

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-5—sSB 280
Judiciary Committee

AN ACT REVISING THE PENALTY FOR CAPITAL FELONIES

SUMMARY: This act:

1. eliminates the death penalty as a sentencing option for a capital felony committed on or after the act's effective date (April 25, 2012), thus leaving life imprisonment without the possibility of release as the penalty;
2. renames the crime of capital felony as "murder with special circumstances";
3. makes a number of changes to apply the rules for capital felony crimes to murder with special circumstances, as necessary; and
4. specifies that it does not affect capital felony convictions or cases pending before April 25, 2012.

The act also requires the Department of Correction (DOC) to confer special circumstances high security status on any inmate (1) convicted of murder with special circumstances or (2) whose death sentence is commuted by the Board of Pardons and Paroles, or reduced by a court, to life without the possibility of release.

These inmates must be placed in administrative segregation (AS) until DOC completes the reclassification process required by the act. After reclassification, the inmates can remain in AS, be placed in protective custody, or be placed in a housing unit for the maximum security population under specified confinement conditions. DOC must annually review the confinement conditions of someone placed in a housing unit for the maximum security population.

EFFECTIVE DATE: Upon passage, and 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 act renames the crime of capital felony as "murder with special circumstances." A person committed the crime of capital felony under prior law, and commits murder with special circumstances under the act, by murdering:

1. certain officers while performing their duties, such as a police officer, state marshal, special conservation officer, or DOC employee;
2. for pay, or hiring someone to murder;
3. after a previous conviction for intentional murder or murder while a felony was committed;
4. while sentenced to life imprisonment;

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5. someone that he or she kidnapped;
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 act 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 prior law, people convicted of murder with special circumstances are ineligible for post-conviction bail while awaiting sentencing or appealing their conviction.

Rules on Prosecution and Release

The act makes a number of technical and conforming changes to apply the laws applicable to 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 to choose to have the case tried to a jury or three-judge panel,
4. allowing them to challenge potential jurors during voir dire,
5. requiring testimony of at least two witnesses or their equivalent for a conviction, and
6. prohibiting medical or compassionate parole release.

Effect of Repeal of an Act or Statute

Under existing law, the repeal of:

1. an act does not affect any (a) punishment, penalty, or forfeiture incurred before the repeal takes effect or (b) suit, prosecution, or proceeding pending at the time of repeal, for an offense committed or recovery of a penalty of forfeiture incurred under the repealed act (CGS § 1-1(t)) and
2. a statute defining or prescribing the punishment for a crime does not affect pending prosecutions or existing liability to prosecution and punishment, unless the repealing statute expressly provides that it has that effect (CGS § 54-194).

The act specifies that these provisions must apply and be given full force and effect regarding capital felonies committed before April 25, 2012.

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CLASSIFICATION AND CONDITIONS OF CONFINEMENT

The act requires DOC to place on special circumstances high security status any inmate:

1. convicted of murder with special circumstances committed on or after the act takes effect or
2. whose death sentence is commuted by the Board of Pardons and Paroles, or reduced by a court, to life without the possibility of release.

These inmates must be placed in AS (see BACKGROUND) until a reclassification process is completed.

The act requires the DOC commissioner to establish the reclassification process, which must include assessing (1) the inmate's risk to staff and other inmates and (2) whether the risk requires placing the inmate in AS or protective custody. If placed in AS, the inmate must complete the AS program.

Under the act, after completing reclassification, the commissioner must determine if the inmate should remain in AS or be placed in protective custody or a housing unit for the maximum security population. If placed in the maximum security population, the act requires the inmate to:

1. remain on special circumstances high security status,
2. be housed separately from inmates who do not have this status,
3. have his or her movements escorted or monitored,
4. move to a new cell at least every 90 days,
5. have his or her cell searched at least twice each week,
6. be prohibited from having physical contact during the inmate's social visits,
7. have work assignments within the assigned housing unit, and
8. be limited to no more than two hours of recreation per day.

The act requires an annual review of an inmate's confinement conditions if he or she is placed in a housing unit for the maximum security population. The commissioner may, for compelling correctional management or safety reasons, change any conditions not specified above.

The act requires DOC to annually report to the legislature, beginning January 2, 2013, on the number of inmates classified with special circumstances high security status on December 1 of the year before the report is due, their location, and the specific conditions of confinement imposed on each such inmate.

BACKGROUND

Administrative Segregation

Under DOC administrative directives, AS places an inmate in a restrictive housing unit that segregates him or her from others. The program includes a number of restrictions, some of which are lifted as the inmate progresses through the program's phases. For example, use of restraints while inmates are outside their cells is phased out until no restraints are generally authorized; the amount inmates can spend on commissary items and the number of phone calls and non-contact visits allowed per week increases; recreation is limited to one hour per

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day, five days per week but the use of restraints is phased out; work assignments within the unit may be allowed in the later phases; inmates take classes throughout the program but in-cell during the program's initial phase; and meals are in-cell during the program's first two phases. Throughout the program, inmates can have a radio but not a television.

High Security Status

Under DOC directives, high security status involves increased supervision of inmates who pose a threat to the safety and security of the facility, staff, inmates, or the public. These inmates are housed in a secured cell and moved to a new cell at least every 90 days. Their conditions are like general population conditions except their movements are escorted or monitored, they have more frequent cell searches, are only allowed work assignments in their unit, can only participate in monitored programs or those within their unit, and are only allowed non-contact visits.

Protective Custody Status

DOC directives authorize using protective measures when there is a substantial risk of serious harm to an inmate, the circumstances of the inmate's offense or media coverage require it, or a DOC employee recommends it based on his or her professional judgment or knowledge. Inmates requiring protective custody are kept separate from general population inmates and activities and directly monitored by staff to minimize the risk to the inmate. Their living conditions must resemble those for general population inmates.

OLR Tracking: CR:KM:PF:ro:eh