



Senate

General Assembly

File No. 111

February Session, 2012

Substitute Senate Bill No. 280

Senate, March 26, 2012

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 Section 53a-54b of the general statutes is repealed and the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
7 Emergency Services and Public Protection or of any local police
8 department, a chief inspector or inspector in the Division of Criminal
9 Justice, a state marshal who is exercising authority granted under any
10 provision of the general statutes, a judicial marshal in performance of
11 the duties of a judicial marshal, a constable who performs criminal law
12 enforcement duties, a special policeman appointed under section 29-
13 18, a conservation officer or special conservation officer appointed by
14 the Commissioner of Energy and Environmental Protection under the
15 provisions of section 26-5, an employee of the Department of

16 Correction or a person providing services on behalf of said department
17 when such employee or person is acting within the scope of such
18 employee's or person's employment or duties in a correctional
19 institution or facility and the actor is confined in such institution or
20 facility, or any firefighter, while such victim was acting within the
21 scope of such victim's duties; (2) murder committed by a defendant
22 who is hired to commit the same for pecuniary gain or murder
23 committed by one who is hired by the defendant to commit the same
24 for pecuniary gain; (3) murder committed by one who has previously
25 been convicted of intentional murder or of murder committed in the
26 course of commission of a felony; (4) murder committed by one who
27 was, at the time of commission of the murder, under sentence of life
28 imprisonment; (5) murder by a kidnapper of a kidnapped person
29 during the course of the kidnapping or before such person is able to
30 return or be returned to safety; (6) murder committed in the course of
31 the commission of sexual assault in the first degree; (7) murder of two
32 or more persons at the same time or in the course of a single
33 transaction; or (8) murder of a 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 the
41 provisions of section 53a-54b in effect prior to the effective date of this
42 section, a term of life imprisonment without the possibility of release
43 unless a sentence of death is imposed in accordance with section 53a-
44 46a, as amended by this act, or (B) for the class A felony of murder
45 with special circumstances committed on or after the effective date of
46 this section under the provisions of section 53a-54b in effect on or after
47 the effective date of this section, a term of life imprisonment without
48 the possibility of release; (2) for the class A felony of murder, a term
49 not less than twenty-five years nor more than life; (3) for the class A

50 felony of aggravated sexual assault of a minor under section 53a-70c, a
51 term not less than twenty-five years or more than fifty years; (4) for a
52 class A felony other than an offense specified in subdivision (2) or (3)
53 of this section, a term not less than ten years nor more than twenty-five
54 years; (5) for the class B felony of manslaughter in the first degree with
55 a firearm under section 53a-55a, a term not less than five years nor
56 more than forty years; (6) for a class B felony other than manslaughter
57 in the first degree with a firearm under section 53a-55a, a term not less
58 than one year nor more than twenty years; (7) for a class C felony, a
59 term not less than one year nor more than ten years; (8) for a class D
60 felony, a term not less than one year nor more than five years; and (9)
61 for an unclassified felony, a term in accordance with the sentence
62 specified in the section of the 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, as amended by this act, unless it is a
77 capital felony committed prior to the effective date of this section,
78 punishable in accordance with subparagraph (A) of subdivision (1) of
79 section 53a-35a, as amended by this act, murder with special
80 circumstances committed on or after the effective date of this section,
81 punishable as a class A felony in accordance with subparagraph (B) of
82 subdivision (1) of section 53a-35a, as amended by this act, or murder

83 under section 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 the
89 provisions of section 53a-54b in effect prior to the effective date of this
90 section only if a hearing is held in accordance with the provisions of
91 this section.

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

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

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

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

114 Sec. 8. Subdivision (2) of subsection (j) of section 10-145b of the 2012
115 supplement to the general statutes is repealed and the following is
116 substituted in lieu thereof (*Effective from passage*):

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

139 Sec. 9. Section 10-145i of the 2012 supplement to the general statutes
140 is repealed and the following is substituted in lieu thereof (*Effective*
141 *from passage*):

142 Notwithstanding the provisions of sections 10-144o to 10-146b,
143 inclusive, and 10-149, the State Board of Education shall not issue or
144 reissue any certificate, authorization or permit pursuant to said
145 sections if (1) the applicant for such certificate, authorization or permit
146 has been convicted of any of the following: (A) A capital felony, as

147 defined [in] under the provisions of section 53a-54b in effect prior to
148 the effective date of this section; (B) arson murder, as defined in section
149 53a-54d; (C) any class A felony; (D) any class B felony except a
150 violation of section 53a-122, 53a-252 or 53a-291; (E) a crime involving
151 an act of child abuse or neglect as described in section 46b-120; or (F) a
152 violation of section 53-21, 53-37a, 53a-60b, 53a-60c, 53a-71, 53a-72a, 53a-
153 72b, 53a-73a, 53a-88, 53a-90a, 53a-99, 53a-103a, 53a-181c, 53a-191, 53a-
154 196, 53a-196c, 53a-216, 53a-217b or 21a-278 or a violation of subsection
155 (a) of section 21a-277, and (2) the applicant completed serving the
156 sentence for such conviction within the five years immediately
157 preceding the date of the application.

158 Sec. 10. Subsection (a) of section 46b-127 of the 2012 supplement to
159 the general statutes is repealed and the following is substituted in lieu
160 thereof (*Effective from passage*):

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

181 motion. A state's attorney may, not later than ten working days after
182 such arraignment, file a motion to transfer the case of any child
183 charged with the commission of a class B felony or a violation of
184 subdivision (2) of subsection (a) of section 53a-70 to the docket for
185 juvenile matters for proceedings in accordance with the provisions of
186 this chapter. The court sitting for the regular criminal docket shall,
187 after hearing and not later than ten working days after the filing of
188 such motion, decide such motion.

189 Sec. 11. Subsection (a) of section 46b-133 of the 2012 supplement to
190 the general statutes is repealed and the following is substituted in lieu
191 thereof (*Effective from passage*):

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

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

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

214 destroyed upon the expiration of twenty years from the date of
215 imposition of the sentence in such case or upon the expiration of the
216 sentence imposed upon such person, whichever is later.

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

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

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

247 parties and any party may request a hearing on the issue of such
248 destruction or disposal before the court in which the matter is pending.

249 (5) In any case in which a person is charged with multiple offenses,
250 no destruction or disposal of exhibits may be ordered under this
251 subsection until the longest applicable retention period under this
252 subsection has expired. The provisions of this subdivision and
253 subdivisions (3), (4) and (6) of this subsection shall apply to any
254 criminal or motor vehicle case disposed of before, on or after October
255 1, 2006.

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

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

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

267 (b) The following matters shall be taken directly to the Supreme
268 Court: (1) Any matter brought pursuant to the original jurisdiction of
269 the Supreme Court under section 2 of article sixteen of the
270 amendments to the Constitution; (2) an appeal in any matter where the
271 Superior Court declares invalid a state statute or a provision of the
272 state Constitution; (3) an appeal in any criminal action involving a
273 conviction for a capital felony under the provisions of section 53a-54b
274 in effect prior to the effective date of this section, class A felony [,] or
275 any other felony, including any persistent offender status, for which
276 the maximum sentence which may be imposed exceeds twenty years;
277 (4) review of a sentence of death pursuant to section 53a-46b, as
278 amended by this act; (5) any election or primary dispute brought to the

279 Supreme Court pursuant to section 9-323 or 9-325; (6) an appeal of any
280 reprimand or censure of a probate judge pursuant to section 45a-65; (7)
281 any matter regarding judicial removal or suspension pursuant to
282 section 51-51j; (8) an appeal of any decision of the Judicial Review
283 Council pursuant to section 51-51r; (9) any matter brought to the
284 Supreme Court pursuant to section 52-265a; (10) writs of error; and
285 (11) any other matter as provided by law.

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

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

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

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

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

307 (a) (1) Each judge of the Supreme Court, each judge of the Appellate
308 Court, each judge of the Superior Court and each judge of the Court of
309 Common Pleas who ceases or has ceased to hold office because of

310 retirement other than under the provisions of section 51-49 and who is
311 an elector and a resident of this state shall be a state referee for the
312 remainder of such judge's term of office as a judge and shall be eligible
313 for appointment as a state referee during the remainder of such judge's
314 life in the manner prescribed by law for the appointment of a judge of
315 the court of which such judge is a member. The Superior Court may
316 refer any civil, nonjury case or with the written consent of the parties
317 or their attorneys, any civil jury case pending before the court in which
318 the issues have been closed to a judge trial referee who shall have and
319 exercise the powers of the Superior Court in respect to trial, judgment
320 and appeal in the case, and any proceeding resulting from a demand
321 for a trial de novo pursuant to subsection (e) of section 52-549z may be
322 referred without the consent of the parties to a judge trial referee who
323 has been specifically designated to hear such proceedings pursuant to
324 subsection (b) of this section. The Superior Court may, with the
325 consent of the parties or their attorneys, refer any criminal case to a
326 judge trial referee who shall have and exercise the powers of the
327 Superior Court in respect to trial, judgment, sentencing and appeal in
328 the case, except that the Superior Court may, without the consent of
329 the parties or their attorneys, (A) refer any criminal case, other than a
330 criminal jury trial, to a judge trial referee assigned to a geographical
331 area criminal court session, and (B) refer any criminal case, other than
332 a class A or B felony or capital felony under the provisions of section
333 53a-54b in effect prior to the effective date of this section, to a judge
334 trial referee to preside over the jury selection process and any voir dire
335 examination conducted in such case, unless good cause is shown not to
336 refer.

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

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

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

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

379 nonviolent sexual offense or a sexually violent offense, as defined in
380 section 54-250, or of a felony that the court finds was committed for a
381 sexual purpose, as provided in section 54-254, register such person's
382 identifying factors, as defined in section 54-250, with the
383 Commissioner of Emergency Services and Public Protection when
384 required pursuant to section 54-251, 54-252 or 54-253, as the case may
385 be; (14) be subject to electronic monitoring, which may include the use
386 of a global positioning system; (15) if convicted of a violation of section
387 46a-58, 53-37a, 53a-181j, 53a-181k or 53a-181l, participate in an anti-bias
388 crime education program; (16) if convicted of a violation of section 53-
389 247, undergo psychiatric or psychological counseling or participate in
390 an animal cruelty prevention and education program provided such a
391 program exists and is available to the defendant; or (17) satisfy any
392 other conditions reasonably related to the defendant's rehabilitation.
393 The court shall cause a copy of any such order to be delivered to the
394 defendant and to the probation officer, if any.

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

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

413 defendant shall be ordered to participate in such program as an
414 alternative to incarceration. If the court determines that the defendant
415 shall participate in such program, the court shall suspend any sentence
416 of imprisonment and shall make participation in the alternate
417 incarceration program a condition of probation as provided in section
418 53a-30, as amended by this act.

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

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

445 Sec. 21. Section 53a-46d of the general statutes is repealed and the

446 following is substituted in lieu thereof (*Effective from passage*):

447 A victim impact statement prepared with the assistance of a victim
448 advocate to be placed in court files in accordance with subdivision (2)
449 of subsection (a) of section 54-220 may be read in court prior to
450 imposition of sentence upon a defendant found guilty of a crime
451 punishable by death or life imprisonment without the possibility of
452 release.

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

456 (a) A person is guilty of harassment in the first degree when, with
457 the intent to harass, annoy, alarm or terrorize another person, he
458 threatens to kill or physically injure that person or any other person,
459 and communicates such threat by telephone, or by telegraph, mail,
460 computer network, as defined in section 53a-250, or any other form of
461 written communication, in a manner likely to cause annoyance or
462 alarm and has been convicted of a capital felony under the provisions
463 of section 53a-54b in effect prior to the effective date of this section, a
464 class A felony, a class B felony, except a conviction under section 53a-
465 86 or 53a-122, a class C felony, except a conviction under section 53a-
466 87, 53a-152 or 53a-153, or a class D felony under sections 53a-60 to 53a-
467 60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114, 53a-
468 136 or 53a-216. For the purposes of this section, "convicted" means
469 having a judgment of conviction entered by a court of competent
470 jurisdiction.

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

474 (a) A person is guilty of criminal possession of body armor when he
475 possesses body armor and has been (1) convicted of a capital felony
476 under the provisions of section 53a-54b in effect prior to the effective
477 date of this section, a class A felony, except a conviction under section

478 53a-196a, a class B felony, except a conviction under section 53a-86,
479 53a-122 or 53a-196b, a class C felony, except a conviction under section
480 53a-87, 53a-152 or 53a-153 or a class D felony under sections 53a-60 to
481 53a-60c, inclusive, 53a-72a, 53a-72b, 53a-95, 53a-103, 53a-103a, 53a-114,
482 53a-136 or 53a-216, or (2) convicted as delinquent for the commission
483 of a serious juvenile offense, as defined in section 46b-120.

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

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

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

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

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

512 (a) In any criminal case, prosecution or proceeding, the [party]
513 accused may, if [he] the accused so elects when called upon to plead,
514 be tried by the court instead of by the jury; and, in such case, the court
515 shall have jurisdiction to hear and try such case and render judgment
516 and sentence thereon.

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

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

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

533 The accused may challenge peremptorily, in any criminal trial
534 before the Superior Court for any offense punishable by death or life
535 imprisonment without the possibility of release, twenty-five jurors; for
536 any offense punishable by [imprisonment for] life imprisonment,
537 fifteen jurors; for any offense the punishment for which may be
538 imprisonment for more than one year and for less than life, six jurors;
539 and for any other offense, three jurors. In any criminal trial in which
540 the accused is charged with more than one count on the information or
541 where there is more than one information, the number of challenges is

542 determined by the count carrying the highest maximum punishment.
543 The state, on the trial of any criminal prosecution, may challenge
544 peremptorily the same number of jurors as the accused.

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

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

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

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

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

573 (a) No defendant convicted of a crime, other than a capital felony
574 under the provisions of section 53a-54b in effect prior to the effective
575 date of this section or murder with special circumstances under the
576 provisions of section 53a-54b, as amended by this act, in effect on or
577 after the effective date of this section, the punishment for which may
578 include imprisonment for more than one year, may be sentenced, or
579 the defendant's case otherwise disposed of, until a written report of
580 investigation by a probation officer has been presented to and
581 considered by the court, if the defendant is so convicted for the first
582 time in this state; but any court may, in its discretion, order a
583 presentence investigation for a defendant convicted of any crime or
584 offense other than a capital felony under the provisions of section 53a-
585 54b in effect prior to the effective date of this section or murder with
586 special circumstances under the provisions of section 53a-54b, as
587 amended by this act, in effect on or after the effective date of this
588 section.

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

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

603 Sec. 32. Subsection (b) of section 54-125a of the 2012 supplement to
604 the general statutes is repealed and the following is substituted in lieu
605 thereof (*Effective from passage*):

606 (b) (1) No person convicted of any of the following offenses, which
607 was committed on or after July 1, 1981, shall be eligible for parole
608 under subsection (a) of this section: (A) Capital felony, as provided [in]
609 under the provisions of section 53a-54b in effect prior to the effective
610 date of this section, (B) murder with special circumstances, as provided
611 under the provisions of section 53a-54b, as amended by this act, in
612 effect on or after the effective date of this section, (C) felony murder, as
613 provided in section 53a-54c, (D) arson murder, as provided in section
614 53a-54d, (E) murder, as provided in section 53a-54a, as amended by
615 this act, or (F) aggravated sexual assault in the first degree, as provided
616 in section 53a-70a. (2) A person convicted of (A) a violation of section
617 53a-100aa or 53a-102, or (B) an offense, other than an offense specified
618 in subdivision (1) of this subsection, where the underlying facts and
619 circumstances of the offense involve the use, attempted use or
620 threatened use of physical force against another person shall be
621 ineligible for parole under subsection (a) of this section until such
622 person has served not less than eighty-five per cent of the definite
623 sentence imposed less any risk reduction credit earned under the
624 provisions of section 18-98e.

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

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

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

636 The Board of Pardons and Paroles may release on medical parole
637 any inmate serving any sentence of imprisonment, except an inmate
638 convicted of a capital felony [as defined in] under the provisions of

639 section 53a-54b in effect prior to the effective date of this section or
640 murder with special circumstances under the provisions of section 53a-
641 54b, as amended by this act, in effect on or after the effective date of
642 this section, who has been diagnosed pursuant to section 54-131c as
643 suffering from a terminal condition, disease or syndrome, and is so
644 debilitated or incapacitated by such condition, disease or syndrome as
645 to be physically incapable of presenting a danger to society.
646 Notwithstanding any provision of the general statutes to the contrary,
647 the Board of Pardons and Paroles may release such inmate at any time
648 during the term of [his] such inmate's sentence.

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

652 (a) The Board of Pardons and Paroles may grant a compassionate
653 parole release to any inmate serving any sentence of imprisonment,
654 except an inmate convicted of a capital felony [, as defined in] under
655 the provisions of section 53a-54b in effect prior to the effective date of
656 this section or murder with special circumstances under the provisions
657 of section 53a-54b, as amended by this act, in effect on or after the
658 effective date of this section, if it finds that such inmate (1) is so
659 physically or mentally debilitated, incapacitated or infirm as a result of
660 advanced age or as a result of a condition, disease or syndrome that is
661 not terminal as to be physically incapable of presenting a danger to
662 society, and (2) (A) has served not less than one-half of such inmate's
663 definite or aggregate sentence, or (B) has served not less than one-half
664 of such inmate's remaining definite or aggregate sentence after
665 commutation of the original sentence by the Board of Pardons and
666 Paroles.

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

670 (a) There shall be no limitation of time within which a person may
671 be prosecuted for (1) a capital felony under the provisions of section

672 53a-54b in effect prior to the effective date of this section, a class A
 673 felony or a violation of section 53a-54d or 53a-169, (2) a violation of
 674 section 53a-165aa or 53a-166 in which such person renders criminal
 675 assistance to another person who has committed an offense set forth in
 676 subdivision (1) of this subsection, or (3) a violation of section 53a-156
 677 committed during a proceeding that results in the conviction of
 678 another person subsequently determined to be actually innocent of the
 679 offense or 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)

Statement of Legislative Commissioners:

Throughout the bill, "under the provisions of section 53a-54b" was substituted for "under section 53a-54b" for clarity.

JUD *Joint Favorable Subst.-LCO*

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:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Pub. Defender Serv. Com.	GF - Savings	700,000	700,000
Criminal Justice, Div.	GF - Savings	150,000	150,000
Correction, Dept.	GF - Savings	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

Summary

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 savings of up to \$850,000 beginning in FY 13 due to reduced litigation costs.

The table below details savings in FY 13/14 as a result of repeal of the death penalty.

FY 13/14 Savings	
Agency	Savings
Public Defenders Service Commission	\$700,000
Division of Criminal Justice	\$150,000
Total Savings	\$850,000

Total future annual savings that could be achieved for the Public Defenders and Division of Criminal Justice after current death row inmates have exhausted appeals, settled cases, or are executed total approximately \$5 million. The full amount of these savings would not be achieved for several years, as litigation and appeals would continue

for offenders currently on death row or facing the death penalty.

In addition, the Department of Correction will realize savings of approximately \$455,000 per inmate for each future murder with special circumstance case.

The following table outlines future out year savings.

Future Savings	
Agency	Savings
Public Defenders Service Commission	\$3,834,000/year
Division of Criminal Justice	\$1,200,000/year
Department of Corrections	\$455,000/inmate

FY 13/14 Savings

Public Defender Services Commission

The Public Defender Services Commission would experience savings of approximately \$700,000 beginning in FY 13 due to a reduction in litigation costs. These savings would occur mainly from staffing and expert witnesses.

Public Defender Services Commission	
Expert Witnesses	\$400,000
Special Public Defenders	\$300,000
Total Savings	\$700,000

Division of Criminal Justice

The Division of Criminal Justice would experience savings of approximately \$150,000 beginning in FY 13 due to reduced litigation costs.

Division of Criminal Justice	
Expert Witnesses	\$150,000
Total Savings	\$150,000

The Out Years

Public Defender Services and Division of Criminal Justice

The annualized savings for Public Defenders and Division of Criminal Justice would continue to increase each year until all current death row inmates have exhausted their appeals, settled the case, or have been executed. This is likely to take over 18 years (based on the most recent inmate execution timeline). Full annual savings would be approximately \$5 million per year and would include closure of the Public Defender Services Commission's Capital Defense Unit.

Public Defender Services Commission	
Personal Services	\$2,500,000
Other Expenses	\$29,000
Expert Witnesses	\$660,000
Special Public Defenders	\$645,000
Total Savings	\$3,834,000

Division of Criminal Justice	
Personal Services	\$1,050,000
Expert Witnesses	\$150,000
Total Savings	\$1,200,000

Department of Correction

The bill results in out year future savings of approximately \$455,000 in costs to the Department of Correction for each murder with special circumstances case.

Department of Correction Impact (per inmate)	
Cost for Death Penalty	\$1,728,340
Cost to Incarcerate an Inmate for Life	\$1,273,566
Difference (Savings from the bill)	\$454,774

The following chart outlines the costs associated with the most

recent prisoner execution.

Department of Correction Death Penalty Cost	
Cost	\$
Incarceration	1,412,340
Execution	<u>316,000</u>
Total Cost of death penalty per offender	1,728,340

The analysis assumes, based on the most recent prisoner executed in Connecticut, each death row inmate will spend approximately 18 years on death row at Northern Correctional Institute. The average cost to incarcerate an inmate at Northern CI is \$78,463. Additionally, the Department of Correction incurred \$316,000 in costs for the most recent execution.

The average age of the offender at the time of the offense for the population currently on death row is 26. Assuming the average life expectancy of a prisoner is 68¹, each future offender under this bill would serve 42 years in prison. The cost for incarcerating a prisoner in a level 4 facility is \$30,323. Over 42 years, it would cost the state approximately \$1.3 million to house each offender.

Sources: *Journal of Urban Health*

¹ Population Impact of Mass Incarceration under New York's Rockefeller Drug Laws: An Analysis of Years of Life Lost" *Journal of Urban Health*: 79:3, September 2002.

OLR Bill Analysis**sSB 280*****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 murders:

1. while the victim was acting within the scope of his or her duties, a police officer, Division of Criminal Justice inspector, state marshal, judicial marshal, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the energy and environmental protection commissioner, firefighter, or Department of Correction (DOC) employee or service provider acting within a correctional facility (the perpetrator must be an inmate);

2. for pay, or hires someone to murder;
3. after a previous conviction for intentional murder or murder while a felony was committed;
4. while sentenced to life imprisonment;
5. a kidnapped person and is the kidnapper;
6. while committing 1st degree sexual assault;
7. two or more people at the same time or in the course of a single transaction; or
8. 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, a judge, or a judge trial referee issuing a bench warrant to arrest someone for murder with special circumstances to indicate that the person should not be released on bail.

As with capital felonies under current 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 the preservation of biological evidence and records of evidence and judicial proceedings,
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, judicial marshal, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the energy and environmental protection commissioner, firefighter, or DOC employee or service provider acting within 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; or
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

Yea 24 Nay 19 (03/21/2012)