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2021 Legislative Proposal

(February 5, 2021 - Revised)

AN ACT PROMOTING JUSTICE AND EQUITY IN THE CRIMINAL JUSTICE SYSTEM

SECTION 1. *Section 54-125a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2021):*

(f) (1) Notwithstanding the provisions of subsections (a) to (e), inclusive, of this section, a person convicted of one or more crimes committed while such person was [~~under eighteen~~] nineteen years of age or younger, who is incarcerated on or after October 1, 2015, and who received a definite sentence or total effective sentence of more than ten years for such crime or crimes prior to, on or after October 1, 2015, 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 such person is confined, provided (A) if such person is serving a sentence of fifty years or less, such person shall be eligible for parole after serving sixty per cent of the sentence or twelve years, whichever is greater, or (B) if such person is serving a sentence of more than fifty years, such person shall be eligible for parole after serving thirty years. Nothing in this subsection shall limit a person's eligibility for parole release under the provisions of subsections (a) to (e), inclusive, of this section if such person would be eligible for parole release at an earlier date under any of such provisions.

(2) The board shall apply the parole eligibility rules of this subsection only with respect to the sentence for a crime or crimes committed while a person was [~~under eighteen~~] nineteen years of age or younger. Any portion of a sentence that is based on a crime or crimes committed while a person was eighteen years of age or older shall be subject to the applicable parole eligibility, suitability and release rules set forth in subsections (a) to (e), inclusive, of this section.

(3) Whenever a person becomes eligible for parole release pursuant to this subsection, the board shall hold a hearing to determine such person's suitability for parole release. At least twelve months prior to such hearing, the board shall notify the office of Chief Public Defender, the appropriate state's attorney, the Victim Services Unit within the Department of Correction, the Office of the Victim Advocate and the Office of Victim Services within the Judicial Department of such person's eligibility for parole release pursuant to this subsection. The office of Chief Public Defender shall assign counsel for such person pursuant to section 51-296 if such person is indigent. At any hearing to determine such person's suitability for parole release pursuant to this subsection, the board shall permit (A) such person to make a statement on such person's behalf, (B) counsel for such person and the state's attorney to submit reports and other documents, and (C) any victim of the crime or crimes to make a statement pursuant to section 54-126a. The board may request testimony from mental health professionals or other relevant witnesses, and reports from the Commissioner of Correction or other persons, as the board may require. The board shall use validated risk assessment and needs assessment tools and its risk-based structured decision making and release criteria established pursuant to subsection (d) of section 54-124a in making a determination pursuant to this subsection.

(4) After such hearing, the board may allow such person to go at large on parole with respect to any portion of a sentence that was based on a crime or crimes committed while such person was under eighteen years of age if the board finds that such parole release would be consistent with the factors set forth in subdivisions (1) to (4), inclusive, of subsection (c) of section 54-300 and if it appears, from all available information, including, but not limited to, any reports from the Commissioner of Correction, that (A) there is a reasonable probability that such person will live and remain at liberty without violating the law, (B) 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 (C) such person has demonstrated substantial rehabilitation since the date such crime or crimes were committed considering such person's character, background and history, as demonstrated by factors, including, but not limited to, such person's correctional record, the age and circumstances of such person as of the date of the commission of the crime or crimes, whether such person has demonstrated remorse and increased maturity since the date of the commission of the crime or crimes, such person's contributions to the welfare of other persons through service, such person's efforts to overcome substance abuse, addiction, trauma, lack of education or obstacles that such person may have faced as a child or youth in the adult correctional system, the opportunities for rehabilitation in the adult correctional system and the overall degree of such person's rehabilitation considering the nature and circumstances of the crime or crimes.

(5) After such hearing, the board shall articulate for the record its decision and the reasons for its decision. If the board determines that continued confinement is necessary,

the board may reassess such person's suitability for a new parole hearing at a later date to be determined at the discretion of the board, but not earlier than two years after the date of its decision.

(6) The decision of the board under this subsection shall not be subject to appeal.

SECTION 2. *Section 53a-40 of the general statutes as amended is repealed and the following is substituted in lieu thereof (Effective from passage):*

(f) A persistent offender for possession of a controlled substance is a person who (1) stands convicted of possession of a controlled substance in violation of the provisions of section 21a-279, and (2) has been, at separate times prior to the commission of the present possession of a controlled substance, twice convicted of the crime of possession of a controlled substance during the ten years prior to the commission of the present violation of 21a-279.

(g) A persistent felony offender is a person who (1) stands convicted of a felony other than a class D or E felony, and (2) has been, at separate times ~~prior to the commission of the present felony~~, twice convicted of a felony other than a class D or E felony, for violations committed during the ten years prior to the commission of the present felony.

SECTION 3. (NEW) *(Effective upon passage)* All application and program fees for the following programs shall be waived by the court if the person has been determined indigent and eligible for representation by a public defender who has been appointed pursuant to C.G.S. §51-296, or, the court has determined a person indigent based upon the filing of a financial affidavit by him/her:

(1)C.G.S. §53a-39c – Community Service Labor Program;

(2)C.G.S. §54-56e –Accelerated Rehabilitation;

(3)C.G.S. §54-56g - Alcohol Education Program;

(4)C.G.S. §54-56i – Pretrial Drug Education Program;

(5) C.G.S. §54-56j - Pretrial School Violence Prevention Program;

(6) C.G.S. §46b-38c (g) - Family Violence Education Program;

(7) C.G.S. §17a-694 – Examination for Alcohol or Drug Dependency; and

(8) C.G.S. §17a-696 – Motion for Suspension of Prosecution and Order of Treatment.

SECTION 4. (NEW) *(Effective upon passage)* Community service shall not be required in lieu of payment of application and program fees whenever a person has been determined indigent and eligible for representation by a public defender who has been appointed pursuant to C.G.S. §51-296.

SECTION 5. *Section 51-164r of the general statutes is repealed and the following is substituted in lieu thereof* (*Effective from passage and applicable to conduct committed on or after said date*):

(a) Any person charged with an infraction who fails to pay the fine and any additional fee imposed or send in **[**his**]** a plea of not guilty by the answer date or willfully fails to appear for any scheduled court appearance date which may be required shall be guilty of **[**a class C misdemeanor**]** an unclassified misdemeanor for which the maximum term of imprisonment specified is 10 days.

(b) Any person charged with any violation specified in subsection (b) of section 51-164n who fails to pay the fine and any additional fee imposed or send in **[**his**]** a plea of not guilty by the answer date or willfully fails to appear for any scheduled court appearance date which may be required shall be guilty of **[**a class A misdemeanor**]** an unclassified misdemeanor for which the maximum term of imprisonment specified is ten days.

SECTION 6. *Section 46b-38c of the general statutes is repealed and the following is substituted in lieu thereof* (*Effective October 1, 2021*):

(c) Each such local family violence intervention unit shall: (1) Accept referrals of family violence cases from a judge or prosecutor, (2) prepare written [~~or oral~~] reports on each case for the court by the next court date to be presented at any time during the court session on that date, (3) provide a copy to defense counsel and the prosecutor of any such written reports prepared for or for presentation to the court at any stage of the proceedings from arraignment to disposition which shall not be shared except with the permission of the court and the parties and in a case in which the defendant is pro se, he/she shall have the right to inspect such written reports, (4) provide or arrange for services to victims and offenders, ~~(4)~~ (5) administer contracts to carry out such services, and [~~(5)~~] (6) establish centralized reporting procedures. All information provided to a family relations counselor, family relations counselor trainee or family services supervisor employed by the Judicial Department in a local family violence intervention unit shall be used solely for the purposes of preparation of the report and the protective order forms for each case and recommendation of services and shall otherwise be confidential and retained in the files of such unit and not be subject to subpoena or other court process for use in any other proceeding or for any other purpose, except that a

family relations counselor, family relations counselor trainee or family services supervisor employed by the Judicial Department:

(A) Shall disclose to the court and the prosecuting authority for appropriate action information that the victim has indicated that the defendant holds a permit to carry a pistol or revolver, possesses one or more firearms or possesses ammunition;

(B) Shall disclose to an employee of the Department of Children and Families information that indicates that a defendant poses a danger or threat to a child or a custodial parent of the child;

(C) May disclose to another family relations counselor, family relations counselor trainee or family services supervisor information pursuant to guidelines adopted by the Chief Court Administrator;

(D) May disclose to a bail commissioner or an intake, assessment and referral specialist employed by the Judicial Department information regarding a defendant who is on or is being considered for pretrial release;

(E) May disclose to a law enforcement agency information that indicates that a defendant poses a danger or threat to another person;

(F) May disclose, after disposition of a family violence case, to a probation officer or a juvenile probation officer, for purposes of determining service needs and supervision levels, information regarding a defendant who has been convicted and sentenced to a period of probation in the family violence case;

(G) May disclose, after a conviction in a family violence case, to a probation officer for the purpose of preparing a presentence investigation report, any information regarding the defendant that has been provided to the family relations counselor, family relations counselor trainee or family services supervisor in the case or in any other case that resulted in the conviction of the defendant;

(H) May disclose to any organization under contract with the Judicial Department to provide family violence programs and services, for the purpose of determining program and service needs, information regarding any defendant who is a client of such organization, provided no information that personally identifies the victim may be disclosed to such organization; and

(I) Shall disclose such information as may be necessary to fulfill such counselor's, trainee's or supervisor's duty as a mandated reporter under section 17a-101a to report suspected child abuse or neglect.

SECTION 7. *Section 18-98d of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2021*):

(a)(1) Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after July 1, 1981, and prior to October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (A) each day of presentence confinement shall be counted only once for the purpose of reducing all sentences imposed after such presentence confinement; and (B) the provisions of this section shall only apply to a person for whom the existence of a mittimus, an inability to obtain bail or the denial of bail is the sole reason for such person's presentence confinement, except that if a person is serving a term of imprisonment at the same time such person is in presentence confinement on another charge and the conviction for such imprisonment is reversed on appeal, such person shall be entitled, in any sentence subsequently imposed, to a reduction based on such presentence confinement in accordance with the provisions of this section. In the case of a fine, each day spent in such confinement prior to sentencing shall be credited against the sentence at a per diem rate equal to the average daily cost of incarceration as determined by the Commissioner of Correction.

(a)(2) Any person who is confined to a community correctional center or a correctional institution for an offense committed on or after October 1, 2021, under a mittimus or because such person is unable to obtain bail or is denied bail shall, if subsequently imprisoned, earn a reduction of such person's sentence equal to the number of days which such person spent in such facility from the time such person was placed in presentence confinement to the time such person began serving the term of imprisonment imposed; provided (A) each day of presentence confinement shall be counted equally in reduction of any concurrent sentence imposed for any offense pending at the time such sentence was imposed, (B) each day of presentence confinement shall be counted only once in reduction of any consecutive sentence so imposed; and (C) the provisions of this section shall only apply to a person for whom the existence of a mittimus, an inability to obtain bail or the denial of bail is the sole reason for such person's presentence confinement, except that if a person is serving a term of imprisonment at the same time such person is in presentence confinement on another charge and the conviction for such imprisonment is reversed on appeal, such person shall be entitled, in any sentence subsequently imposed, to a reduction based on such presentence confinement in accordance with the provisions of this section. In the case of a fine, each day spent in such confinement prior to sentencing shall be credited against the sentence at a per diem rate equal to the average daily cost of incarceration as determined by the Commissioner of Correction.

SECTION 8. *Section 21a-257 of the general statutes is repealed and the following is substituted in lieu thereof* (*Effective October 1, 2021*):

(a) A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, pharmacist or other person authorized under the provisions of section 21a-248, and the owner of any animal for which any such drug has been prescribed, sold or dispensed may lawfully possess it only in the container in which it was delivered to the recipient by the person selling or dispensing the same except as may be authorized by regulations adopted hereunder.

(b) Any person who fails to keep narcotics in the original container shall be guilty of a Class D misdemeanor.

(c)The provisions of subsection (a) of this section shall not apply to any person who in good faith has placed a narcotic drug which has been so prescribed in either: (1) a pill box or medication box or organizer stored within their residence; or, (2) a secured and/or locking pill case or organizer as may be authorized by regulations adopted hereunder.

SECTION 9. *Section 54-56i of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2021)***:**

(a) There is established a pretrial drug education and community service program for persons charged with a violation of section 21a-257, 21a-267, 21a-279 or 21a-279a. The pretrial drug education and community service program shall include a fifteen-session drug education program and a substance abuse treatment program of not less than fifteen sessions, and the performance of community service.

SECTION 10. Section 17a-98d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) The board, pursuant to section 17a-584 or 17a-592, may recommend to the court the discharge of the acquittee from custody or the acquittee may apply directly to the court for discharge from custody. The court shall send copies of the recommendation or application to the state's attorney and to counsel for the acquittee. An acquittee may apply for discharge not more than once every six months and no sooner than six months after the initial board hearing held pursuant to section 17a-583.

(b) The recommendation or application shall contain the dates on which any prior recommendations or applications for discharge had been filed with the court, the dates on which decisions thereon were rendered, and a statement of facts, including any change in circumstances since the determination on the most recent recommendation or

application, sufficient to qualify the acquittee as a person who should be discharged. A recommendation by the board shall contain findings and conclusions to support the recommendation.

(c) If reasonable cause exists to believe that the acquittee remains a person with psychiatric disabilities or a person with intellectual disability to the extent that his discharge at the expiration of his maximum term of commitment would constitute a danger to himself or others or is gravely disabled, the state's attorney may make application for commitment of said acquittee to a hospital for psychiatric disabilities pursuant to Title 17a, Chapter 319 i, Part II of the Connecticut General Statutes, at least one hundred thirty-five days prior to such expiration . [~~, may petition the court for an order of continued commitment of the acquittee.~~]

(d) The court shall forward any application for discharge received from the acquittee [~~and any petition for continued commitment of the acquittee~~] to the board. The board shall, within ninety days of its receipt of the application or petition, file a report with the court, and send a copy thereof to the state's attorney and counsel for the acquittee, setting forth its findings and conclusions as to whether the acquittee is a person who should be discharged. The board may hold a hearing or take other action appropriate to assist it in preparing its report.

(e) Within ten days of receipt of a recommendation for discharge filed by the board under subsection (a) of this section or receipt of the board's report filed under subsection (d) of this section, either the state's attorney or counsel for the acquittee may file notice of intent to perform a separate examination of the acquittee. An examination conducted on behalf of the acquittee may be performed by a psychiatrist or psychologist of the acquittee's own choice and shall be performed at the expense of the acquittee unless he is indigent. If the acquittee is indigent, the court shall provide him with the services of a psychiatrist or psychologist to perform the examination at the expense of the state. Any such separate examination report shall be filed with the court within thirty days of the notice of intent to perform the examination. To facilitate examinations of the acquittee, the court may order him placed in the temporary custody of any hospital for psychiatric disabilities or other suitable facility or placed with the Commissioner of Developmental Services.

(f) After receipt of the board's report and any separate examination reports, the court shall promptly commence a hearing on the recommendation or application for discharge [~~or petition for continued commitment~~]. At the hearing, the acquittee shall have the burden of proving by a preponderance of the evidence that the acquittee is a person who should be discharged.

(g) The court shall make a finding as to the mental condition of the acquittee and, considering that its primary concern is the protection of society, make one of the following orders: (1) If the court finds that the acquittee is not a person who should be

discharged, the court shall order the recommendation or application for discharge be dismissed; or (2) if the court finds that the acquittee is a person who should be discharged, the court shall order the acquittee discharged from custody. The court shall send a copy of such finding and order to the board.

SECTION 11. *Section 46b-137 of the general statutes as amended is repealed and the following is substituted in lieu thereof (Effective October 1, 2021):*

(a) Any admission, confession or statement, written or oral, made by a child under the age of [~~**sixteen**~~] eighteen to a police officer or Juvenile Court official shall be inadmissible in any proceeding concerning the [~~**alleged delinquency of the**~~] child making such admission, confession or statement unless made by such child in the presence of the child's parent or parents or guardian and after the parent or parents or guardian and child have been advised (1) of the child's right to retain counsel, or if unable to afford counsel, to have counsel appointed on the child's behalf, (2) of the child's right to refuse to make any statements, and (3) that any statements the child makes may be introduced into evidence against the child.

~~**[(b) Any admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be inadmissible in any proceeding concerning the alleged delinquency of the child making such admission, confession or statement, unless (1) the police or Juvenile Court official has made reasonable efforts to contact a parent or guardian of the child, and (2) such child has been advised that (A) the child has the right to contact a parent or guardian and to have a parent or guardian present during any interview, (B) the child has the right to retain counsel or, if unable to afford counsel, to have counsel appointed on behalf of the child, (C) the child has the right to refuse to make any statement, and (D) any statement the child makes may be introduced into evidence against the child.]**~~

~~**[(c) The admissibility of any admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer or Juvenile Court official, except an admission, confession or statement, written or oral, made by a child sixteen or seventeen years of age to a police officer in connection with a case transferred to the Juvenile Court from the youthful offender docket, regular criminal docket of the Superior Court or any docket for the presentment of defendants in motor vehicle matters, shall be determined by considering the totality of the circumstances at the time of the making of such admission, confession or statement. When determining the admissibility of such admission, confession or statement, the court shall consider (1) the age, experience, education, background and intelligence of the**~~

~~child, (2) the capacity of the child to understand the advice concerning rights and warnings required under subdivision (2) of subsection (b) of this section, the nature of the privilege against self-incrimination under the United States and Connecticut Constitutions, and the consequences of waiving such rights and privilege, (3) the opportunity the child had to speak with a parent, guardian or some other suitable individual prior to or while making such admission, confession or statement, and (4) the circumstances surrounding the making of the admission, confession or statement, including, but not limited to, (A) when and where the admission, confession or statement was made, (B) the reasonableness of proceeding, or the need to proceed, without a parent or guardian present, and (C) the reasonableness of efforts by the police or Juvenile Court official to attempt to contact a parent or guardian.]~~

~~[(d)]~~ (b) Any confession, admission or statement, written or oral, made by the parent or parents or guardian of the child or youth after the filing of a petition alleging such child or youth to be neglected, uncared for or abused shall be inadmissible in any proceeding held upon such petition against the person making such admission or statement unless such person shall have been advised of the person's right to retain counsel, and that if the person is unable to afford counsel, counsel will be appointed to represent the person, that the person has a right to refuse to make any statement and that any statements the person makes may be introduced in evidence against the person, except that any statement made by the mother of any child or youth, upon inquiry by the court and under oath if necessary, as to the identity of any person who might be the father of the child or youth shall not be inadmissible if the mother was not so advised.

SECTION 12. (NEW) *(Effective October 1, 2021)* (a) Law enforcement shall have an affirmative and ongoing duty to disclose its complete investigative file, including any exculpatory information or material, to the prosecutorial official upon receipt of such.

(b) Law enforcement shall have an affirmative and ongoing duty to disclose to the prosecutorial official any exculpatory information or material throughout the pendency of the case and after the disposition of such.

(c) Failure by law enforcement to comply with subsection (a) or (b) of this section shall require that the officer be referred to the Police Officer Standards and Training Council for investigation into whether the individual or individuals in such law enforcement entity should be placed on probation, require recertification or require additional training pertaining to the constitutional rights of accused persons.