



General Assembly

**Substitute Bill No. 1062**

January Session, 2013



**AN ACT CONCERNING THE RECOMMENDATIONS OF THE  
CONNECTICUT SENTENCING COMMISSION REGARDING THE  
SENTENCING OF A CHILD CONVICTED OF A FELONY OFFENSE.**

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

- 1 Section 1. (NEW) (*Effective October 1, 2013*) (a) If the case of a child,  
2 as defined in section 46b-120 of the general statutes, charged with the  
3 commission of a felony is transferred to the regular criminal docket of  
4 the Superior Court pursuant to section 46b-127 of the general statutes,  
5 as amended by this act, and the child is convicted pursuant to such  
6 transfer, the court shall consider mitigating factors at the time of  
7 sentencing, including, but not limited to, the following:
- 8 (1) The age and maturity of the child at the time of the offense;
  - 9 (2) The child's history of trauma, abuse or neglect;
  - 10 (3) The child's history of mental illness or substance abuse;
  - 11 (4) The intellectual capacity and educational history of the child;
  - 12 (5) The child's family and community environment, including the  
13 child's ability to extricate himself or herself from such environment;
  - 14 (6) The child's level of participation in the offense;
  - 15 (7) The degree of peer or familial influence or pressure on the child;

16 (8) The impetuosity of the child;

17 (9) The ability of the child to appreciate the risks and consequences  
18 of the child's conduct;

19 (10) The ability of the child to navigate the criminal justice system  
20 and participate meaningfully in his or her defense;

21 (11) The capacity for rehabilitation of such child and the  
22 opportunities for rehabilitation of such child in the community and in  
23 an adult prison environment; and

24 (12) Any scientific and psychological evidence showing the  
25 differences between a child's brain development and an adult's brain  
26 development.

27 (b) Notwithstanding the provisions of section 54-91a of the general  
28 statutes, no presentence investigation or report may be waived with  
29 respect to a child convicted of a class A or B felony. With respect to a  
30 child convicted of a class C or D felony or an unclassified felony, the  
31 presentence investigation and report may be waived by the child only  
32 upon approval by the court. Any presentence report prepared with  
33 respect to a child shall address the factors set forth in subdivisions (1)  
34 to (12), inclusive, of subsection (a) of this section.

35 (c) The Court Support Services Division of the Judicial Branch shall  
36 establish reference materials relating to adolescent psychological and  
37 brain development to assist courts in sentencing children pursuant to  
38 this section.

39 Sec. 2. Subsection (c) of section 46b-127 of the general statutes is  
40 repealed and the following is substituted in lieu thereof (*Effective*  
41 *October 1, 2013*):

42 (c) Upon the effectuation of the transfer, such child shall stand trial  
43 and be sentenced, if convicted, as if such child were eighteen years of  
44 age, subject to the requirements of section 1 of this act. Such child shall

45 receive credit against any sentence imposed for time served in a  
46 juvenile facility prior to the effectuation of the transfer. A child who  
47 has been transferred may enter a guilty plea to a lesser offense if the  
48 court finds that such plea is made knowingly and voluntarily. Any  
49 child transferred to the regular criminal docket who pleads guilty to a  
50 lesser offense shall not resume such child's status as a juvenile  
51 regarding such offense. If the action is dismissed or nolleed or if such  
52 child is found not guilty of the charge for which such child was  
53 transferred or of any lesser included offenses, the child shall resume  
54 such child's status as a juvenile until such child attains the age of  
55 eighteen years.

56 Sec. 3. Subsection (f) of section 46b-133c of the general statutes is  
57 repealed and the following is substituted in lieu thereof (*Effective*  
58 *October 1, 2013*):

59 (f) Whenever a proceeding has been designated a serious juvenile  
60 repeat offender prosecution pursuant to subsection (b) of this section  
61 and the child does not waive such child's right to a trial by jury, the  
62 court shall transfer the case from the docket for juvenile matters to the  
63 regular criminal docket of the Superior Court. Upon transfer, such  
64 child shall stand trial and be sentenced, if convicted, as if such child  
65 were eighteen years of age, subject to the requirements of section 1 of  
66 this act, except that no such child shall be placed in a correctional  
67 facility but shall be maintained in a facility for children and youths  
68 until such child attains eighteen years of age or until such child is  
69 sentenced, whichever occurs first. Such child shall receive credit  
70 against any sentence imposed for time served in a juvenile facility  
71 prior to the effectuation of the transfer. A child who has been  
72 transferred may enter a guilty plea to a lesser offense if the court finds  
73 that such plea is made knowingly and voluntarily. Any child  
74 transferred to the regular criminal docket who pleads guilty to a lesser  
75 offense shall not resume such child's status as a juvenile regarding  
76 such offense. If the action is dismissed or nolleed or if such child is  
77 found not guilty of the charge for which such child was transferred,

78 the child shall resume such child's status as a juvenile until such child  
79 attains eighteen years of age.

80 Sec. 4. Subsection (f) of section 46b-133d of the general statutes is  
81 repealed and the following is substituted in lieu thereof (*Effective*  
82 *October 1, 2013*):

83 (f) When a proceeding has been designated a serious sexual  
84 offender prosecution pursuant to subsection (c) of this section and the  
85 child does not waive the right to a trial by jury, the court shall transfer  
86 the case from the docket for juvenile matters to the regular criminal  
87 docket of the Superior Court. Upon transfer, such child shall stand trial  
88 and be sentenced, if convicted, as if such child were eighteen years of  
89 age, subject to the requirements of section 1 of this act, except that no  
90 such child shall be placed in a correctional facility but shall be  
91 maintained in a facility for children and youths until such child attains  
92 eighteen years of age or until such child is sentenced, whichever occurs  
93 first. Such child shall receive credit against any sentence imposed for  
94 time served in a juvenile facility prior to the effectuation of the  
95 transfer. A child who has been transferred may enter a guilty plea to a  
96 lesser offense if the court finds that such plea is made knowingly and  
97 voluntarily. Any child transferred to the regular criminal docket who  
98 pleads guilty to a lesser offense shall not resume such child's status as  
99 a juvenile regarding such offense. If the action is dismissed or nolle or  
100 if such child is found not guilty of the charge for which such child was  
101 transferred, the child shall resume such child's status as a juvenile until  
102 such child attains eighteen years of age.

103 Sec. 5. Section 53a-46a of the general statutes is repealed and the  
104 following is substituted in lieu thereof (*Effective October 1, 2013, and*  
105 *applicable to any person convicted prior to, on or after said date*):

106 (a) A person shall be subjected to the penalty of death for a capital  
107 felony committed prior to April 25, 2012, under the provisions of  
108 section 53a-54b, as amended by this act, in effect prior to April 25,  
109 2012, only if (1) a hearing is held in accordance with the provisions of

110 this section, and (2) such person was eighteen years of age or older at  
111 the time the offense was committed.

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

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

143 of the information to establish the existence of any mitigating or  
144 aggravating factor. The burden of establishing any of the aggravating  
145 factors set forth in subsection (i) of this section shall be on the state.  
146 The burden of establishing any mitigating factor shall be on the  
147 defendant.

148 (d) In determining whether a mitigating factor exists concerning the  
149 defendant's character, background or history, or the nature and  
150 circumstances of the crime, pursuant to subsection (b) of this section,  
151 the jury or, if there is no jury, the court shall first determine whether a  
152 particular factor concerning the defendant's character, background or  
153 history, or the nature and circumstances of the crime, has been  
154 established by the evidence, and shall determine further whether that  
155 factor is mitigating in nature, considering all the facts and  
156 circumstances of the case. Mitigating factors are such as do not  
157 constitute a defense or excuse for the capital felony of which the  
158 defendant has been convicted, but which, in fairness and mercy, may  
159 be considered as tending either to extenuate or reduce the degree of his  
160 culpability or blame for the offense or to otherwise constitute a basis  
161 for a sentence less than death.

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

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

175 (g) If the jury or, if there is no jury, the court finds that (1) any of the  
176 factors set forth in subsection (h) of this section exist, or (2) none of the  
177 aggravating factors set forth in subsection (i) of this section exists, or  
178 (3) one or more of the aggravating factors set forth in subsection (i) of  
179 this section exist and one or more mitigating factors exist, but the one  
180 or more aggravating factors set forth in subsection (i) of this section do  
181 not outweigh the one or more mitigating factors, the court shall impose  
182 a sentence of life imprisonment without the possibility of release.

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

200 (i) The aggravating factors to be considered shall be limited to the  
201 following: (1) The defendant committed the offense during the  
202 commission or attempted commission of, or during the immediate  
203 flight from the commission or attempted commission of, a felony and  
204 the defendant had previously been convicted of the same felony; or (2)  
205 the defendant committed the offense after having been convicted of  
206 two or more state offenses or two or more federal offenses or of one or  
207 more state offenses and one or more federal offenses for each of which

208 a penalty of more than one year imprisonment may be imposed, which  
209 offenses were committed on different occasions and which involved  
210 the infliction of serious bodily injury upon another person; or (3) the  
211 defendant committed the offense and in such commission knowingly  
212 created a grave risk of death to another person in addition to the  
213 victim of the offense; or (4) the defendant committed the offense in an  
214 especially heinous, cruel or depraved manner; or (5) the defendant  
215 procured the commission of the offense by payment, or promise of  
216 payment, of anything of pecuniary value; or (6) the defendant  
217 committed the offense as consideration for the receipt, or in  
218 expectation of the receipt, of anything of pecuniary value; or (7) the  
219 defendant committed the offense with an assault weapon, as defined  
220 in section 53-202a; or (8) the defendant committed the offense set forth  
221 in subdivision (1) of section 53a-54b, as amended by this act, to avoid  
222 arrest for a criminal act or prevent detection of a criminal act or to  
223 hamper or prevent the victim from carrying out any act within the  
224 scope of the victim's official duties or to retaliate against the victim for  
225 the performance of the victim's official duties.

226 Sec. 6. Section 53a-54b of the general statutes is repealed and the  
227 following is substituted in lieu thereof (*Effective October 1, 2013, and*  
228 *applicable to any person convicted prior to, on or after said date*):

229 A person is guilty of murder with special circumstances who is  
230 convicted of any of the following and was eighteen years of age or  
231 older when such person committed the murder: (1) Murder of a  
232 member of the Division of State Police within the Department of  
233 Emergency Services and Public Protection or of any local police  
234 department, a chief inspector or inspector in the Division of Criminal  
235 Justice, a state marshal who is exercising authority granted under any  
236 provision of the general statutes, a judicial marshal in performance of  
237 the duties of a judicial marshal, a constable who performs criminal law  
238 enforcement duties, a special policeman appointed under section 29-  
239 18, a conservation officer or special conservation officer appointed by  
240 the Commissioner of Energy and Environmental Protection under the

241 provisions of section 26-5, an employee of the Department of  
242 Correction or a person providing services on behalf of said department  
243 when such employee or person is acting within the scope of such  
244 employee's or person's employment or duties in a correctional  
245 institution or facility and the actor is confined in such institution or  
246 facility, or any firefighter, while such victim was acting within the  
247 scope of such victim's duties; (2) murder committed by a defendant  
248 who is hired to commit the same for pecuniary gain or murder  
249 committed by one who is hired by the defendant to commit the same  
250 for pecuniary gain; (3) murder committed by one who has previously  
251 been convicted of intentional murder or of murder committed in the  
252 course of commission of a felony; (4) murder committed by one who  
253 was, at the time of commission of the murder, under sentence of life  
254 imprisonment; (5) murder by a kidnapper of a kidnapped person  
255 during the course of the kidnapping or before such person is able to  
256 return or be returned to safety; (6) murder committed in the course of  
257 the commission of sexual assault in the first degree; (7) murder of two  
258 or more persons at the same time or in the course of a single  
259 transaction; or (8) murder of a person under sixteen years of age.

260 Sec. 7. Section 53a-54d of the general statutes is repealed and the  
261 following is substituted in lieu thereof (*Effective October 1, 2013, and*  
262 *applicable to any person convicted prior to, on or after said date*):

263 A person is guilty of murder when, acting either alone or with one  
264 or more persons, he commits arson and, in the course of such arson,  
265 causes the death of a person. Notwithstanding any other provision of  
266 the general statutes, any person convicted of murder under this section  
267 who was eighteen years of age or older at the time of the offense shall  
268 be punished by life imprisonment and shall not be eligible for parole.

269 Sec. 8. Subsection (c) of section 53a-54a of the general statutes is  
270 repealed and the following is substituted in lieu thereof (*Effective*  
271 *October 1, 2013, and applicable to any person convicted prior to, on or after*  
272 *said date*):

273 (c) Murder is punishable as a class A felony in accordance with  
 274 subdivision (2) of section 53a-35a unless it is (1) a capital felony  
 275 committed prior to April 25, 2012, by a person who was eighteen years  
 276 of age or older at the time of the offense, punishable in accordance  
 277 with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder  
 278 with special circumstances committed on or after April 25, 2012, by a  
 279 person who was eighteen years of age or older at the time of the  
 280 offense, punishable as a class A felony in accordance with  
 281 subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder  
 282 under section 53a-54d, as amended by this act, committed by a person  
 283 who was eighteen years of age or older at the time of the offense.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	46b-127(c)
Sec. 3	<i>October 1, 2013</i>	46b-133c(f)
Sec. 4	<i>October 1, 2013</i>	46b-133d(f)
Sec. 5	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-46a
Sec. 6	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54b
Sec. 7	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54d
Sec. 8	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54a(c)

**JUD** Joint Favorable Subst.