
OLR Bill Analysis

sHB 5221

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING LENGTHY SENTENCES FOR CRIMES COMMITTED BY A CHILD OR YOUTH AND THE SENTENCING OF A CHILD OR YOUTH CONVICTED OF CERTAIN FELONY OFFENSES.

SUMMARY:

This bill makes a number of changes related to sentencing and parole release of offenders who were under age 18 at the time of committing their crimes. Among other things, it:

1. retroactively eliminates (a) life sentences for capital felony and arson murder, and (b) convictions for murder with special circumstances, for offenders who committed these crimes when they were under age 18;
2. requires criminal courts to consider certain factors when sentencing someone convicted of a class A, B, or C felony committed when he or she was between ages 14 and 18;
3. establishes alternative parole eligibility rules that can make someone eligible for parole sooner if he or she (a) committed a crime when he or she was under age 18 and (b) was sentenced to more than 10 years in prison; and
4. (a) prohibits a child convicted of a class A or B felony from waiving a presentence investigation or report, (b) requires court approval before a child convicted of a class C felony can waive such an investigation or report, and (c) requires such an investigation or report for a child convicted of a class A, B, or C felony to consider the same sentencing factors the bill requires a criminal court to consider. (In practice, defendants can waive these investigations and reports.)

The bill also makes technical and conforming changes (§§ 3-5).

EFFECTIVE DATE: October 1, 2014, and the provisions regarding capital felony, murder with special circumstances, and arson murder apply regardless of when an offender is or was convicted.

§§ 6-9 — SENTENCES FOR OFFENDERS UNDER AGE 18

The bill prohibits sentencing someone for a capital felony if he or she was under age 18 when the crime was committed and overturns prior sentences of this type. By law, capital felony punishes crimes committed before April 25, 2012 with death or life imprisonment without possibility of release. The law prohibits sentencing to death offenders who were under age 18 at the time of the crime.

The bill prohibits convicting someone of murder with special circumstances unless the offender was at least age 18 at the time of the offense. It overturns any prior convictions of this crime for these offenders. By law, this crime is punishable by life imprisonment without the possibility of release.

The bill lowers the penalty for arson murder when the offender is under age 18 from life imprisonment, statutorily defined as 60 years without parole, to 25 to 60 years. It applies this change retroactively to decrease the prison sentence of any offender previously convicted of committing this crime when under age 18.

The bill also makes conforming changes.

§ 2 — CONSIDERATIONS AT SENTENCING

The bill requires a criminal court to consider certain factors when sentencing someone convicted of a class A, B, or C felony committed when he or she was between ages 14 and 18. In addition to other information relevant to sentencing, the bill requires the court to consider scientific and psychological evidence showing the differences between a child's and an adult's brain development, including evidence showing that a child, as compared to an adult:

1. lacks maturity and has an underdeveloped sense of

responsibility, including evidence of recklessness, impulsivity, and risk-taking tendencies;

2. is vulnerable to negative influences and outside pressures from peers, family members, or both;
3. has an increased capacity for change and rehabilitation; and
4. has reduced competency to appreciate the risks and consequences of actions, negotiate the criminal justice system's complexities, and assist in his or her defense.

If the court proposes a lengthy sentence under which it is likely the child will die in prison, the bill requires the court to consider how this evidence counsels against such a sentence.

The bill requires the Judicial Branch's Court Support Services Division to create reference material on adolescent psychology and brain development to help courts sentence children.

§ 1 — PAROLE ELIGIBILITY

Currently, someone is generally eligible for parole after serving (1) 50% of his or her sentence minus any risk reduction credits earned if convicted of a nonviolent crime and (2) 85% of his or her sentence if convicted of a violent crime, home invasion, or 2nd degree burglary. Someone convicted of the following crimes is ineligible for parole: murder, capital felony, murder with special circumstances, felony murder, arson murder, or 1st degree aggravated sexual assault.

The bill establishes alternative parole eligibility rules that can make someone eligible for parole sooner if he or she (1) commits a crime when he or she is under age 18 and (2) is sentenced to more than 10 years in prison. The eligibility rules do not apply to any portion of a sentence imposed for a crime committed when the person was age 18 or older. Existing parole eligibility rules apply to such a sentence.

The rules apply if they make someone eligible for parole sooner than under existing law and they also apply to someone convicted of a

crime who would otherwise be ineligible for parole. Under these rules, someone sentenced to:

1. up to 50 years in prison is eligible for parole after serving the greater of 12 years or 60% of his or her sentence or
2. more than 50 years in prison is eligible for parole after serving 30 years.

The bill applies to offenders incarcerated on and after October 1, 2014 regardless of when the crime was committed or the offender sentenced.

Required Hearing

The bill requires (1) a parole hearing when someone becomes parole-eligible under the bill's provisions and (2) the board to notify, at least 12 months before the hearing, the Chief Public Defender's Office, appropriate state's attorney, Department of Correction's (DOC) Victim Services Unit, Office of Victim Advocate, and Judicial Branch's Office of Victim Services. The Chief Public Defender's Office must provide counsel for an indigent person.

At the hearing, the bill requires the board to permit:

1. the inmate to make a statement;
2. the inmate's counsel and state's attorney to submit reports and documents; and
3. a victim of the person's crime to make a statement, as with other parole hearings.

The board may also request (1) testimony from mental health professionals and relevant witnesses and (2) reports from the DOC or others. The board must use a validated risk and needs assessment tool and risk-based structured decision making and release criteria. (Existing law requires the board's chairwoman to adopt policies on these topics.)

Release Decisions

After the hearing, the bill allows the board to release someone on parole if:

1. the release (a) holds the offender accountable to the community without compromising public safety, (b) reflects the offense's seriousness and makes the sentence proportional to the harm to victims and the community, (c) uses the most appropriate sanctions available, including prison, community punishment, and supervision, (d) could reduce criminal activity, impose just punishment, and provide the offender with meaningful and effective rehabilitation and reintegration, and (e) is fair and promotes respect for the law;
2. it appears from all available information, including DOC reports, that (a) there is a reasonable probability the offender will not violate the law again and (b) the benefits of release to the offender substantially outweigh the benefits from continued confinement; and
3. it appears from all available information, including DOC reports, that the offender is substantially rehabilitated considering his or her character, background, and history, including (a) the person's prison record, age, and circumstances at the time of committing the crime, (b) whether he or she has shown remorse and increased maturity since committing the crime, (c) his or her contributions to others' welfare through service, (d) his or her efforts to overcome substance abuse, addiction, trauma, lack of education, or obstacles he or she faced as a child or youth in prison, (e) the opportunities for rehabilitation in prison, and (f) the overall degree of his or her rehabilitation considering the nature and circumstances of the crime.

The bill requires the board to articulate reasons for its decision on the record. If the board denies parole, the bill allows the board to reassess the person's suitability for a hearing at a later time determined by the board but no sooner than two years after the board's denial.

The bill specifies that the board's decisions under these provisions are not appealable.

BACKGROUND

Related Cases — U.S. Supreme Court

In *Graham v. Florida*, the U.S. Supreme Court ruled that the Eighth Amendment's prohibition against cruel and unusual punishment prohibits states from sentencing defendants under age 18 to life without parole for non-homicide crimes. The Court stated that there must be "some meaningful opportunity" for release based on a defendant's demonstrated maturity and rehabilitation. The Court stated that the Eighth Amendment does not prohibit a juvenile who commits a non-homicide crime from being kept in prison for life but it prohibits making the judgment "at the outset that those offenders never will be fit to re-enter society" (130 S.Ct. 2011 (2010)).

In *Miller v. Alabama*, the U.S. Supreme Court held that the Eighth Amendment prohibits courts from automatically imposing life without parole sentences on offenders who committed homicides while they were juveniles (under age 18). The Court did not categorically bar life without parole sentences for juveniles but stated that a court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison" (132 S.Ct. 2455 (2012)).

Cases in Juvenile Court and Superior Court

By law, juvenile courts have jurisdiction to hear criminal cases of offenders under age 18. Depending on the circumstances, offenders alleged to have committed felonies when they were between ages 14 and 18 may be transferred to the Superior Court criminal docket.

Capital Felony and Murder with Special Circumstances

A person commits a capital felony, before April 25, 2012, or murder with special circumstances, after that date, if he or she murders:

1. certain officers while performing their duties, such as a police officer, state marshal, special conservation officer, or DOC

- employee;
- 2. for pay or hires someone to murder;
- 3. after a previous conviction for intentional murder or murder while a felony was committed;
- 4. while sentenced to life imprisonment;
- 5. 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.

Presentence Investigation Report

The law requires a presentence investigation for anyone convicted of a felony for the first time in Connecticut. The court may request it for any crime or offense other than a capital felony or murder with special circumstances. Probation officers prepare the report, which includes information on the circumstances of the offense; the victim's attitude; and the defendant's criminal record, social history, and present condition.

Felony Classifications

The law classifies felonies as A, B, C, D, or E and establishes penalties for each classification. There are also unclassified felonies that have different penalties. Table 1 displays the penalties for felony classifications.

Table 1: Penalties for Felony Classifications

<i>Felony</i>	<i>Prison Term</i>	<i>Fine</i>
Class A felony of murder with special circumstances	Life without the possibility of release	Up to \$20,000
Class A felony of murder	25 to 60 years	Up to \$20,000

Class A felony of aggravated sexual assault of a minor	25 to 50 years	Up to \$20,000
Class A felony	10 to 25 years	Up to \$20,000
Class B felony of 1st degree manslaughter with a firearm	Five to 40 years	Up to \$15,000
Class B felony	One to 20 years	Up to \$15,000
Class C felony	One to 10 years	Up to \$10,000
Class D felony	Up to 5 years	Up to \$5,000
Class E felony	Up to 3 years	Up to \$3,500

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 35 Nay 7 (03/10/2014)