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2022 Legislative Proposal
AN ACT PROMOTING JUSTICE AND EQUITY
IN THE CRIMINAL JUSTICE SYSTEM

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(1) *Purpose:* To clarify the retroactive application of section 25 of Public Act 21-102, as amended by section 63 of Public Act 21-104.

(NEW) (Effective upon passage) The provisions of section 25 of Public Act 21-102, as amended by section 63 of Public Act 21-104, shall apply to any application for a sentence modification filed on or after October 1, 2021 that is brought by or on behalf of a person who was convicted prior to, on or after October 1, 2021.

(2) **Purpose:** *This section would amend Public Act 15-84 to expand the eligibility for these hearings to include persons who were 18 - 21 years of age at the time of their conduct. Public Act 15-84 conferred a statutory right to people who were convicted of crimes prior to their 18th birthday to be eligible for parole where the attendant circumstances of youth could be considered at a hearing, commonly referred to as a Miller-Graham hearing, to determine if early release is appropriate for the inmate.*

*Brain science has demonstrated that a child's brain does not fully develop until approximately the age of 25 and that as a result, juveniles do not have the ability to appreciate the severity of their actions and should not be subject to the harshest of penalties. Relying upon the U.S. Supreme Court cases which relied heavily upon the brain science, *Graham v. Florida*, 560 U.S. 48 (2010) and *Miller v Alabama*, 567 U.S. 460 (2012) and *Montgomery v Louisiana*, 577 U.S. ____ (2016), the Connecticut state legislature passed P.A. 15-84.*

Section 54-125a of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2022):

(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~~] twenty-one 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~~] twenty-one 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.

- (3) **Purpose:** *This section requires that parents or the guardians of juveniles ages 16 and 17 be present when the juveniles are speaking with law enforcement for the juvenile's statement(s) to be admissible in any proceeding. This proposal protects children under the age of 18, regardless of the court's jurisdiction, when questioned by adults in authority in the absence of a parent or guardian. It further ensures equal treatment of all juveniles under the age of 18, not just juveniles under the age of 16, and ensures fair and equitable sentencing and treatment of all juveniles adjudicated delinquent and sentenced to commitment or who are prosecuted as adults.*

Section 46b-137 of the general statutes as amended is repealed and the following is substituted in lieu thereof (Effective October 1, 2022):

(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.

- (4) **Purpose:** *This is new and ensures that the defense and prosecution are provided copies of reports and information provided to the court by family relations throughout the criminal process.*

Section 46b-38c of the general statutes is repealed and the following is substituted in lieu thereof (Effective October 1, 2022):

(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 the defendant and his/her 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, (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.