



General Assembly

**Amendment**

January Session, 2013

LCO No. 7431

**\*HB0658107431HDO\***

Offered by:

REP. FOX, 146<sup>th</sup> Dist.

REP. LABRIOLA, 131<sup>st</sup> Dist.

To: Subst. House Bill No. 6581

File No. 690

Cal. No. 473

**"AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH."**

1 In line 109, strike "one-half" and substitute "sixty per cent" in lieu  
2 thereof and strike "ten" and substitute "twelve" in lieu thereof

3 Strike line 112 in its entirety and substitute "years." in lieu thereof

4 In line 113, strike "section 18-98e."

5 After the last section, add the following and renumber sections and  
6 internal references accordingly:

7 "Sec. 501. (NEW) (*Effective October 1, 2013*) (a) If the case of a child,  
8 as defined in section 46b-120 of the general statutes, is transferred to  
9 the regular criminal docket of the Superior Court pursuant to section  
10 46b-127 of the general statutes, as amended by this act, and the child is  
11 convicted of a class A, B or C felony pursuant to such transfer, at the

12 time of sentencing, the court shall:

13 (1) Consider, in addition to any other information relevant to  
14 sentencing, any scientific and psychological evidence showing the  
15 differences between a child's brain development and an adult's brain  
16 development, including, but not limited to, evidence showing, as  
17 compared to an adult: (A) A child's lack of maturity and  
18 underdeveloped sense of responsibility, including evidence showing a  
19 child's recklessness, impulsivity and risk-taking tendencies; (B) a  
20 child's vulnerability to negative influences and outside pressures from  
21 peers or family members, or both; (C) a child's increased capacity for  
22 change and rehabilitation; and (D) a child's reduced competency in (i)  
23 appreciating the risks and consequences of his or her own actions, (ii)  
24 negotiating the complexities of the criminal justice system, and (iii)  
25 assisting in his or her own defense; and

26 (2) Consider, if the court proposes to sentence the child to a lengthy  
27 sentence under which it is likely that the child will die while  
28 incarcerated, how the scientific and psychological evidence described  
29 in subdivision (1) of this subsection counsels against such a sentence.

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

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

43 Sec. 502. Subsection (c) of section 46b-127 of the general statutes is

44 repealed and the following is substituted in lieu thereof (*Effective*  
45 *October 1, 2013*):

46 (c) Upon the effectuation of the transfer, such child shall stand trial  
47 and be sentenced, if convicted, as if such child were eighteen years of  
48 age, subject to the requirements of section 501 of this act. Such child  
49 shall receive credit against any sentence imposed for time served in a  
50 juvenile facility prior to the effectuation of the transfer. A child who  
51 has been transferred may enter a guilty plea to a lesser offense if the  
52 court finds that such plea is made knowingly and voluntarily. Any  
53 child transferred to the regular criminal docket who pleads guilty to a  
54 lesser offense shall not resume such child's status as a juvenile  
55 regarding such offense. If the action is dismissed or nolleed or if such  
56 child is found not guilty of the charge for which such child was  
57 transferred or of any lesser included offenses, the child shall resume  
58 such child's status as a juvenile until such child attains the age of  
59 eighteen years.

60 Sec. 503. Subsection (f) of section 46b-133c of the general statutes is  
61 repealed and the following is substituted in lieu thereof (*Effective*  
62 *October 1, 2013*):

63 (f) Whenever a proceeding has been designated a serious juvenile  
64 repeat offender prosecution pursuant to subsection (b) of this section  
65 and the child does not waive such child's right to a trial by jury, the  
66 court shall transfer the case from the docket for juvenile matters to the  
67 regular criminal docket of the Superior Court. Upon transfer, such  
68 child shall stand trial and be sentenced, if convicted, as if such child  
69 were eighteen years of age, subject to the requirements of section 501  
70 of this act, except that no such child shall be placed in a correctional  
71 facility but shall be maintained in a facility for children and youths  
72 until such child attains eighteen years of age or until such child is  
73 sentenced, whichever occurs first. Such child shall receive credit  
74 against any sentence imposed for time served in a juvenile facility  
75 prior to the effectuation of the transfer. A child who has been  
76 transferred may enter a guilty plea to a lesser offense if the court finds  
77 that such plea is made knowingly and voluntarily. Any child

78 transferred to the regular criminal docket who pleads guilty to a lesser  
79 offense shall not resume such child's status as a juvenile regarding  
80 such offense. If the action is dismissed or nolleed or if such child is  
81 found not guilty of the charge for which such child was transferred,  
82 the child shall resume such child's status as a juvenile until such child  
83 attains eighteen years of age.

84 Sec. 504. Subsection (f) of section 46b-133d of the general statutes is  
85 repealed and the following is substituted in lieu thereof (*Effective*  
86 *October 1, 2013*):

87 (f) When a proceeding has been designated a serious sexual  
88 offender prosecution pursuant to subsection (c) of this section and the  
89 child does not waive the right to a trial by jury, the court shall transfer  
90 the case from the docket for juvenile matters to the regular criminal  
91 docket of the Superior Court. Upon transfer, such child shall stand trial  
92 and be sentenced, if convicted, as if such child were eighteen years of  
93 age, subject to the requirements of section 501 of this act, except that no  
94 such child shall be placed in a correctional facility but shall be  
95 maintained in a facility for children and youths until such child attains  
96 eighteen years of age or until such child is sentenced, whichever occurs  
97 first. Such child shall receive credit against any sentence imposed for  
98 time served in a juvenile facility prior to the effectuation of the  
99 transfer. A child who has been transferred may enter a guilty plea to a  
100 lesser offense if the court finds that such plea is made knowingly and  
101 voluntarily. Any child transferred to the regular criminal docket who  
102 pleads guilty to a lesser offense shall not resume such child's status as  
103 a juvenile regarding such offense. If the action is dismissed or nolleed or  
104 if such child is found not guilty of the charge for which such child was  
105 transferred, the child shall resume such child's status as a juvenile until  
106 such child attains eighteen years of age.

107 Sec. 505. Section 53a-46a of the general statutes is repealed and the  
108 following is substituted in lieu thereof (*Effective October 1, 2013, and*  
109 *applicable to any person convicted prior to, on or after said date*):

110 (a) A person shall be subjected to the penalty of death for a capital

111 felony committed prior to April 25, 2012, under the provisions of  
112 section 53a-54b, as amended by this act, in effect prior to April 25,  
113 2012, only if (1) a hearing is held in accordance with the provisions of  
114 this section, and (2) such person was eighteen years of age or older at  
115 the time the offense was committed.

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

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

145 shall be permitted to rebut any information received at the hearing and  
146 shall be given fair opportunity to present argument as to the adequacy  
147 of the information to establish the existence of any mitigating or  
148 aggravating factor. The burden of establishing any of the aggravating  
149 factors set forth in subsection (i) of this section shall be on the state.  
150 The burden of establishing any mitigating factor shall be on the  
151 defendant.

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

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

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

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

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

204 (i) The aggravating factors to be considered shall be limited to the  
205 following: (1) The defendant committed the offense during the  
206 commission or attempted commission of, or during the immediate  
207 flight from the commission or attempted commission of, a felony and  
208 the defendant had previously been convicted of the same felony; or (2)  
209 the defendant committed the offense after having been convicted of  
210 two or more state offenses or two or more federal offenses or of one or  
211 more state offenses and one or more federal offenses for each of which  
212 a penalty of more than one year imprisonment may be imposed, which

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

230 Sec. 506. Section 53a-54b of the general statutes is repealed and the  
231 following is substituted in lieu thereof (*Effective October 1, 2013, and*  
232 *applicable to any person convicted prior to, on or after said date*):

233 A person is guilty of murder with special circumstances who is  
234 convicted of any of the following and was eighteen years of age or  
235 older when such person committed the murder: (1) Murder of a  
236 member of the Division of State Police within the Department of  
237 Emergency Services and Public Protection or of any local police  
238 department, a chief inspector or inspector in the Division of Criminal  
239 Justice, a state marshal who is exercising authority granted under any  
240 provision of the general statutes, a judicial marshal in performance of  
241 the duties of a judicial marshal, a constable who performs criminal law  
242 enforcement duties, a special policeman appointed under section 29-  
243 18, a conservation officer or special conservation officer appointed by  
244 the Commissioner of Energy and Environmental Protection under the  
245 provisions of section 26-5, an employee of the Department of  
246 Correction or a person providing services on behalf of said department

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

264 Sec. 507. Section 53a-54d of the general statutes is repealed and the  
265 following is substituted in lieu thereof (*Effective October 1, 2013, and*  
266 *applicable to any person convicted prior to, on or after said date*):

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

273 Sec. 508. Subsection (c) of section 53a-54a of the general statutes is  
274 repealed and the following is substituted in lieu thereof (*Effective*  
275 *October 1, 2013, and applicable to any person convicted prior to, on or after*  
276 *said date*):

277 (c) Murder is punishable as a class A felony in accordance with  
278 subdivision (2) of section 53a-35a unless it is (1) a capital felony  
279 committed prior to April 25, 2012, by a person who was eighteen years

280 of age or older at the time of the offense, punishable in accordance  
 281 with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder  
 282 with special circumstances committed on or after April 25, 2012, by a  
 283 person who was eighteen years of age or older at the time of the  
 284 offense, punishable as a class A felony in accordance with  
 285 subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder  
 286 under section 53a-54d, as amended by this act, committed by a person  
 287 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:		
Sec. 501	<i>October 1, 2013</i>	New section
Sec. 502	<i>October 1, 2013</i>	46b-127(c)
Sec. 503	<i>October 1, 2013</i>	46b-133c(f)
Sec. 504	<i>October 1, 2013</i>	46b-133d(f)
Sec. 505	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-46a
Sec. 506	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54b
Sec. 507	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54d
Sec. 508	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54a(c)