Connecticut Sentencing Commission
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Andrew J. Clark, Acting Executive Director

TESTIMONY IN SUPPORT OF H.B. 5546: AN ACT CONCERNING SENTENCE MODIFICATION OF JUVENILES

Justice David M. Borden & Mike Lawlor
Connecticut Sentencing Commission

Judiciary Committee

March 23, 2012

Good morning Chairman Coleman, Chairman Fox, and members of the Judiciary Committee. I am Justice David M. Borden, formerly of the Connecticut Supreme Court, and a member of the Connecticut Sentencing Commission, and I am here representing that Commission. With me is Mike Lawlor, OPM Under Secretary for the Criminal Justice Policy and Planning Division and current vice-chair of the Connecticut Sentencing Commission. We are here to testify on H.B. 5546, An Act Concerning Sentence Modification of Juveniles.

This bill directs the Connecticut Sentencing Commission to examine the feasibility of creating a procedure whereby a person sentenced to a lengthy term of imprisonment for a crime committed when he or she was under the age of 18 would have a meaningful opportunity, after service of a portion of the sentence, to obtain release before the end of that term by demonstrating increased maturity and rehabilitation.

In Connecticut, children as young as fourteen years old charged with certain serious crimes are automatically tried as adults and subject to the same penalties as adults, including mandatory minimum sentence requirements and parole ineligibility rules. There are a number of juvenile offenders in Connecticut serving very lengthy sentences with no opportunity for parole. Under current law, even if a juvenile offender has matured and rehabilitated while in prison, there is no opportunity for a "second look" at the sentence unless the state's attorney consents to a sentence modification hearing before the sentencing court.

Below, we describe recent United States Supreme Court precedent on this topic, relevant scientific evidence on juvenile brain development, and data on the population of juvenile offenders serving lengthy prison sentences in Connecticut. We also discuss the Sentencing Commission's work on this issue during the past year, and the issues for consideration raised by H.B. 5546.

I. New United States Supreme Court Precedent

Twice in the past six years, the U.S. Supreme Court has found that "because juveniles have lessened culpability, they are less deserving of the most severe punishments."[1] Because juveniles are less culpable, and at the same time more capable of change, than adults, the Court found in both cases that even a juvenile's commission of a very serious crime cannot be considered evidence that he or she has a permanently bad character and is incapable of reform. In *Graham*, the Court held, based on its findings about the characteristics of juvenile offenders, that states must give "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham* concluded that a sentence of life without this "meaningful opportunity for release" violates the Eighth Amendment's ban on cruel and unusual punishment – at least when the crime is a non-homicide crime. The U.S. Supreme Court is currently considering two cases involving fourteen-year-olds serving sentences of life without the possibility of parole for homicide crimes.

II. Scientific Evidence Regarding Adolescent Brain Development

In *Roper* and *Graham*, the U.S. Supreme Court based its conclusions on the results of scientific and sociological studies (as well as "what any parent knows"), and developments in psychology and brain science showing: (1) a lack of maturity and an underdeveloped sense of responsibility in youth that often lead to impetuous and ill-considered actions and decisions, (2) a greater susceptibility to negative influences and outside pressures, including peer pressure, and (3) fundamental differences between juvenile and adult minds, particularly in the parts of the brain involved in behavior control.

As the Supreme Court recognized, scientific research establishes fundamental differences between adults and children. This research shows that brain control over impulsivity and judgment does not fully develop until around age twenty-five. Indeed, brain scans show visible differences between the brains of adolescents and adults, particularly in the parts of the brain involved in behavior control. When adolescents get involved in criminal activity, the acts tend to be impulsive, without awareness of consequences, and committed with groups or with older

[1] *Graham v. Florida*, 130 S. Ct. 2011 (2010) (holding that the U.S. Constitution forbids imposition of the sentence of life imprisonment without parole for juvenile offenders for non-homicide crimes); *Roper v. Simmons*, 543 U.S. 551 (2005) (holding that the U.S. Constitution forbids imposition of death sentences on juvenile offenders).

adults, rather than the result of a settled depravity or a premeditated design.[2]

III. Data Regarding Children Sentenced to Long Prison Terms in Connecticut

Research conducted for the Commission indicates that, as of September 28, 2011, there were 191 prisoners serving sentences longer than ten years based solely on crimes committed when they were under the age of eighteen. More than half (51%) of these prisoners are ineligible for parole. These parole-ineligible individuals are all serving sentences of twenty years or more.

Some individuals serving long prison sentences were very young when they committed their crimes: twenty-one people are serving sentences of twenty-five years or more for crimes committed at ages fourteen or fifteen. Thirty-two people are serving sentences of fifty years or more for crimes committed under the age of eighteen. Graphs showing data on these juvenile offenders are attached as Exhibit A.

IV. Overview of the Commission's Work Regarding Lengthy Prison Sentences Imposed on Juvenile Offenders

Sentencing Commission members identified the issue of lengthy sentences for juvenile offenders as a legislative priority, after concerns were expressed by judges and academics that current policies treating children as adults rely on outdated science and fail to take into account recent U.S. Supreme Court precedent. The Connecticut legislature updated youth sentencing policies significantly by enacting "Raise the Age" legislation, but has not addressed the lingering consequences of older "adult time" policies on those juveniles already serving extremely long sentences without the opportunity for parole.

The Commission's Legislative Committee, chaired by myself, Justice David M. Borden,[3] met seven times during the months of April-November 2011 and undertook a review of:

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[2] *See, e.g.*, Elizabeth Cauffman et al., *Age Differences in Affective Decision Making as Indexed by Performance on the Iowa Gambling Task*, 46 DEVELOPMENTAL PSYCHOL. 193 (2010); Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood*, 41 DEVELOPMENTAL PSYCHOL. 625, 626–634 (2005); Jay N. Giedd, *Structural Magnetic Resonance Imagine of the Adolescent Brain*, 1021 ANNALS N.Y. ACAD. SCI. 77 (2004); ROLF LOEBER & DAVID FARRINGTON, YOUNG HOMICIDE OFFENDERS AND VICTIMS: RISK FACTORS, PREDICTION, AND PREVENTION FROM CHILDHOOD 158 (Springer, 2011); Brent Roberts et al., *Patterns of Mean-Level Change in Personality Traits Across the Life Course*, 132 PSYCH. BULL. 1, 14-16 (2006); Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 47, 55–56 (2008).

- the number of individuals convicted of crimes as juveniles who are serving lengthy adult prison sentences in Connecticut;
- the relevant United States Supreme Court precedent;
- studies concerning juvenile offender recidivism and recent developments in brain science and recidivism;
- new approaches and pending legislation in other jurisdictions; and
- model legislation concerning juvenile sentence review recommended by the American Law Institute and other bodies.

The Legislative Committee determined that Connecticut's existing sentencing and parole system currently lacks an effective mechanism to provide juvenile offenders with a "second look" after they have the chance to mature and change. "Sentence Review" is available only shortly after the original sentencing and cannot take into account the consequences of maturity and rehabilitation. "Sentence Modification" is available only with the permission of the state's attorney. The Legislative Committee considered potential models of sentence review and modification that included: abandoning mandatory minimum sentences for juveniles; setting sentencing limits for juveniles; establishing juvenile sentencing review boards; allowing juvenile offenders to petition directly to the court for sentence modification; and providing special parole eligibility rules for juvenile offenders.

The Legislative Committee reported its findings and recommendations to the full Commission, and the Commission discussed this topic at several meetings. On January 26, 2012, the Commission approved, in principle, the following "second look" concept:

The Sentencing Commission recommends that legislation be enacted to create a procedure whereby a person sentenced to a lengthy term of imprisonment for a crime committed when he/she was under the age of 18 will have a meaningful opportunity, after service of a portion of the sentence, to obtain release before the end of that term by demonstrating increased maturity and rehabilitation.

The Commission then convened a Working Group on Juvenile Sentence Modification.[4] Over the course of five meetings, the Working Group made substantial progress toward drafting a proposed bill and was able to agree on many central issues. In particular, the group agreed:

[3] Members of the Legislative Committee included: Justice Borden, William Carbone, Michelle Cruz, Kevin Kane, Mike Lawlor, Mark Palmer, Susan Storey

[4] The Working Group included: Michelle Cruz, Robert Farr, Kevin Kane, Deborah Del Prete Sullivan, Erika Tindill, and Thomas Ullmann.

- The Board of Pardons and Paroles would be the most appropriate and cost-efficient body to consider suitability for release of juvenile offenders serving lengthy sentences.
- The Board should be permitted to recommend parole only for offenders who have demonstrated remorse, atonement, maturity, and rehabilitation.
- In recognition of the special challenges facing individuals who have spent their formative years in prison, counsel should be appointed to assist juvenile offenders in preparing for parole release hearings.
- Counsel for the inmate and the state's attorney should have an opportunity to submit materials to the Board in advance of the hearing.
- The victim or victim's representative should have notice and an opportunity to participate.

Although the Working Group generally agreed that special parole eligibility rules should govern cases involving juvenile offenders, the group was not able to agree on the precise timing of eligibility for parole hearings. In addition, the group disagreed on whether juvenile offenders sentenced to life without the possibility of release for capital felony offenses should be eligible for a "second look" at all during their lifetimes. The Working Group drafted a proposed bill that reflected the areas of agreement, and presented two different options regarding eligibility. This draft bill is attached as Exhibit B, and the two options are set forth in subsection (g)(1) of the bill.

On March 14, 2012, the full Sentencing Commission considered the Working Group's recommendations. In light of the areas of disagreement regarding eligibility, the Commission was unable to reach a consensus recommendation at that time on specific statutory language for a proposed bill.

V. H.B. 5546

H.B. 5546 provides that the Sentencing Commission should consider the feasibility of creating a procedure whereby a person sentenced to a lengthy term of imprisonment for a crime committed when he or she was under the age of 18 would have a meaningful opportunity, after service of a portion of the sentence, to obtain release before the end of that term by demonstrating increased maturity and rehabilitation. The bill enumerates eight issues for the Commission's consideration. Below, we briefly summarize these issues.

(1) Whether the proceedings should be before the superior court, the Board of Pardons and Paroles, or other agency.

The two obvious candidates are the court which originally imposed the sentence, aided by an investigation conducted by probation into the offender's circumstances at the time he or she applies to modify the sentence, and the Board of Pardons and Paroles, aided by an

investigation by parole officers. The Working Group took the view that the Board of Pardons and Paroles was the more appropriate and cost-effective body to conduct the review.

(2) Whether counsel should be appointed for the petitioner.

The right to assistance of counsel would seem to be a minimum standard to ensure a "meaningful opportunity" for release. The Working Group agreed that counsel should be appointed and would have the ability to submit materials to the Board of Pardons and Paroles for consideration in advance of a hearing.

(3) Whether such release should be applicable to any offense committed by a person under the age of eighteen.

Although *Graham v. Florida* involved a non-homicide case, the Supreme Court is currently considering whether to extend *Graham*'s holding to homicide cases. The Court's observation in *Graham* that juvenile offenders are typically less culpable than adults and have a greater capacity for rehabilitation are generally applicable across all types of offenses. The Working Group did not agree on whether individuals serving sentences of life without the possibility of release for capital felony offenses should be eligible for a "second look."

(4) Whether parties should have a reasonable opportunity to present testimony.

The Supreme Court leaves this up to the individual states. The possibilities range from a full-fledged adversarial hearing, with sworn testimony and written reports, to a more administrative hearing, with several combinations and permutations of procedures possible. The Working Group agreed this matter should be left to the discretion of the Board of Pardons and Paroles.

(5) Whether the petitioner should have more than one opportunity for a hearing.

A statute should recognize that the circumstances of offenders change over their time incarcerated. At the same time, if more than one opportunity were to be provided, there would have to be safeguards to prevent abuse of the victims of crime and inordinate demands on the resources of the courts or the Board of Pardons and Paroles. The Working Group determined that the timing of additional review hearings would be at the discretion of the board of pardons and paroles in individual cases.

(6) The scope of such hearings.

At a minimum, the scope of the hearing must allow the decisionmaker to accurately assess an offender's overall degree of rehabilitation. This assessment requires an understanding of the individual's background,

criminal history, progress in prison, and prospect for successful reintegration into the community.

(7) The standard for granting sentence reduction.

The Supreme Court's decision in *Graham* requires that the offender be given a meaningful opportunity to show increased maturity and rehabilitation. Other criteria could be added; e.g., the offender's remorse, his or her efforts to atone, a demonstration of decreased risk to society and the victim, as well as the more generalized standard that the original sentence is more severe than necessary to achieve legitimate penological goals. The Working Group agreed that the Board of Pardons and Paroles should use the following standard when evaluating an individual's suitability for release:

(1) Whether there is reasonable probability that such person will live and remain at liberty without violating the law; (2) whether the benefits to such person and society that would result from such person's release to community supervision substantially outweigh the benefits to such person and society that would result from such person's continued incarceration; and (3) whether such person has demonstrated substantial rehabilitation since the time of the offense. In assessing rehabilitation, the board shall consider whether the person has demonstrated increased maturity since the time of the offense; remorse for the offense of which the person was convicted; efforts to atone for that offense; efforts to overcome substance abuse addiction, trauma, lack of education, or other obstacles; and overall degree of rehabilitation. In addition, the board shall consider the person's background, obstacles the person may have faced as a youth in an adult prison environment, and the opportunities for rehabilitation available to the person during the course of the confinement.

(8) The period of imprisonment such person should serve before being eligible to petition for sentence reduction.

The portion of the sentence served must be long enough to recognize the severity of the offender's conduct and the harm done to the victim, yet not so long as to frustrate the basic purpose of allowing for review and potential shortening of the time served. The Working Group determined that a minimum of ten years should be served, with a longer period for some categories of sentences.

VI. Conclusion

In sum, it appears that reform of juvenile sentencing in Connecticut by allowing a "second look" at long adult prison sentences imposed on juvenile offenders would better align juvenile sentences to real culpability and encourage hope, rehabilitation, and reform. It would also keep Connecticut in compliance with recent U.S. Supreme Court

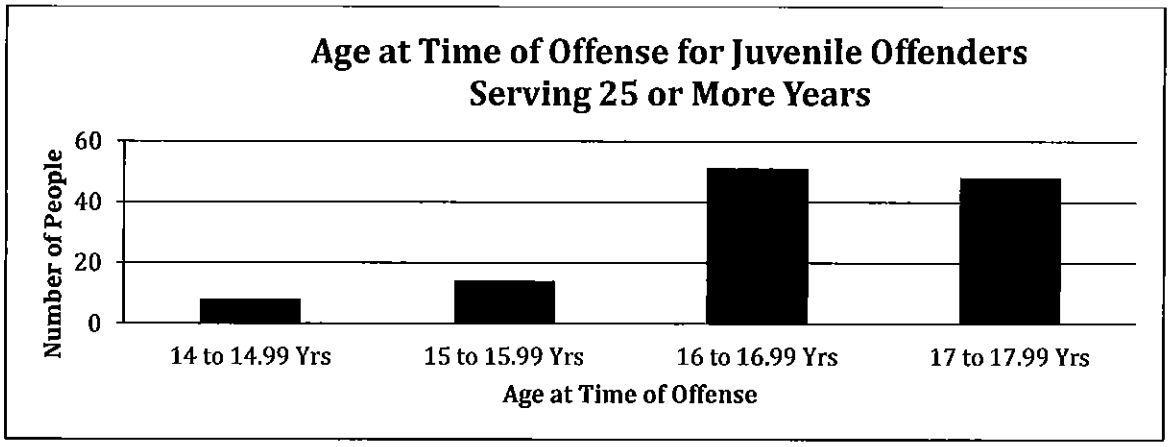
precedent and national best practices. Legislation creating a "second look" mechanism will need to resolve the matters described in H.B. 5546. Should the Judiciary Committee wish additional information on this topic in this Legislative Session, the Commission is happy to provide it.

Exhibit A:

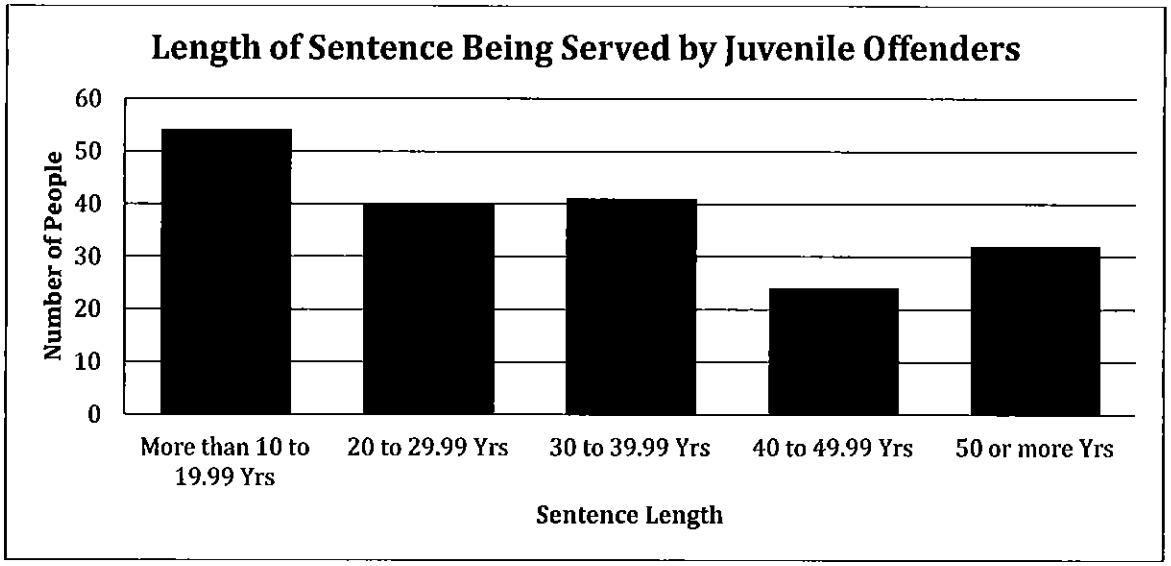
The Data: Juvenile Offenders Serving Long Adult Prison Sentences*

There are 191 individuals in Connecticut serving sentences of more than 10 years based solely on crimes committed when they were under the age of 18.

Ages: Twenty-one people are serving sentences of 25 years or more for crimes they committed when they were only 14 or 15 years old.



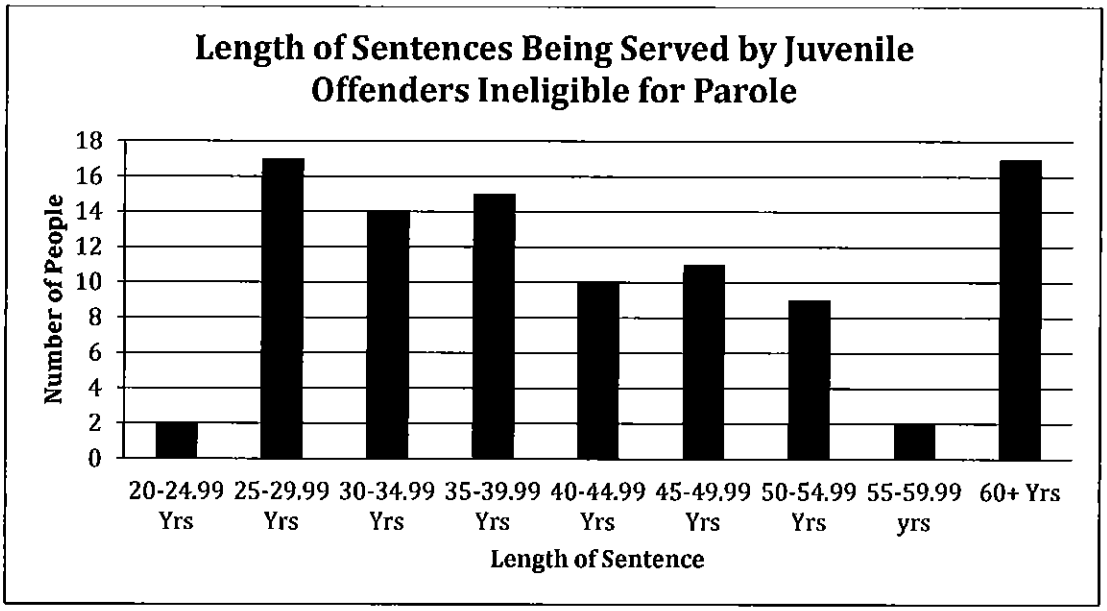
Sentence Length: Thirty-two people are serving sentences of 50 years or more for crimes committed under the age of 18.



* Sources and notes on the final page

Exhibit A:

Parole Ineligibility: Ninety-seven people serving sentences based on crimes committed under the age of 18 are not eligible for parole at all, and they are all serving sentences of at least 20 years.



Small Segment of Total Prison Population: Out of Connecticut's prison population of 17,658 inmates, there are only 191 individuals serving sentences of more than 10 years based solely on crimes committed under the age of 18.

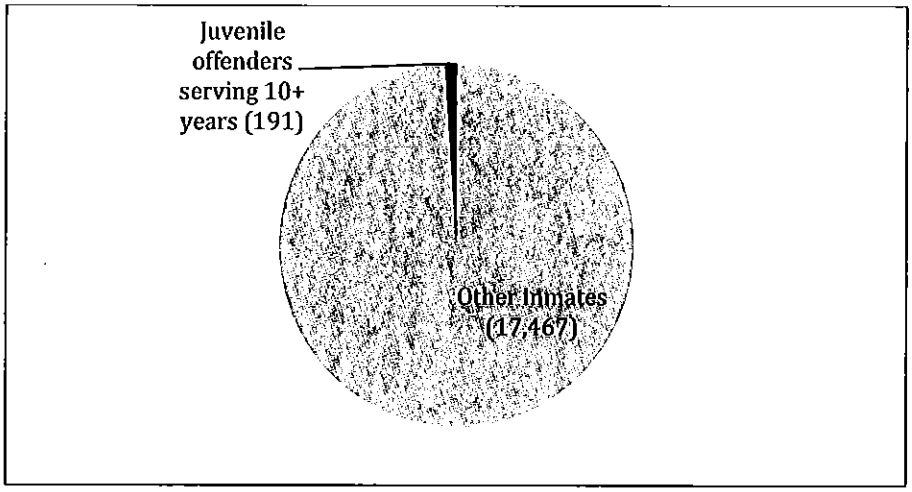
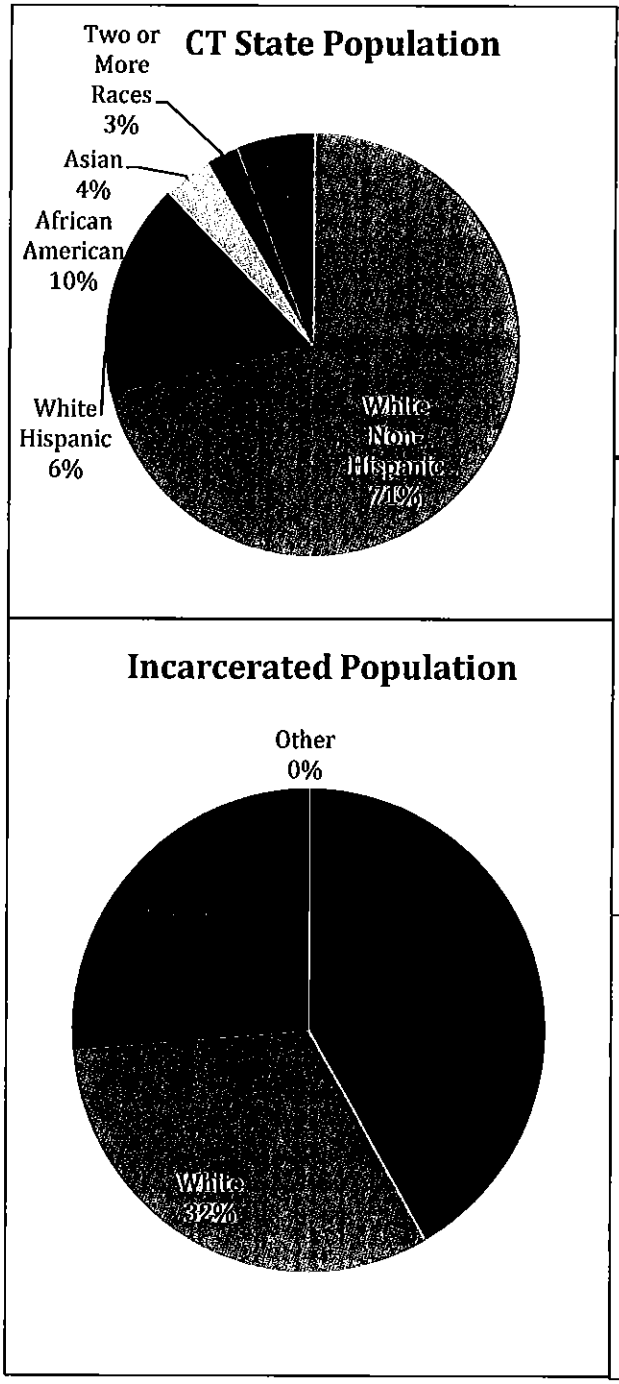


Exhibit A:

Juvenile Offenders: Demographics

Composition of Connecticut



Composition of Juvenile Offenders

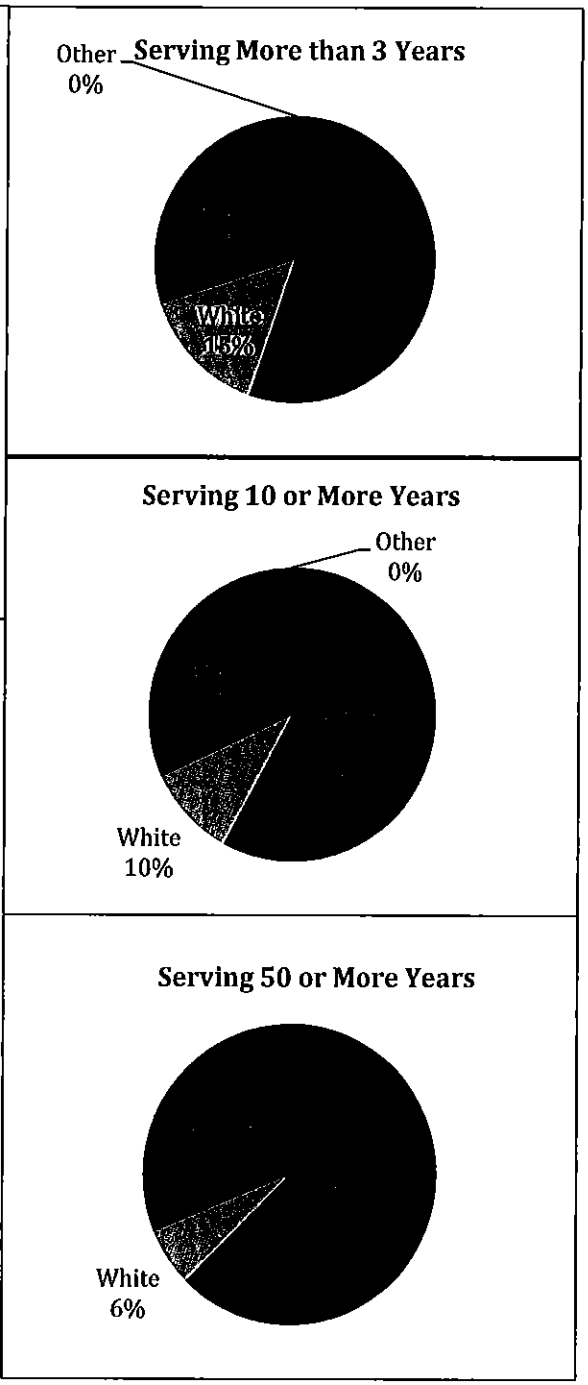


Exhibit A:

Sources: U.S. Census (2010); Connecticut Department of Correction ("DOC") (population data: 7/1/11; juvenile data: 9/28/11).
Notes:

"Juvenile" refers to individuals under the age of 18.

The data displayed does not include individuals serving sentences based in part on crimes committed at age 18 or older. There are 191 individuals serving sentence of more than 10 years based solely on crimes committed under the age of 18. There are an additional 152 individuals serving sentences of more than 10 years based on both crimes committed under the age of 18 and crimes committed at age 18 or above.

Age chart: When the individual is serving a sentence based on two or more offenses committed on different dates, the age chart shows the offender's age at the time of the earlier offense.

Demographic charts: DOC counts "Hispanic" as a racial category. The 2010 U.S. Census did not list "Hispanic" under the question regarding race, but had a separate question inquiring if the person was of "Hispanic origin" (ethnicity). Thus, an individual could state that his race was "White" and also that he was of Hispanic origin. However, individuals could also write in their race as "Hispanic," and those responses, as well as other "write-in" responses, are included in the "other" category on the Connecticut population chart above.

Exhibit B:

AN ACT CONCERNING THE PAROLE ELIGIBILITY OF JUVENILE OFFENDERS

To allow those convicted of crimes committed under the age of 18 the opportunity for parole earlier than adults.

Summary:

Current law provides that individuals who commit crimes when they are under the age of 18 are subject to the same parole rules as adults: they are ineligible for parole for certain crimes, and eligible after 85% of the sentence for many other crimes. In addition, if a person is convicted of capital felony and was under the age of 18 at the time of the offense, the court must impose a sentence of life imprisonment without the possibility of release.

The draft bill applies to individuals serving sentences of more than ten years based on crimes committed under the age of 18. The bill provides:

- the possibility of parole for juvenile offenders convicted of crimes for which parole is currently not available.
- the possibility of parole at an earlier date for some juvenile offenders serving long sentences.
- the possibility of parole for children who commit capital felonies.

Under the draft bill, the timing of parole eligibility differs depending on the length of the sentence:

- A juvenile offender serving a sentence of more than 10 years but less than 25 years will be eligible for parole when he or she reaches the age of 25 and has served at least 10 years in prison.
- A juvenile offender serving a sentence between 25 and 60 years inclusive will be eligible for parole when he or she reaches the age of 30 and has served at least 15 years in prison.
- A juvenile offender serving a sentence of more than 60 years, except in capital felony cases, will be eligible for parole when he or she reaches the age of 35 and has served at least 20 years in prison.
- Juvenile offenders convicted of capital felony are eligible for parole only after they reach the age of 40 and have served at least 25 years in prison.

If a juvenile offender becomes eligible for parole under the ordinary adult parole rules at an earlier date, than he or she may be released at that earlier date. An alternative eligibility approach is also noted below. Under "Option 2," parole eligibility comes after serving 50% of the sentence, or ten years, whichever is greater. In addition, Option 2 would not permit release in capital felony cases.

In recognition of the special challenges facing individuals who have spent their formative years in prison, the bill also provides for the appointment of counsel to assist juvenile offenders in preparing for parole release hearings.

Exhibit B:

Draft Bill:

AN ACT CONCERNING THE PAROLE ELIGIBILITY OF JUVENILE OFFENDERS
Be it enacted by the Senate and House of Representatives in General Assembly convened:
Section 1. Section 53a-46a of the general statutes is repealed and the following in substituted in lieu thereof (*Effective October 1, 2012, and applicable retroactively to persons currently serving adult sentences for crimes committed when they were under the age of eighteen*):
(a) A person shall be subjected to the penalty of death for a capital felony only if a hearing is held in accordance with the provisions of this section.

(b) For the purpose of determining the sentence to be imposed when a defendant is convicted of or pleads guilty to a capital felony, the judge or judges who presided at the trial or before whom the guilty plea was entered shall conduct a separate hearing to determine the existence of any mitigating factor concerning the defendant's character, background and history, or the nature and circumstances of the crime, and any aggravating factor set forth in subsection (i). Such hearing shall not be held if the state stipulates that none of the aggravating factors set forth in subsection (i) of this section exists or that any factor set forth in subsection (h) exists. Such hearing shall be conducted (1) before the jury which determined the defendant's guilt, or (2) before a jury impaneled for the purpose of such hearing if (A) the defendant was convicted upon a plea of guilty; (B) the defendant was convicted after a trial before three judges as provided in subsection (b) of section 53a-45; or (C) if the jury which determined the defendant's guilt has been discharged by the court for good cause, or (3) before the court, on motion of the defendant and with the approval of the court and the consent of the state.

(c) In such hearing the court shall disclose to the defendant or his counsel all material contained in any presentence report which may have been prepared. No presentence information withheld from the defendant shall be considered in determining the existence of any mitigating or aggravating factor. Any information relevant to any mitigating factor may be presented by either the state or the defendant, regardless of its admissibility under the rules governing admission of evidence in trials of criminal matters, but the admissibility of information relevant to any of the aggravating factors set forth in subsection (i) shall be governed by the rules governing the admission of evidence in such trials. The state and the defendant shall be permitted to rebut any information received at the hearing and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any mitigating or aggravating factor. The burden of establishing any of the aggravating factors set forth in subsection (i) shall be on the state. The burden of establishing any mitigating factor shall be on the defendant.

(d) In determining whether a mitigating factor exists concerning the defendant's character, background or history, or the nature and circumstances of the crime, pursuant to subsection (b) of this section, the jury or, if there is no jury, the court shall first determine whether a particular factor concerning the defendant's character, background or history, or the nature and circumstances of the crime, has been established by the evidence, and shall determine further whether that factor is mitigating in nature, considering all the facts and circumstances of the case. Mitigating factors are such as do not constitute a defense or excuse for the capital felony of which the defendant has been convicted, but which, in fairness and mercy, may be considered as

Exhibit B:

tending either to extenuate or reduce the degree of his culpability or blame for the offense or to otherwise constitute a basis for a sentence less than death.

(e) The jury or, if there is no jury, the court shall return a special verdict setting forth its findings as to the existence of any factor set forth in subsection (h), the existence of any aggravating factor or factors set forth in subsection (i) and whether any aggravating factor or factors outweigh any mitigating factor or factors found to exist pursuant to subsection (d).

(f) If the jury or, if there is no jury, the court finds that (1) none of the factors set forth in subsection (h) exist, (2) one or more of the aggravating factors set forth in subsection (i) exist and (3)(A) no mitigating factor exists or (B) one or more mitigating factors exist but are outweighed by one or more aggravating factors set forth in subsection (i), the court shall sentence the defendant to death.

(g) If the jury or, if there is no jury, the court finds that (1) any of the factors set forth in subsection (h)(2)-(5) exist, or (2) none of the aggravating factors set forth in subsection (i) exists, or (3) one or more of the aggravating factors set forth in subsection (i) exist and one or more mitigating factors exist, but the one or more aggravating factors set forth in subsection (i) do not outweigh the one or more mitigating factors, the court shall impose a sentence of life imprisonment without the possibility of release. If the jury or, if there is no jury, the court finds that the factor set forth in subsection (h)(1) exits, then the court shall impose a sentence of life without the possibility of release except as provided by section 54-125a(g) of the general statutes.

(h) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict, as provided in subsection (e), that at the time of the offense (1) the defendant was under the age of eighteen years, or (2) the defendant was a person with mental retardation, as defined in section 1-1g, or (3) the defendant's mental capacity was significantly impaired or the defendant's ability to conform the defendant's conduct to the requirements of law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution, or (4) the defendant was criminally liable under sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed by another, but the defendant's participation in such offense was relatively minor, although not so minor as to constitute a defense to prosecution, or (5) the defendant could not reasonably have foreseen that the defendant's conduct in the course of commission of the offense of which the defendant was convicted would cause, or would create a grave risk of causing, death to another person.

(i) The aggravating factors to be considered shall be limited to the following: (1) The defendant committed the offense during the commission or attempted commission of, or during the immediate flight from the commission or attempted commission of, a felony and the defendant had previously been convicted of the same felony; or (2) the defendant committed the offense after having been convicted of two or more state offenses or two or more federal offenses or of one or more state offenses and one or more federal offenses for each of which a penalty of more than one year imprisonment may be imposed, which offenses were committed on different occasions and which involved the infliction of serious bodily injury upon another person; or (3) the defendant committed the offense and in such commission knowingly created a grave risk of

Exhibit B:

death to another person in addition to the victim of the offense; or (4) the defendant committed the offense in an especially heinous, cruel or depraved manner; or (5) the defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value; or (6) the defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value; or (7) the defendant committed the offense with an assault weapon, as defined in section 53-202a; or (8) the defendant committed the offense set forth in subdivision (1) of section 53a-54b to avoid arrest for a criminal act or prevent detection of a criminal act or to hamper or prevent the victim from carrying out any act within the scope of the victim's official duties or to retaliate against the victim for the performance of the victim's official duties.

Exhibit B:

Section 2. Section 54-125a of the general statutes is repealed and the following in substituted in lieu thereof (*Effective October 1, 2012, and applicable retroactively to persons currently serving adult sentences for crimes committed when they were under the age of eighteen*):
(a) Except as provided in subsection (g), a[A] person convicted of one or more crimes who is incarcerated on or after October 1, 1990, who received a definite sentence or aggregate sentence of more than two years, and who has been confined under such sentence or sentences for not less than one-half of the aggregate sentence or one-half of the most recent sentence imposed by the court, whichever is greater, may be allowed to go at large on parole in the discretion of the panel of the Board of Pardons and Paroles for the institution in which the person is confined, if (1) it appears from all available information, including any reports from the Commissioner of Correction that the panel may require, that there is reasonable probability that such inmate will live and remain at liberty without violating the law, and (2) such release is not incompatible with the welfare of society. At the discretion of the panel, and under the terms and conditions as may be prescribed by the panel including requiring the parolee to submit personal reports, the parolee shall be allowed to return to the parolee's home or to reside in a residential community center, or to go elsewhere. The parolee shall, while on parole, remain under the jurisdiction of the board until the expiration of the maximum term or terms for which the parolee was sentenced. Any parolee released on the condition that the parolee reside in a residential community center may be required to contribute to the cost incidental to such residence. Each order of parole shall fix the limits of the parolee's residence, which may be changed in the discretion of the board and the Commissioner of Correction. Within three weeks after the commitment of each person sentenced to more than two years, the state's attorney for the judicial district shall send to the Board of Pardons and Paroles the record, if any, of such person.
(b) (1) Except as provided in subsection (g), n[N]o person convicted of any of the following offenses, which was committed on or after July 1, 1981, shall be eligible for parole under subsection (a) of this section: Capital felony, as provided in section 53a-54b, felony murder, as provided in section 53a-54c, arson murder, as provided in section 53a-54d, murder, as provided in section 53a-54a, or aggravated sexual assault in the first degree, as provided in section 53a-70a. (2) A person convicted of (A) a violation of section 53a-100aa or 53a-102, or (B) an offense, other than an offense specified in subdivision (1) of this subsection, where the underlying facts and circumstances of the offense involve the use, attempted use or threatened use of physical force against another person shall be ineligible for parole under subsection (a) of this section until such person has served not less than eighty-five per cent of the definite sentence imposed.
(c) Except as provided in subsection (g), t[T]he Board of Pardons and Paroles shall, not later than July 1, 1996, adopt regulations in accordance with chapter 54 to ensure that a person convicted of an offense described in subdivision (2) of subsection (b) of this section is not released on parole until such person has served eighty-five per cent of the definite sentence imposed by the court. Such regulations shall include guidelines and procedures for classifying a person as a violent offender that are not limited to a consideration of the elements of the offense or offenses for which such person was convicted.
(d) Except as provided in subsection (g), t[T]he Board of Pardons and Paroles shall hold a hearing to determine the suitability for parole release of any person whose eligibility for parole release is not subject to the provisions of subsection (b) of this section upon completion by such person of seventy-five per cent of such person's definite or aggregate sentence. An employee of the board or, if deemed necessary by the chairperson, a panel of the board shall reassess the

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suitability for parole release of such person based on the following standards: (1) Whether there is reasonable probability that such person will live and remain at liberty without violating the law, and (2) whether the benefits to such person and society that would result from such person's release to community supervision substantially outweigh the benefits to such person and society that would result from such person's continued incarceration. After hearing, if the board determines that continued confinement is necessary, it shall articulate for the record the specific reasons why such person and the public would not benefit from such person serving a period of parole supervision while transitioning from incarceration to the community. The decision of the board under this subsection shall not be subject to appeal.

(e) Except as provided in subsection (g), t[T]he Board of Pardons and Paroles shall hold a hearing to determine the suitability for parole release of any person whose eligibility for parole release is subject to the provisions of subdivision (2) of subsection (b) of this section upon completion by such person of eighty-five per cent of such person's definite or aggregate sentence. An employee of the board or, if deemed necessary by the chairperson, a panel of the board shall assess the suitability for parole release of such person based on the following standards: (1) Whether there is reasonable probability that such person will live and remain at liberty without violating the law, and (2) whether the benefits to such person and society that would result from such person's release to community supervision substantially outweigh the benefits to such person and society that would result from such person's continued incarceration. After hearing, if the board determines that continued confinement is necessary, it shall articulate for the record the specific reasons why such person and the public would not benefit from such person serving a period of parole supervision while transitioning from incarceration to the community. The decision of the board under this subsection shall not be subject to appeal.

(f) Any person released on parole under this section shall remain in the custody of the Commissioner of Correction and be subject to supervision by personnel of the Department of Correction during such person's period of parole.

OPTION 1

(g) (1) Any person who committed an offense or offenses before reaching eighteen years of age and is serving a sentence of more than ten years based on such offense or offenses may be released under parole supervision as follows:

(A) If such person is serving a sentence of more than ten years but less than twenty-five years, such person may be released under parole supervision after such person reaches twenty-five years of age and has been confined under the sentence for the offense or offenses for at least ten years. If such person becomes eligible for parole release under subsections (a) or (b) of this section prior to reaching twenty-five years of age or prior to being confined for ten years, such person may be released at the earlier date pursuant to subsections (a) or (b).

(B) If such person is serving a sentence of between twenty-five and sixty years imprisonment inclusive, such person may be released under parole supervision after such person reaches thirty years of age and has been confined under the sentence for the offense or offenses for at least fifteen years. If such person becomes eligible for parole release under subsections (a) or (b) of this section prior to reaching thirty years of age or prior to being confined for fifteen years, such person may be released at the earlier date pursuant to subsections (a) or (b).

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(C) If such person is serving a sentence of more than sixty years imprisonment for an offense or offenses other than capital felony, such person may be released under parole supervision after such person reaches thirty-five years of age and has been confined under the sentence for the offense or offenses for at least twenty years. If such person becomes eligible for parole release under subsections (a) or (b) of this section prior to reaching thirty-five years of age or prior to being confined for twenty years, such person may be released at the earlier date pursuant to subsections (a) or (b).

(D) A person convicted of capital felony committed before the person turned eighteen years of age may be released under parole supervision only after reaching the age of forty years old, and only after being confined for at least twenty-five years.

OPTION 2

(g) (1) Any person who committed an offense or offenses, other than capital felony, before reaching eighteen years of age and is serving a sentence of more than ten years based on such offense or offenses may be released under parole supervision after such person has been confined under such sentence for one-half of the sentence or for ten years, whichever is greater.

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(2) When a person obtains eligibility for parole release pursuant to subdivision (1), the Board of Pardons and Paroles shall hold a hearing to determine such person's suitability for parole release. At least twelve months prior to the hearing, the Board of Pardons and Paroles shall notify the Office of the Chief Public Defender pursuant to this subsection. The Office of the Chief Public Defender shall assign counsel for the person pursuant to section 51-296 of the general statutes if the person is indigent. At the hearing, the board shall permit counsel for such person to submit reports and other documents. The state's attorney shall have the same opportunity. The person whose suitability for parole is being considered shall have an opportunity to make a personal statement on his or her own behalf. The board may, in its discretion, request testimony from mental health professionals or other relevant witnesses. The victim shall be permitted to make a statement pursuant to section 54-126a of the general statutes.

(3) A panel of the board shall assess the suitability for parole release of a person subject to section (1) or (2) of this subsection based on the following standards: (1) Whether there is reasonable probability that such person will live and remain at liberty without violating the law, (2) whether the benefits to such person and society that would result from such person's release to community supervision substantially outweigh the benefits to such person and society that would result from such person's continued incarceration, and (3) whether such person has demonstrated substantial rehabilitation since the time of the offense. In assessing rehabilitation, the board shall consider whether the person has demonstrated increased maturity since the time of the offense; remorse for the offense of which the person was convicted; efforts to atone for that offense; efforts to overcome substance abuse addiction, trauma, lack of education, or other obstacles; and overall degree of rehabilitation. In addition, the board shall consider the person's background, obstacles the person may have faced as a youth in an adult prison environment, and the opportunities for rehabilitation available to the person during the course of the confinement. After the hearing, if the board determines the person shall not be suitable for parole, it shall articulate for the record the specific reasons why such person and the public would not benefit at that time from such

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person serving a period of parole supervision while transitioning from incarceration to the community. The decision of the board under this subsection shall not be subject to appeal. If release is denied, the board shall reassess parole suitability at a date to be determined at the discretion of the board.

Section 3. Section 53a-35a of the general statutes is repealed and the following in substituted in lieu thereof (Effective October 1, 2012):
For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and, unless the section of the general statutes that defines the crime specifically provides otherwise, the term shall be fixed by the court as follows: (1) For a capital felony, a term of life imprisonment without the possibility of release unless (a) a sentence of death is imposed in accordance with section 53a-46a or (b) the defendant was under the age of eighteen at the time of the offense, in which case the sentence is life without the possibility of release except as provided by section 54-125a(g) of the general statutes; (2) for the class A felony of murder, a term not less than twenty-five years nor more than life; (3) for the class A felony of aggravated sexual assault of a minor under section 53a-70c, a term not less than twenty-five years or more than fifty years; (4) for a class A felony other than an offense specified in subdivision (2) or (3) of this section, a term not less than ten years nor more than twenty-five years; (5) for the class B felony of manslaughter in the first degree with a firearm under section 53a-55a, a term not less than five years nor more than forty years; (6) for a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than twenty years; (7) for a class C felony, a term not less than one year nor more than ten years; (8) for a class D felony, a term not less than one year nor more than five years; and (9) for an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines the crime.