subdivision (1) of section 53a-35a, as amended by this act, in which  
70 case the sentence shall be imprisonment for the remainder of the  
71 defendant's natural life.

72 Sec. 4. Subsection (a) of section 53a-45 of the general statutes is  
73 repealed and the following is substituted in lieu thereof (*Effective from*  
74 *passage*):

75 (a) Murder is punishable as a class A felony in accordance with  
76 subdivision (2) of section 53a-35a unless it is a capital felony  
77 committed prior to the effective date of this section, punishable in  
78 accordance with subparagraph (A) of subdivision (1) of section 53a-  
79 35a, as amended by this act, murder with special circumstances  
80 committed on or after the effective date of this section, punishable as a  
81 class A felony in accordance with subparagraph (B) of subdivision (1)  
82 of section 53a-35a, as amended by this act, or murder under section

83 53a-54d.

84 Sec. 5. Subsection (a) of section 53a-46a of the general statutes is  
85 repealed and the following is substituted in lieu thereof (*Effective from*  
86 *passage*):

87 (a) A person shall be subjected to the penalty of death for a capital  
88 felony committed prior to the effective date of this section under  
89 section 53a-54b in effect prior to the effective date of this section only if  
90 a hearing is held in accordance with the provisions of this section.

91 Sec. 6. Subsection (a) of section 53a-46b of the general statutes is  
92 repealed and the following is substituted in lieu thereof (*Effective from*  
93 *passage*):

94 (a) Any sentence of death imposed in accordance with the  
95 provisions of section 53a-46a, as amended by this act, shall be  
96 reviewed by the Supreme Court pursuant to its rules. In addition to its  
97 authority to correct errors at trial, the Supreme Court shall either  
98 affirm the sentence of death or vacate said sentence and remand for  
99 imposition of a sentence in accordance with subparagraph (A) of  
100 subdivision (1) of section 53a-35a, as amended by this act.

101 Sec. 7. Subsection (c) of section 53a-54a of the general statutes is  
102 repealed and the following is substituted in lieu thereof (*Effective from*  
103 *passage*):

104 (c) Murder is punishable as a class A felony in accordance with  
105 subdivision (2) of section 53a-35a, as amended by this act, unless it is a  
106 capital felony committed prior to the effective date of this section,  
107 punishable in accordance with subparagraph (A) of subdivision (1) of  
108 section 53a-35a, as amended by this act, murder with special  
109 circumstances committed on or after the effective date of this section,  
110 punishable as a class A felony in accordance with subparagraph (B) of  
111 subdivision (1) of section 53a-35a, as amended by this act, or murder  
112 under section 53a-54d.

113 Sec. 8. Subdivision (2) of subsection (j) of section 10-145b of the

114 general statutes is repealed and the following is substituted in lieu  
115 thereof (*Effective from passage*):

116 (2) When the Commissioner of Education is notified, pursuant to  
117 section 10-149a or 17a-101i, that a person holding a certificate,  
118 authorization or permit issued by the State Board of Education under  
119 the provisions of sections 10-144o to 10-149, inclusive, has been  
120 convicted of (A) a capital felony, pursuant to section 53a-54b in effect  
121 prior to the effective date of this section, (B) arson murder, pursuant to  
122 section 53a-54d, (C) a class A felony, (D) a class B felony, except a  
123 violation of section 53a-122, 53a-252 or 53a-291, (E) a crime involving  
124 an act of child abuse or neglect as described in section 46b-120, or (F) a  
125 violation of section 53-21, 53-37a, 53a-49, 53a-60b, 53a-60c, 53a-71, 53a-  
126 72a, 53a-72b, 53a-73a, 53a-88, 53a-90a, 53a-99, 53a-103a, 53a-181c, 53a-  
127 191, 53a-196, 53a-196c, 53a-216, 53a-217b or 21a-278 or subsection (a) of  
128 section 21a-277, any certificate, permit or authorization issued by the  
129 State Board of Education and held by such person shall be deemed  
130 revoked and the commissioner shall notify such person of such  
131 revocation, provided such person may request reconsideration  
132 pursuant to regulations adopted by the State Board of Education, in  
133 accordance with the provisions of chapter 54. As part of such  
134 reconsideration process, the board shall make the initial determination  
135 as to whether to uphold or overturn the revocation. The commissioner  
136 shall make the final determination as to whether to uphold or overturn  
137 the revocation.

138 Sec. 9. Section 10-145i of the general statutes is repealed and the  
139 following is substituted in lieu thereof (*Effective from passage*):

140 Notwithstanding the provisions of sections 10-144o to 10-146b,  
141 inclusive, and 10-149, the State Board of Education shall not issue or  
142 reissue any certificate, authorization or permit pursuant to said  
143 sections if (1) the applicant for such certificate, authorization or permit  
144 has been convicted of any of the following: (A) A capital felony, as  
145 defined in section 53a-54b in effect prior to the effective date of this  
146 section; (B) arson murder, as defined in section 53a-54d; (C) any class

147 A felony; (D) any class B felony except a violation of section 53a-122,  
148 53a-252 or 53a-291; (E) a crime involving an act of child abuse or  
149 neglect as described in section 46b-120; or (F) a violation of section 53-  
150 21, 53-37a, 53a-49, 53a-60b, 53a-60c, 53a-71, 53a-72a, 53a-72b, 53a-73a,  
151 53a-88, 53a-90a, 53a-99, 53a-103a, 53a-181c, 53a-191, 53a-196, 53a-196c,  
152 53a-216, 53a-217b or 21a-278 or a violation of subsection (a) of section  
153 21a-277, and (2) the applicant completed serving the sentence for such  
154 conviction within the five years immediately preceding the date of the  
155 application.

156 Sec. 10. Subsection (a) of section 46b-127 of the general statutes is  
157 repealed and the following is substituted in lieu thereof (*Effective from*  
158 *passage*):

159 (a) The court shall automatically transfer from the docket for  
160 juvenile matters to the regular criminal docket of the Superior Court  
161 the case of any child charged with the commission of a capital felony  
162 under section 53a-54b in effect prior to the effective date of this section,  
163 a class A or B felony or a violation of section 53a-54d, provided such  
164 offense was committed after such child attained the age of fourteen  
165 years and counsel has been appointed for such child if such child is  
166 indigent. Such counsel may appear with the child but shall not be  
167 permitted to make any argument or file any motion in opposition to  
168 the transfer. The child shall be arraigned in the regular criminal docket  
169 of the Superior Court at the next court date following such transfer,  
170 provided any proceedings held prior to the finalization of such transfer  
171 shall be private and shall be conducted in such parts of the courthouse  
172 or the building wherein court is located as shall be separate and apart  
173 from the other parts of the court which are then being held for  
174 proceedings pertaining to adults charged with crimes. The file of any  
175 case so transferred shall remain sealed until the end of the tenth  
176 working day following such arraignment unless the state's attorney  
177 has filed a motion pursuant to this subsection, in which case such file  
178 shall remain sealed until the court makes a decision on the motion. A  
179 state's attorney may, not later than ten working days after such  
180 arraignment, file a motion to transfer the case of any child charged

181 with the commission of a class B felony or a violation of subdivision (2)  
182 of subsection (a) of section 53a-70 to the docket for juvenile matters for  
183 proceedings in accordance with the provisions of this chapter. The  
184 court sitting for the regular criminal docket shall, after hearing and not  
185 later than ten working days after the filing of such motion, decide such  
186 motion.

187 Sec. 11. Subsection (a) of section 46b-133 of the general statutes is  
188 repealed and the following is substituted in lieu thereof (*Effective from*  
189 *passage*):

190 (a) Nothing in this part shall be construed as preventing the arrest of  
191 a child, with or without a warrant, as may be provided by law, or as  
192 preventing the issuance of warrants by judges in the manner provided  
193 by section 54-2a, as amended by this act, except that no child shall be  
194 taken into custody on such process except on apprehension in the act,  
195 or on speedy information, or in other cases when the use of such  
196 process appears imperative. Whenever a child is arrested and charged  
197 with a crime, such child may be required to submit to the taking of his  
198 photograph, physical description and fingerprints. Notwithstanding  
199 the provisions of section 46b-124, the name, photograph and custody  
200 status of any child arrested for the commission of a capital felony  
201 under section 53a-54b in effect prior to the effective date of this section  
202 or class A felony may be disclosed to the public.

203 Sec. 12. Subsection (c) of section 51-36 of the general statutes is  
204 repealed and the following is substituted in lieu thereof (*Effective from*  
205 *passage*):

206 (c) (1) In any case in which a person has been convicted of a felony,  
207 other than a capital felony under section 53a-54b in effect prior to the  
208 effective date of this section or murder with special circumstances  
209 under section 53a-54b, as amended by this act, in effect on or after the  
210 effective date of this section, the official records of evidence or judicial  
211 proceedings in the court may be destroyed upon the expiration of  
212 twenty years from the date of imposition of the sentence in such case  
213 or upon the expiration of the sentence imposed upon such person,

214 whichever is later.

215 (2) In any case in which a person has been convicted after trial of a  
216 capital felony under section 53a-54b in effect prior to the effective date  
217 of this section or murder with special circumstances under section 53a-  
218 54b, as amended by this act, in effect on or after the effective date of  
219 this section, the official records of evidence or judicial proceedings in  
220 the court may be destroyed upon the expiration of seventy-five years  
221 from the date of imposition of the sentence in such case.

222 (3) In any case in which a person has been found not guilty, or in  
223 any case that has been dismissed or was not prosecuted, the court may  
224 order the destruction or disposal of all exhibits entered in such case  
225 upon the expiration of ninety days from the date of final disposition of  
226 such case, unless a prior disposition of such exhibits has been ordered  
227 pursuant to section 54-36a. In any case in which a nolle has been  
228 entered, the court may order the destruction or disposal of all exhibits  
229 entered in such case upon the expiration of thirteen months from the  
230 date of final disposition of such case. Not less than thirty days prior to  
231 the scheduled destruction or disposal of exhibits under this  
232 subdivision, the clerk of the court shall send notice to all parties and  
233 any party may request a hearing on the issue of such destruction or  
234 disposal before the court in which the matter is pending.

235 (4) In any case in which a person has been convicted of a  
236 misdemeanor or has been adjudicated a youthful offender, the court  
237 may order the destruction or disposal of all exhibits entered in such  
238 case upon the expiration of ten years from the date of imposition of the  
239 sentence in such case or upon the expiration of the sentence imposed  
240 on such person, whichever is later, unless a prior disposition of such  
241 exhibits has been ordered pursuant to section 54-36a. Not less than  
242 thirty days prior to the scheduled destruction or disposal of exhibits  
243 under this subdivision, the clerk of the court shall send notice to all  
244 parties and any party may request a hearing on the issue of such  
245 destruction or disposal before the court in which the matter is pending.

246 (5) In any case in which a person is charged with multiple offenses,

247 no destruction or disposal of exhibits may be ordered under this  
248 subsection until the longest applicable retention period under this  
249 subsection has expired. The provisions of this subdivision and  
250 subdivisions (3), (4) and (6) of this subsection shall apply to any  
251 criminal or motor vehicle case disposed of before, on or after October  
252 1, 2006.

253 (6) The retention period for the official records of evidence and  
254 exhibits in any habeas corpus proceeding, petition for a new trial or  
255 other proceeding arising out of a criminal case in which a person has  
256 been convicted shall be the same as the applicable retention period  
257 under this subsection for the criminal case from which such  
258 proceeding or petition arose.

259 (7) For the purposes of this subsection, "sentence" includes any  
260 period of incarceration, parole, special parole or probation.

261 Sec. 13. Subsection (b) of section 51-199 of the general statutes is  
262 repealed and the following is substituted in lieu thereof (*Effective from*  
263 *passage*):

264 (b) The following matters shall be taken directly to the Supreme  
265 Court: (1) Any matter brought pursuant to the original jurisdiction of  
266 the Supreme Court under section 2 of article sixteen of the  
267 amendments to the Constitution; (2) an appeal in any matter where the  
268 Superior Court declares invalid a state statute or a provision of the  
269 state Constitution; (3) an appeal in any criminal action involving a  
270 conviction for a capital felony under section 53a-54b in effect prior to  
271 the effective date of this section, class A felony [,] or any other felony,  
272 including any persistent offender status, for which the maximum  
273 sentence which may be imposed exceeds twenty years; (4) review of a  
274 sentence of death pursuant to section 53a-46b, as amended by this act;  
275 (5) any election or primary dispute brought to the Supreme Court  
276 pursuant to section 9-323 or 9-325; (6) an appeal of any reprimand or  
277 censure of a probate judge pursuant to section 45a-65; (7) any matter  
278 regarding judicial removal or suspension pursuant to section 51-51j; (8)  
279 an appeal of any decision of the Judicial Review Council pursuant to

280 section 51-51r; (9) any matter brought to the Supreme Court pursuant  
281 to section 52-265a; (10) writs of error; and (11) any other matter as  
282 provided by law.

283 Sec. 14. Section 51-246 of the general statutes is repealed and the  
284 following is substituted in lieu thereof (*Effective from passage*):

285 In the trial of any [capital case or any case involving imprisonment  
286 for life] case involving a crime punishable by death, life imprisonment  
287 without the possibility of release or life imprisonment, the court may,  
288 in its discretion, require the jury to remain together in the charge of  
289 judicial marshals during the trial and until the jury is discharged by  
290 the court from further consideration of the case.

291 Sec. 15. Section 51-286c of the general statutes is repealed and the  
292 following is substituted in lieu thereof (*Effective from passage*):

293 The state's attorney for any judicial district may employ one or more  
294 detectives to investigate for the purpose of discovering the  
295 perpetrators of any crime committed within this state, whenever the  
296 penalty for such crime is capital punishment, [or imprisonment in the  
297 Connecticut Correctional Institution, Somers] life imprisonment  
298 without the possibility of release or life imprisonment. The expenses  
299 incurred in the employment of such detectives shall be paid from the  
300 State Treasury on an order from the state's attorney employing them.

301 Sec. 16. Subdivision (1) of subsection (a) of section 52-434 of the  
302 general statutes is repealed and the following is substituted in lieu  
303 thereof (*Effective from passage*):

304 (1) Each judge of the Supreme Court, each judge of the Appellate  
305 Court, each judge of the Superior Court and each judge of the Court of  
306 Common Pleas who ceases or has ceased to hold office because of  
307 retirement other than under the provisions of section 51-49 and who is  
308 an elector and a resident of this state shall be a state referee for the  
309 remainder of such judge's term of office as a judge and shall be eligible  
310 for appointment as a state referee during the remainder of such judge's

311 life in the manner prescribed by law for the appointment of a judge of  
312 the court of which such judge is a member. The Superior Court may  
313 refer any civil, nonjury case or with the written consent of the parties  
314 or their attorneys, any civil jury case pending before the court in which  
315 the issues have been closed to a judge trial referee who shall have and  
316 exercise the powers of the Superior Court in respect to trial, judgment  
317 and appeal in the case, and any proceeding resulting from a demand  
318 for a trial de novo pursuant to subsection (e) of section 52-549z may be  
319 referred without the consent of the parties to a judge trial referee who  
320 has been specifically designated to hear such proceedings pursuant to  
321 subsection (b) of this section. The Superior Court may, with the  
322 consent of the parties or their attorneys, refer any criminal case to a  
323 judge trial referee who shall have and exercise the powers of the  
324 Superior Court in respect to trial, judgment, sentencing and appeal in  
325 the case, except that the Superior Court may, without the consent of  
326 the parties or their attorneys, (A) refer any criminal case, other than a  
327 criminal jury trial, to a judge trial referee assigned to a geographical  
328 area criminal court session, and (B) refer any criminal case, other than  
329 a class A or B felony or capital felony under section 53a-54b in effect  
330 prior to the effective date of this section, to a judge trial referee to  
331 preside over the jury selection process and any voir dire examination  
332 conducted in such case, unless good cause is shown not to refer.

333 Sec. 17. Subsection (b) of section 53a-25 of the general statutes is  
334 repealed and the following is substituted in lieu thereof (*Effective from*  
335 *passage*):

336 (b) Felonies are classified for the purposes of sentence as follows: (1)  
337 Class A, (2) class B, (3) class C, (4) class D, (5) unclassified and (6)  
338 capital felonies under section 53a-54b in effect prior to the effective  
339 date of this section.

340 Sec. 18. Subsection (a) of section 53a-30 of the general statutes is  
341 repealed and the following is substituted in lieu thereof (*Effective from*  
342 *passage*):

343 (a) When imposing sentence of probation or conditional discharge,

344 the court may, as a condition of the sentence, order that the defendant:  
345 (1) Work faithfully at a suitable employment or faithfully pursue a  
346 course of study or of vocational training that will equip the defendant  
347 for suitable employment; (2) undergo medical or psychiatric treatment  
348 and remain in a specified institution, when required for that purpose;  
349 (3) support the defendant's dependents and meet other family  
350 obligations; (4) make restitution of the fruits of the defendant's offense  
351 or make restitution, in an amount the defendant can afford to pay or  
352 provide in a suitable manner, for the loss or damage caused thereby  
353 and the court may fix the amount thereof and the manner of  
354 performance; (5) if a minor, (A) reside with the minor's parents or in a  
355 suitable foster home, (B) attend school, and (C) contribute to the  
356 minor's own support in any home or foster home; (6) post a bond or  
357 other security for the performance of any or all conditions imposed; (7)  
358 refrain from violating any criminal law of the United States, this state  
359 or any other state; (8) if convicted of a misdemeanor or a felony, other  
360 than a capital felony under section 53a-54b in effect prior to the  
361 effective date of this section, a class A felony or a violation of section  
362 21a-278, 21a-278a, 53a-55, 53a-56, 53a-56b, 53a-57, 53a-58 or 53a-70b or  
363 any offense for which there is a mandatory minimum sentence which  
364 may not be suspended or reduced by the court, and any sentence of  
365 imprisonment is suspended, participate in an alternate incarceration  
366 program; (9) reside in a residential community center or halfway  
367 house approved by the Commissioner of Correction, and contribute to  
368 the cost incident to such residence; (10) participate in a program of  
369 community service labor in accordance with section 53a-39c; (11)  
370 participate in a program of community service in accordance with  
371 section 51-181c; (12) if convicted of a violation of subdivision (2) of  
372 subsection (a) of section 53-21, section 53a-70, 53a-70a, 53a-70b, 53a-71,  
373 53a-72a or 53a-72b, undergo specialized sexual offender treatment; (13)  
374 if convicted of a criminal offense against a victim who is a minor, a  
375 nonviolent sexual offense or a sexually violent offense, as defined in  
376 section 54-250, or of a felony that the court finds was committed for a  
377 sexual purpose, as provided in section 54-254, register such person's  
378 identifying factors, as defined in section 54-250, with the

379 Commissioner of Public Safety when required pursuant to section 54-  
380 251, 54-252 or 54-253, as the case may be; (14) be subject to electronic  
381 monitoring, which may include the use of a global positioning system;  
382 (15) if convicted of a violation of section 46a-58, 53-37a, 53a-181j, 53a-  
383 181k or 53a-181l, participate in an anti-bias crime education program;  
384 (16) if convicted of a violation of section 53-247, undergo psychiatric or  
385 psychological counseling or participate in an animal cruelty  
386 prevention and education program provided such a program exists  
387 and is available to the defendant; or (17) satisfy any other conditions  
388 reasonably related to the defendant's rehabilitation. The court shall  
389 cause a copy of any such order to be delivered to the defendant and to  
390 the probation officer, if any.

391 Sec. 19. Subsection (a) of section 53a-39a of the general statutes is  
392 repealed and the following is substituted in lieu thereof (*Effective from*  
393 *passage*):

394 (a) In all cases where a defendant has been convicted of a  
395 misdemeanor or a felony, other than a capital felony under section 53a-  
396 54b in effect prior to the effective date of this section, a class A felony  
397 or a violation of section 21a-278, 21a-278a, 53a-55, 53a-56, 53a-56b, 53a-  
398 57, 53a-58 or 53a-70b or any other offense for which there is a  
399 mandatory minimum sentence which may not be suspended or  
400 reduced by the court, after trial or by a plea of guilty without trial, and  
401 a term of imprisonment is part of a stated plea agreement or the  
402 statutory penalty provides for a term of imprisonment, the court may,  
403 in its discretion, order an assessment for placement in an alternate  
404 incarceration program under contract with the Judicial Department. If  
405 the Court Support Services Division recommends placement in an  
406 alternate incarceration program, it shall also submit to the court a  
407 proposed alternate incarceration plan. Upon completion of the  
408 assessment, the court shall determine whether such defendant shall be  
409 ordered to participate in such program as an alternative to  
410 incarceration. If the court determines that the defendant shall  
411 participate in such program, the court shall suspend any sentence of  
412 imprisonment and shall make participation in the alternate

413 incarceration program a condition of probation as provided in section  
414 53a-30, as amended by this act.

415 Sec. 20. Subsection (a) of section 53a-40d of the general statutes is  
416 repealed and the following is substituted in lieu thereof (*Effective from*  
417 *passage*):

418 (a) A persistent offender of crimes involving assault, stalking,  
419 trespass, threatening, harassment, criminal violation of a protective  
420 order or criminal violation of a restraining order is a person who (1)  
421 stands convicted of assault under section 53a-61, stalking under section  
422 53a-181d, threatening under section 53a-62, harassment under section  
423 53a-183, criminal violation of a protective order under section 53a-223,  
424 criminal violation of a restraining order under section 53a-223b or  
425 criminal trespass under section 53a-107 or 53a-108, and (2) has, (A)  
426 been convicted of a capital felony under section 53a-54b in effect prior  
427 to the effective date of this section, a class A felony, a class B felony,  
428 except a conviction under section 53a-86 or 53a-122, a class C felony,  
429 except a conviction under section 53a-87, 53a-152 or 53a-153, or a class  
430 D felony under sections 53a-60 to 53a-60c, inclusive, 53a-72a, 53a-72b,  
431 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, assault under  
432 section 53a-61, stalking under section 53a-181d, threatening under  
433 section 53a-62, harassment under section 53a-183, criminal violation of  
434 a protective order under section 53a-223, criminal violation of a  
435 restraining order under section 53a-223b, or criminal trespass under  
436 section 53a-107 or 53a-108, (B) been convicted in any other state of any  
437 crime the essential elements of which are substantially the same as any  
438 of the crimes enumerated in subparagraph (A) of this subdivision, or  
439 (C) been released from incarceration with respect to such conviction.

440 Sec. 21. Section 53a-46d of the general statutes is repealed and the  
441 following is substituted in lieu thereof (*Effective from passage*):

442 A victim impact statement prepared with the assistance of a victim  
443 advocate to be placed in court files in accordance with subdivision (2)  
444 of subsection (a) of section 54-220 may be read in court prior to  
445 imposition of sentence upon a defendant found guilty of a crime

446 punishable by death or life imprisonment without the possibility of  
447 release.

448 Sec. 22. Subsection (a) of section 53a-182b of the general statutes is  
449 repealed and the following is substituted in lieu thereof (*Effective from*  
450 *passage*):

451 (a) A person is guilty of harassment in the first degree when, with  
452 the intent to harass, annoy, alarm or terrorize another person, he  
453 threatens to kill or physically injure that person or any other person,  
454 and communicates such threat by telephone, or by telegraph, mail,  
455 computer network, as defined in section 53a-250, or any other form of  
456 written communication, in a manner likely to cause annoyance or  
457 alarm and has been convicted of a capital felony under section 53a-54b  
458 in effect prior to the effective date of this section, a class A felony, a  
459 class B felony, except a conviction under section 53a-86 or 53a-122, a  
460 class C felony, except a conviction under section 53a-87, 53a-152 or 53a-  
461 153, or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-  
462 72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216. For  
463 the purposes of this section, "convicted" means having a judgment of  
464 conviction entered by a court of competent jurisdiction.

465 Sec. 23. Subsection (a) of section 53a-217d of the general statutes is  
466 repealed and the following is substituted in lieu thereof (*Effective from*  
467 *passage*):

468 (a) A person is guilty of criminal possession of body armor when he  
469 possesses body armor and has been (1) convicted of a capital felony  
470 under section 53a-54b in effect prior to the effective date of this section,  
471 a class A felony, except a conviction under section 53a-196a, a class B  
472 felony, except a conviction under section 53a-86, 53a-122 or 53a-196b, a  
473 class C felony, except a conviction under section 53a-87, 53a-152 or 53a-  
474 153 or a class D felony under sections 53a-60 to 53a-60c, inclusive, 53a-  
475 72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-136 or 53a-216, or  
476 (2) convicted as delinquent for the commission of a serious juvenile  
477 offense, as defined in section 46b-120.

478 Sec. 24. Subsection (b) of section 54-2a of the general statutes is  
479 repealed and the following is substituted in lieu thereof (*Effective from*  
480 *passage*):

481 (b) The court, judge or judge trial referee issuing a bench warrant  
482 for the arrest of the person or persons complained against shall, in  
483 cases punishable by death, life imprisonment without the possibility of  
484 release or life imprisonment, set the conditions of release or indicate  
485 that the person or persons named in the warrant shall not be entitled to  
486 bail and may, in all other cases, set the conditions of release. The  
487 conditions of release, if included in the warrant, shall fix the first of the  
488 following conditions which the court, judge or judge trial referee finds  
489 necessary to assure such person's appearance in court: (1) Written  
490 promise to appear; (2) execution of a bond without surety in no greater  
491 amount than necessary; or (3) execution of a bond with surety in no  
492 greater amount than necessary.

493 Sec. 25. Subsection (a) of section 54-46a of the general statutes is  
494 repealed and the following is substituted in lieu thereof (*Effective from*  
495 *passage*):

496 (a) No person charged by the state, who has not been indicted by a  
497 grand jury prior to May 26, 1983, shall be put to plea or held to trial for  
498 any crime punishable by death, life imprisonment without the  
499 possibility of release or life imprisonment unless the court at a  
500 preliminary hearing determines there is probable cause to believe that  
501 the offense charged has been committed and that the accused person  
502 has committed it. The accused person may knowingly and voluntarily  
503 waive such preliminary hearing to determine probable cause.

504 Sec. 26. Section 54-82 of the general statutes is repealed and the  
505 following is substituted in lieu thereof (*Effective from passage*):

506 (a) In any criminal case, prosecution or proceeding, the [party]  
507 accused may, if [he] the accused so elects when called upon to plead,  
508 be tried by the court instead of by the jury; and, in such case, the court  
509 shall have jurisdiction to hear and try such case and render judgment

510 and sentence thereon.

511 (b) If the accused is charged with a crime punishable by death, [or  
512 imprisonment for] life imprisonment without the possibility of release  
513 or life imprisonment and elects to be tried by the court, the court shall  
514 be composed of three judges to be designated by the Chief Court  
515 Administrator, or [his] the Chief Court Administrator's designee, who  
516 shall name one such judge to preside over the trial. Such judges, or a  
517 majority of them, shall have power to decide all questions of law and  
518 fact arising upon the trial and render judgment accordingly.

519 (c) If the [party] accused does not elect to be tried by the court, [he]  
520 the accused shall be tried by a jury of six except that no person [ ]  
521 charged with an offense which is punishable by death, life  
522 imprisonment without the possibility of release or life imprisonment,  
523 shall be tried by a jury of less than twelve without [his] such person's  
524 consent.

525 Sec. 27. Section 54-82g of the general statutes is repealed and the  
526 following is substituted in lieu thereof (*Effective from passage*):

527 The accused may challenge peremptorily, in any criminal trial  
528 before the Superior Court for any offense punishable by death or life  
529 imprisonment without the possibility of release, twenty-five jurors; for  
530 any offense punishable by [imprisonment for] life imprisonment,  
531 fifteen jurors; for any offense the punishment for which may be  
532 imprisonment for more than one year and for less than life, six jurors;  
533 and for any other offense, three jurors. In any criminal trial in which  
534 the accused is charged with more than one count on the information or  
535 where there is more than one information, the number of challenges is  
536 determined by the count carrying the highest maximum punishment.  
537 The state, on the trial of any criminal prosecution, may challenge  
538 peremptorily the same number of jurors as the accused.

539 Sec. 28. Subsection (a) of section 54-82h of the general statutes is  
540 repealed and the following is substituted in lieu thereof (*Effective from*  
541 *passage*):

542 (a) In any criminal prosecution to be tried to the jury in the Superior  
543 Court if it appears to the court that the trial is likely to be protracted,  
544 the court may, in its discretion, direct that, after a jury has been  
545 selected, two or more additional jurors shall be added to the jury  
546 panel, to be known as "alternate jurors". Such alternate jurors shall  
547 have the same qualifications and be selected and subject to  
548 examination and challenge in the same manner and to the same extent  
549 as the jurors constituting the regular panel, provided, in any case when  
550 the court directs the selection of alternate jurors, the number of  
551 peremptory challenges allowed shall be as follows: In any criminal  
552 prosecution the state and the accused may each peremptorily  
553 challenge thirty jurors if the offense for which the accused is arraigned  
554 is punishable by death or life imprisonment without the possibility of  
555 release, eighteen jurors if the offense is punishable by life  
556 imprisonment, eight jurors if the offense is punishable by  
557 imprisonment for more than one year and for less than life, and four  
558 jurors in any other case.

559 Sec. 29. Section 54-83 of the general statutes is repealed and the  
560 following is substituted in lieu thereof (*Effective from passage*):

561 No person may be convicted of any crime punishable by death or  
562 life imprisonment without the possibility of release without the  
563 testimony of at least two witnesses, or that which is equivalent thereto.

564 Sec. 30. Subsection (a) of section 54-91a of the general statutes is  
565 repealed and the following is substituted in lieu thereof (*Effective from*  
566 *passage*):

567 (a) No defendant convicted of a crime, other than a capital felony  
568 under section 53a-54b in effect prior to the effective date of this section  
569 or murder with special circumstances under section 53a-54b, as  
570 amended by this act, in effect on or after the effective date of this  
571 section, the punishment for which may include imprisonment for more  
572 than one year, may be sentenced, or the defendant's case otherwise  
573 disposed of, until a written report of investigation by a probation  
574 officer has been presented to and considered by the court, if the

575 defendant is so convicted for the first time in this state; but any court  
576 may, in its discretion, order a presentence investigation for a defendant  
577 convicted of any crime or offense other than a capital felony under  
578 section 53a-54b in effect prior to the effective date of this section or  
579 murder with special circumstances under section 53a-54b, as amended  
580 by this act, in effect on or after the effective date of this section.

581 Sec. 31. Subsection (b) of section 54-102jj of the general statutes is  
582 repealed and the following is substituted in lieu thereof (*Effective from*  
583 *passage*):

584 (b) Upon the conviction of a person of a capital felony under section  
585 53a-54b in effect prior to the effective date of this section or murder  
586 with special circumstances under section 53a-54b, as amended by this  
587 act, in effect on or after the effective date of this section or the  
588 conviction of a person of a crime after trial, or upon order of the court  
589 for good cause shown, the state police, all local police departments,  
590 any agent of the state police or a local police department and any other  
591 person to whom biological evidence has been transferred shall  
592 preserve all biological evidence acquired during the course of the  
593 investigation of such crime for the term of such person's incarceration.

594 Sec. 32. Subsection (b) of section 54-125a of the general statutes is  
595 repealed and the following is substituted in lieu thereof (*Effective from*  
596 *passage*):

597 (b) (1) No person convicted of any of the following offenses, which  
598 was committed on or after July 1, 1981, shall be eligible for parole  
599 under subsection (a) of this section: Capital felony, as provided in  
600 section 53a-54b in effect prior to the effective date of this section, or  
601 murder with special circumstances, as provided in section 53a-54b, as  
602 amended by this act, in effect on or after the effective date of this  
603 section, felony murder, as provided in section 53a-54c, arson murder,  
604 as provided in section 53a-54d, murder, as provided in section 53a-54a,  
605 as amended by this act, or aggravated sexual assault in the first degree,  
606 as provided in section 53a-70a. (2) A person convicted of (A) a  
607 violation of section 53a-100aa or 53a-102, or (B) an offense, other than

608 an offense specified in subdivision (1) of this subsection, where the  
609 underlying facts and circumstances of the offense involve the use,  
610 attempted use or threatened use of physical force against another  
611 person shall be ineligible for parole under subsection (a) of this section  
612 until such person has served not less than eighty-five per cent of the  
613 definite sentence imposed.

614 Sec. 33. Subsection (d) of section 54-125d of the general statutes is  
615 repealed and the following is substituted in lieu thereof (*Effective from*  
616 *passage*):

617 (d) Notwithstanding any provision of the general statutes, a  
618 sentencing court may refer any person convicted of an offense other  
619 than a capital felony under section 53a-54b in effect prior to the  
620 effective date of this section or a class A felony who is an alien to the  
621 Board of Pardons and Paroles for deportation under this section.

622 Sec. 34. Section 54-131b of the general statutes is repealed and the  
623 following is substituted in lieu thereof (*Effective from passage*):

624 The Board of Pardons and Paroles may release on medical parole  
625 any inmate serving any sentence of imprisonment, except an inmate  
626 convicted of a capital felony [as defined in] under section 53a-54b in  
627 effect prior to the effective date of this section or murder with special  
628 circumstances under section 53a-54b, as amended by this act, in effect  
629 on or after the effective date of this section, who has been diagnosed  
630 pursuant to section 54-131c as suffering from a terminal condition,  
631 disease or syndrome, and is so debilitated or incapacitated by such  
632 condition, disease or syndrome as to be physically incapable of  
633 presenting a danger to society. Notwithstanding any provision of the  
634 general statutes to the contrary, the Board of Pardons and Paroles may  
635 release such inmate at any time during the term of [his] such inmate's  
636 sentence.

637 Sec. 35. Subsection (a) of section 54-131k of the general statutes is  
638 repealed and the following is substituted in lieu thereof (*Effective from*  
639 *passage*):

640 (a) The Board of Pardons and Paroles may grant a compassionate  
 641 parole release to any inmate serving any sentence of imprisonment,  
 642 except an inmate convicted of a capital felony [, as defined in] under  
 643 section 53a-54b in effect prior to the effective date of this section or  
 644 murder with special circumstances under section 53a-54b, as amended  
 645 by this act, in effect on or after the effective date of this section, if it  
 646 finds that such inmate (1) is so physically or mentally debilitated,  
 647 incapacitated or infirm as a result of advanced age or as a result of a  
 648 condition, disease or syndrome that is not terminal as to be physically  
 649 incapable of presenting a danger to society, and (2) (A) has served not  
 650 less than one-half of such inmate's definite or aggregate sentence, or  
 651 (B) has served not less than one-half of such inmate's remaining  
 652 definite or aggregate sentence after commutation of the original  
 653 sentence by the Board of Pardons and Paroles.

654 Sec. 36. Subsection (a) of section 54-193 of the general statutes is  
 655 repealed and the following is substituted in lieu thereof (*Effective from*  
 656 *passage*):

657 (a) There shall be no limitation of time within which a person may  
 658 be prosecuted for (1) a capital felony under section 53a-54b in effect  
 659 prior to the effective date of this section, a class A felony or a violation  
 660 of section 53a-54d or 53a-169, (2) a violation of section 53a-165aa or  
 661 53a-166 in which such person renders criminal assistance to another  
 662 person who has committed an offense set forth in subdivision (1) of  
 663 this subsection, or (3) a violation of section 53a-156 committed during a  
 664 proceeding that results in the conviction of another person  
 665 subsequently determined to be actually innocent of the offense or  
 666 offenses of which such other person was convicted.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage and applicable to crimes committed on or after said date</i>	53a-54b

Sec. 2	<i>from passage</i>	53a-35a
Sec. 3	<i>from passage</i>	53a-35b
Sec. 4	<i>from passage</i>	53a-45(a)
Sec. 5	<i>from passage</i>	53a-46a(a)
Sec. 6	<i>from passage</i>	53a-46b(a)
Sec. 7	<i>from passage</i>	53a-54a(c)
Sec. 8	<i>from passage</i>	10-145b(j)(2)
Sec. 9	<i>from passage</i>	10-145i
Sec. 10	<i>from passage</i>	46b-127(a)
Sec. 11	<i>from passage</i>	46b-133(a)
Sec. 12	<i>from passage</i>	51-36(c)
Sec. 13	<i>from passage</i>	51-199(b)
Sec. 14	<i>from passage</i>	51-246
Sec. 15	<i>from passage</i>	51-286c
Sec. 16	<i>from passage</i>	52-434(a)(1)
Sec. 17	<i>from passage</i>	53a-25(b)
Sec. 18	<i>from passage</i>	53a-30(a)
Sec. 19	<i>from passage</i>	53a-39a(a)
Sec. 20	<i>from passage</i>	53a-40d(a)
Sec. 21	<i>from passage</i>	53a-46d
Sec. 22	<i>from passage</i>	53a-182b(a)
Sec. 23	<i>from passage</i>	53a-217d(a)
Sec. 24	<i>from passage</i>	54-2a(b)
Sec. 25	<i>from passage</i>	54-46a(a)
Sec. 26	<i>from passage</i>	54-82
Sec. 27	<i>from passage</i>	54-82g
Sec. 28	<i>from passage</i>	54-82h(a)
Sec. 29	<i>from passage</i>	54-83
Sec. 30	<i>from passage</i>	54-91a(a)
Sec. 31	<i>from passage</i>	54-102jj(b)
Sec. 32	<i>from passage</i>	54-125a(b)
Sec. 33	<i>from passage</i>	54-125d(d)
Sec. 34	<i>from passage</i>	54-131b
Sec. 35	<i>from passage</i>	54-131k(a)
Sec. 36	<i>from passage</i>	54-193(a)

**JUD**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

## **OFA Fiscal Note**

### **State Impact:**

<b>Agency Affected</b>	<b>Fund-Effect</b>	<b>FY 12 \$</b>	<b>FY 13 \$</b>
Various State Agencies	GF - Savings	See Below	See Below
Correction, Dept.	GF - Cost	See Below	See Below

Note: GF=General Fund

**Municipal Impact:** None

### **Explanation**

The bill eliminates the death penalty as a sentencing option for crimes committed on or after the bill's effective date. Repeal of the death penalty will result in an annual state savings of up to \$3.3 million from a reduction in litigation costs. These savings would be partially offset by costs of incarceration. The full amount of these savings would not be achieved for several years, as litigation would continue for offenders currently on death row or facing the death penalty.

### **Litigation Savings**

The state would save up to \$3.3 million annually in defense and prosecution costs due to a repeal of the death penalty. These savings would be partially offset by additional costs to incarcerate prisoners for terms of life rather than being executed prior. The table below details savings as a result of a repeal of the death penalty.

<b>Agency</b>	<b>Savings</b>
Public Defenders	\$ 2,029,250
Criminal Justice	\$ 1,230,000
Judicial Department	\$ 35,000
<b>Total Savings</b>	<b>\$ 3,294,250</b>

The Public Defender Services Commission would experience annual

savings of \$2 million due to a reduction in litigation costs. It is anticipated that staffing, special public defenders and other costs associated with death penalty defense could be reduced significantly with the repeal of the death penalty, which would result in the savings detailed below:

<b>Public Defender Services Commission</b>	
Capital Defense Unit	\$ 1,000,250
Special Public Defenders	\$ 503,000
Expert Witnesses	\$ 496,000
Other Expenses (Transcripts, etc.)	\$ 30,000
<b>Total Savings</b>	<b>\$ 2,029,250</b>

The Division of Criminal Justice's expenditures attributable to the death penalty are not concentrated in a single cost center or entirely among particular employees. However, it is expected that a savings of \$1.2 million could be obtained within the agency. These savings include:

<b>Division of Criminal Justice</b>	
Staffing Costs Associated with Capital Cases	\$ 1,050,000
Expert Witnesses	\$ 150,000
Other Expenses (Transcripts, etc.)	\$ 30,000
<b>Total Savings</b>	<b>\$ 1,230,000</b>

The Judicial Department would experience savings of less than \$35,000 (overtime, travel reimbursements and other expenses) to the extent that future extraordinary judicial proceedings to hear a motion in a death penalty case are precluded. Likewise, the Public Defender Services Commission and Division of Criminal Justice could avoid future extraordinary costs related to litigation over the constitutionality of the death penalty.

### **Department of Correction**

The Department of Correction (DOC) incurred costs of \$316,000 to carry out an execution in 2005. Comparable costs would be foregone

in the future as executions would be eliminated by the bill. However, the cost avoidance would be offset by costs to the extent that inmates serve lengthier periods of incarceration.

The average cost of incarceration for an inmate at Northern Correctional Institution (NCI), where Death Row is located, is \$103,295 per year. There are currently 10 men on death row at NCI (average age 40.9 years), resulting in an annual incarceration cost of approximately \$1.0 million. The national average for time spent on death row prior to execution is about 13 years.

### ***The Out Years***

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

*Sources: Core-CT Financial Accounting System  
Department of Administrative Services website  
2010 Public Defender Services Commission Annual Report*

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**OLR Bill Analysis****sSB 1035*****AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES.*****SUMMARY:**

This bill (1) eliminates the death penalty as a sentencing option for a capital felony committed on or after the bill's effective date, thus leaving life imprisonment without the possibility of release as the penalty and (2) renames the crime of capital felony as murder with special circumstances.

It also makes a number of changes to apply the rules for capital felony crimes to murder with special circumstances, as necessary.

**EFFECTIVE DATE:** Upon passage. The provision renaming the crime of capital felony as murder with special circumstances applies to crimes committed on and after that date.

**CRIME OF CAPITAL FELONY AND MURDER WITH SPECIAL CIRCUMSTANCES**

The bill renames the crime of capital felony as murder with special circumstances. A person commits the crime of capital felony under current law, or murder with special circumstances under the bill, if he or she:

1. murders, while the victim was acting within the scope of his or her duties, a police officer, Division of Criminal Justice inspector, state marshal exercising statutory authority, judicial marshal performing duties, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the environmental protection commissioner, firefighter, or Department of Correction (DOC) employee or service provider acting within the scope of

- employment in a correctional facility (the perpetrator must be an inmate);
2. murders for pay or hires someone to murder;
  3. murders and was previously convicted of intentional murder or murder while a felony was committed;
  4. murders while sentenced to life imprisonment;
  5. murders a kidnapped person and is the kidnapper;
  6. murders while committing 1<sup>st</sup> degree sexual assault;
  7. murders two or more people at the same time or in the course of a single transaction; or
  8. murders a person under age 16.

**BAIL**

Under the Connecticut Constitution, a person is eligible for bail unless he or she is charged with a capital offense “where the proof is evident or the presumption great.” Because murder with special circumstances is not a capital offense, people charged with this crime would be eligible for bail under the constitution. The bill allows the court or a judge or judge trial referee issuing a bench warrant to arrest someone for murder with special circumstances to indicate that the person should not be released bail.

As with capital felonies under prior law, people convicted of murder with special circumstances are ineligible for post-conviction bail while awaiting sentencing or appealing their conviction.

**RULES ON PROSECUTION AND RELEASE**

The bill makes a number of technical and conforming changes to apply the rules for capital felony crimes to murder with special circumstances as necessary, such as:

1. requiring that biological evidence and records of evidence and

- judicial proceedings be preserved,
2. authorizing the court to allow the reading of a victim impact statement in court before imposing the sentence,
  3. allowing defendants accused of the crime to choose a jury or three-judge panel,
  4. allowing them to challenge potential jurors,
  5. requiring testimony of at least two witnesses or their equivalent for a conviction, and
  6. prohibiting medical or compassionate parole release.

## **BACKGROUND**

### ***Death Penalty Sentencing Hearing***

A person convicted of a capital felony must be sentenced to either the death penalty or life imprisonment without the possibility of release. The jury, or the court if the defendant chooses, weighs mitigating and aggravating factors in a separate sentencing hearing to decide whether to impose the death penalty. The jury or court cannot impose the death penalty and must sentence the person to life imprisonment without the possibility of release if mitigating factors outweigh, or are of equal weight to, the aggravating factors, or if any of five automatic bars to the death penalty exist. Otherwise, the person must be sentenced to death.

***Aggravating Factors.*** By law, the only aggravating factors that the jury or court can consider are that the defendant:

1. committed the offense while committing or attempting to commit a felony, or while fleeing from the commission of or attempt to commit a felony, and had previously been convicted of the same felony;
2. had been convicted of at least two state or federal offenses prior to the offense, each of which was committed on different

- occasions, involved serious bodily injury, and had a maximum penalty of at least one year imprisonment;
3. committed the offense knowingly creating a risk of death to another person in addition to the victim of the offense;
  4. committed the offense in an especially heinous, cruel, or depraved manner;
  5. procured someone else to commit the offense by paying or promising to pay anything of pecuniary value;
  6. committed the offense in return for payment or the expectation of payment;
  7. committed the offense with an assault weapon; or
  8. murdered one of the following people, while the victim was acting within the scope of duty, in order to (a) avoid arrest for or prevent detection of a criminal act, (b) hamper or prevent the victim from carrying out an act within the scope of official duties, or (c) retaliate against the victim for performing official duties: a police officer, Division of Criminal Justice inspector, state marshal exercising statutory authority, judicial marshal performing duties, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the environmental protection commissioner, firefighter, or DOC employee or service provider acting within the scope of employment in a correctional facility (the perpetrator must be an inmate).

**Mitigating Factors.** The jury or court must determine if a particular factor concerning the defendant's character, background, or history or the nature and circumstances of the crime is established by the evidence and whether that factor is mitigating, considering all the facts and circumstances of the case. Mitigating factors are not defenses or excuses for the capital felony of which the defendant was convicted, but are factors that, in fairness and mercy, tend either to extenuate or

reduce the defendant's blame for the offense or otherwise provide a reason for a sentence less than death.

**Bars to the Death Penalty**

By law, five factors automatically bar the death penalty. A defendant cannot receive the death penalty if the court or jury determines that he or she:

1. was under age 18 at the time of the crime;
2. was mentally retarded at the time of the crime;
3. had a mental capacity or ability to conform his or her conduct to the requirements of law that was significantly impaired at the time of the crime (but not so impaired as to constitute a defense);
4. was guilty of a capital felony only as an accessory and had relatively minor participation; and
5. could not reasonably have foreseen that the conduct, in the course of committing the crime he or she was convicted of, would cause someone's death.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 17 (04/12/2011)