
OLR Bill Analysis

sSB 1113

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO THE SEXUAL OFFENDER REGISTRY, PETITIONS TO TERMINATE PARENTAL RIGHTS OF INCARCERATED PARENTS AND SENTENCE REVIEW AND SENTENCE MODIFICATION.

SUMMARY

This bill enacts the Sentencing Commission's recommendations for the sexual offender registry, parental rights of incarcerated parents, and sentence reviews and modifications.

Regarding the reform of the sexual offender registry (§§ 1-20), the bill:

1. creates a new "law enforcement agency registry," designates the current registry as the "public registry," and establishes new registration requirements for sexual offenders required to register on or after July 1, 2020;
2. establishes a nine-member Sexual Offender Registration Board whose members are appointed to placement panels that, starting July 1, 2020, must use a validated actuarial risk assessment instrument to place sex offenders on the appropriate registry generally based on their risk of reoffending (i.e., lowest-level, moderate-level, and highest-level risk classifications);
3. creates processes that allow certain (a) persons to petition the court for exemption from the registration requirements of the law enforcement agency registry, (b) registrants on the public registry to petition the board to be moved to the law enforcement agency registry, and (c) registrants on the existing sexual offender registry (e.g., those convicted of a sexual offense prior to January 1, 1998) to petition the court for removal from

the registry; and

4. establishes related reporting requirements for the judicial branch, Sexual Offender Registration Board, and Sentencing Commission.

The bill generally maintains the existing sexual offender registration requirements for registrants who, before July 1, 2020, were convicted, or acquitted by reason of mental disease or defect of a (1) criminal offense against a victim who is a minor, (2) nonviolent sexual offense, (3) sexually violent offense, or (4) felony the court found was committed for a sexual purpose.

Regarding petitions to terminate the parental rights of incarcerated parents, the bill generally (1) establishes factors the Department of Children and Families (DCF) may consider when determining whether filing such a petition is in the child's best interest and (2) requires the court to consider whether the parent has maintained a meaningful role in the child's life (§§ 21-24).

The bill also generally makes an inmate ineligible to apply for a sentence review or receive a modification if the sentence was a result of certain types of plea deals (§§ 25 & 26).

Lastly, the bill makes technical and conforming changes, including to the existing sexual offender registration statutes (§§ 7-12 & 14-16).

EFFECTIVE DATE: October 1, 2019, except the (1) provision requiring the Department of Emergency Services and Public Protection (DESPP) to establish the law enforcement agency registry is effective upon passage and (2) conforming changes to the existing sexual offender registry are effective July 1, 2020.

§§ 1 & 2 — SEXUAL OFFENDER REGISTRATION BOARD

The bill establishes a nine-member Sexual Offender Registration Board ("the board") within the Department of Correction, for administrative purposes only. The governor must appoint all board members, including the chair person. Members serve part-time.

Qualifications

The chairperson of the board must be qualified by education, experience, or training in sexual offender management, supervision, or treatment, and may sit in place of any board member during hearings. The chairperson, or in the chairperson's absence, a member the chairperson designates, must be present at all board meetings.

As shown in Table 1, the remaining eight members must have expertise in one of three related areas; the chief court administrator must recommend six of the eight members.

Table 1: Board Members' Expertise

<i>Minimum Number of Members</i>	<i>Expertise</i>	<i>Recommended by Chief Court Administrator</i>
Two	Substantial experience in providing sexual assault victims with victim advocacy services	No
Three	At least five years of experience in the assessment of sexual offenders and meet the criteria for clinical membership in an organization in the state that (1) provides evaluations and treatment to persons with problem sexual behaviors or (2) is dedicated to preventing sexual abuse	Yes
Three	At least five years of experience in sexual offender management and supervision and who have received training in evidence-based supervision of sexual offenders	Yes

Terms and Vacancies

Members' terms are coterminous with that of the governor, or until he chooses a successor, whichever is later. The governor must fill any board vacancy for the unexpired portion of the term. If any member, other than the chairperson, is temporarily unable to perform his or her duties, the governor, at the board's request, may appoint a qualified person to serve as a temporary member during such period.

Executive Director

Under the bill, the board chairperson must appoint an executive

director to oversee the board's administration.

At the discretion of the chairperson, the executive director must:

1. direct and supervise all of the board's administrative affairs;
2. prepare the agency's (i.e., the board's) budget and annual operation plan;
3. assign staff to perform administrative reviews;
4. organize hearing calendars;
5. implement a uniform case filing and processing system; and
6. create programs for staff and board member development, training, and education.

Compensation

The bill requires the administrative services commissioner to determine the compensation for the executive director and all board members. Board members must be compensated on a per diem basis and reimbursed for necessary expenses incurred while performing their duties.

Annual Budget and Report

The bill requires the board's chairperson to:

1. adopt an annual budget and plan of operation,
2. adopt rules as deemed necessary for the board's internal affairs, and
3. submit an annual report to the governor and the General Assembly. (The bill does not establish the requirements of this annual report.)

§§ 1-2 & 20 — PLACEMENT PANELS AND PLACEMENT PROCEDURES

Under the bill, the Sexual Offender Registration Board chairperson

must appoint board members to placement panels. Each panel must have at least three members, including one from each area of expertise described above.

Authority

The bill generally requires placement panels to determine whether people convicted of a sexual offense on or after July 1, 2020:

1. must register on the public registry or the law enforcement agency registry, and for how long the offender must maintain the registration, or
2. may be reclassified from the public registry to the law enforcement agency registry, or from the law enforcement agency registry to the public registry.

(The bill does not establish a timeline for placement panels to conduct the risk assessments and make placement determinations (see COMMENT).)

Actuarial Risk Assessment and Sexual Offender Risk Classification

The bill requires placement panels to assess sexual offenders and determine whether they are lowest-risk, moderate-risk, or highest-risk offenders. Under the bill, a “sexual offender” is a person convicted of a sexual offense; a “sexual offense” means any criminal offense against a victim who is a minor, felony committed for a sexual purpose, nonviolent sexual offense, or sexually violent offense.

Under the bill, this three-tier risk classification is based on an individualized actuarial risk assessment as follows:

1. "lowest-risk offender" means an offender who has been assessed and determined by a placement panel to pose a low risk to reoffend sexually or violently,
2. "moderate-risk offender" means an offender who has been assessed and determined by a placement panel to pose a moderate risk to reoffend sexually or violently, and

3. "highest-risk offender" means an offender who has been assessed and determined by a placement panel to pose a high risk to reoffend sexually or violently.

In making lowest- or highest-risk classifications, the board must use scoring from validated actuarial risk assessment instruments. (It is unclear how a risk assessment instrument is validated.) The panel may override the risk classification based on other factors not otherwise considered as part of such assessment, including the nature and circumstance of the sexual offense, any other aggravating or mitigating factors, and the impact to the victim, if known, and to the community. (For the assessment of moderate risk offenders see below under "Placement on Registry of Moderate Risk Offender.")

The bill establishes a presumption that a sexual offender whose results are (1) low on the actuarial risk assessment must be required to register on the law enforcement agency registry or (2) high on the actuarial risk assessment must be required to register on the public registry.

(The bill does not indicate how placement panels will obtain the necessary offender-specific information when conducting the individualized risk assessment.)

Placement on Registry of Lowest-Risk Offender

Placement panels must direct lowest-risk offenders, based on the actuarial risk assessment, to register on the law enforcement agency registry and to maintain such registration for 10 years from the date of such person's release into the community.

Placement on Registry of Moderate-Risk Offender

Placement panels must direct moderate-risk offenders, based on the actuarial risk assessment, to register on either the (1) public registry and maintain the registration for life or (2) law enforcement agency registry and maintain the registration for 20 years from their date of release into the community.

For each sexual offender whose assessment resulted in a score that

is a moderate risk, the placement panel must determine placement on the appropriate registry by considering the actuarial risk assessment and certain additional factors. Specifically, the panel must further assess the offender's risk using a set of evidence-based criteria and a structured decision-making tool, determined and developed by the board. The decision-making tool must take into account the factors relevant to determining whether a moderate-risk offender would be best placed on the public registry or the law enforcement agency registry. (The bill does not establish a deadline by which the board must develop the decision-making tool.)

In the case of a moderate-risk offender, there may be no presumption of assignment to either the public registry for life or to the law enforcement agency registry for 20 years.

Placement on Registry of Highest-Risk Offender

Placement panels must direct highest-risk offenders, based on the actuarial risk assessment, to register on the public registry and maintain such registration for life.

Placement Appeal and Hearing

Under the bill, a placement panel's decision to place an offender on the law enforcement agency registry may not be appealed. A decision to place an offender on the public registry may be appealed by requesting a hearing before the board. (The bill does not establish a window of time within which such an appeal must be made.)

The bill requires the board to adopt policies and procedures, in accordance with the Uniform Administrative Procedure Act, concerning placement hearings.

Victim Notification

Under the bill the board must notify each known victim of a sexual offender about any determination concerning the offender to be made by the board or a placement panel. The victim may provide input before the board or panel, as appropriate, makes a determination. The board or panel must consider the victim's input in making its decision.

(Presumably the victim will communicate with the board through the Office of Victim Services (OVS), the Department of Correction's (DOC) Victim Services Unit (VSU), or both.)

The bill requires the board to seek to expand the notification provided to victims through the judicial branch's CT SAVIN victim notification service to include sex offender supervision classification and sexual offender registry status. ("CT SAVIN" is Connecticut's Statewide Automated Victim Information and Notification system.) (§ 20)

§§ 1, 3 & 13 — THE LAW ENFORCEMENT AGENCY REGISTRY

The bill establishes a new private sexual offender registry called the "law enforcement agency registry," which DESPP must establish and maintain. It specifies that this registry is not a public document and must be released only to law enforcement agencies, unless otherwise allowed under specific circumstances (e.g., to victims). (The bill appears to have a conflicting provision in § 12 that requires DESPP to make such registrants' information available to the public (see COMMENT).)

Registration Requirements

Registration Period. The bill requires anyone directed by the board or one of its panels, on or after July 1, 2020, to register on the law enforcement agency registry to do so (1) within three days after release into the community or (2) if the person is in the custody of DOC, before release as directed by the commissioner.

The bill requires registrants on the law enforcement agency registry to maintain their registration for 10 years from the date of their release into the community, unless otherwise directed by the:

1. board or a placement panel to maintain the registration for 20 years or
2. court's decision on an application for exemption from registration (see § 5 below), or by the board's decision on an application to be moved from the public registry to the law

enforcement registry (see § 6 below).

Under current law, sexual offender registration is conviction-based rather than risk-based. The categories of offenses that require registration and the registration periods under current law are follows:

1. criminal offense against a victim who is a minor: generally, 10 years for the first conviction and lifetime for a subsequent conviction;
2. nonviolent sexual offense: generally, 10 years for the first conviction and lifetime for a subsequent conviction; and
3. sexually violent offenses: lifetime.

Under current law, the court may also impose registration for 10 years for a felony the court finds was committed for a sexual purpose.

Registry Information. Under the bill, anyone ordered to register on the law enforcement agency registry, whether or not living in the state, must register certain information with the DESPP commissioner. Specifically, they must register their name; identifying factors (e.g., finger prints); criminal history record; residential address; and email and instant message addresses, or other similar Internet communication identifier, if any. The bill requires the commissioner to provide the forms and locations for the registrants to do so.

Guilty Plea or Nolo Contendere. Before accepting a guilty plea or nolo contendere from a person with respect to a sexual offense, the bill requires the court to (1) inform the person that the entry of a guilty finding after the plea acceptance will subject the person to the requirements of the law enforcement agency or public registries and (2) determine that the person fully understands the plea's consequences.

Name or Address Changes. The bill requires registrants to notify DESPP, in writing and without undue delay, of changes to their name, address, email address, instant message address, or any other similar Internet communication identifier.

Under the bill, a registrant whose new address is in another state must also register with an appropriate agency in that state, provided that other state has a registration requirement for such offenders. A registrant must also notify the DESPP commissioner when he or she establishes a new electronic mail address, instant message address, or other similar Internet communication identifier. (Presumably this must be done without undue delay.)

Certain Employees or Students. Under the bill, a registrant who works, carries on a vocation, or is a student at a trade or professional institution or an institution of higher learning in the state, must, without undue delay, notify the DESPP commissioner of such status and of any change in such status.

A person who is employed in another state, carries on a vocation in another state, or is a student in another state must, without undue delay, notify the DESPP commissioner and also register with an appropriate agency in that state, provided that state has a registration requirement for such offenders.

Address Verification and Victim Notification

The bill requires DESPP, in cooperation with the Office of the Chief Court Administrator, DOC, and the Psychiatric Security Review Board, to develop appropriate forms for use by agencies and individuals to report registration information, including address changes. It requires registrants to (1) verify their residential address by completing and returning the forms that are mailed to them and (2) submit to retaking a photographic image, upon the DESPP commissioner's request.

The bill also requires the commissioner to notify a registrant's known victims of the registrant's residential address and any changes to such address.

Violations

As under current law, failure to register, or to update information as required for five business days, is a class D felony, punishable by up to five years in prison, a fine up to \$5,000, or both.

The bill allows a probation or parole officer or a state's attorney to ask the board to have a registrant on the law enforcement agency registry moved to the public registry because of the registrant's failure to meet parole or probation conditions or because of new criminal activity. The board or a placement panel must review each such request and issue a determination as to which registry the registrant must register.

DESPP's Authority and Responsibilities Regarding the Law Enforcement Agency Registry

The bill requires DESPP, by July 1, 2020, to establish and maintain the law enforcement agency registry. Except for victim notification, the registry is not a public document and may only be released to law enforcement agencies.

Enter Information and Notify Law Enforcement. Upon receiving registration information, DESPP must enter it into the registry and notify the local police department or state police troop with jurisdiction where the registrant resides or plans to reside.

If a registrant notifies DESPP that he or she works, carries on a vocation, or is a student at a trade or professional institution or institution of higher learning in the state, the department must notify the law enforcement agency that has jurisdiction over such institution.

Suspend or Reinstate Registration. DESPP may suspend a registrant's registration on the law enforcement agency registry while he or she is incarcerated, under civil commitment, or residing outside the state. During the suspension period, the department is not required to verify the registrant's address and may withdraw the registration information from public access. (Since the bill deems the law enforcement agency registry nonpublic, it is unclear what "withdrawal from public access" means. If it limits victims' access, it may conflict with the provision requiring victim notification.)

Upon a registrant's release from incarceration or civil commitment, or when he or she resumes living in the state, the department must reinstate the registration, redistribute the registration information to

the appropriate local police department or state police troop, and resume address verification. A registrant suspension does not affect the expiration date of the registrant's registration obligation.

Address Verification. Except when registration has been suspended as described above, DESPP must verify registrants' addresses by mailing a nonforwardable verification form to their last reported address. DESPP must verify an address (1) annually for anyone who has to maintain the registration for 10 years or (2) semiannually for anyone who has to maintain the registration for 20 years. DESPP may not verify the address of a registrant whose last reported address was out of state.

The address-verification form must require the registrant to (1) sign a statement that he or she still resides at the last reported address and (2) return the form by mail within 10 days after the date when it was mailed to the registrant. The form must also contain a statement indicating that failing to return it or providing false information is a violation of the law enforcement agency registry requirements.

Notify Law Enforcement of Failure to Verify Address. In the event that a registrant fails to return the address verification form, DESPP must notify the local police department or the state police troop having jurisdiction over the registrant's last reported address. That agency may apply for a warrant to be issued for the registrant's arrest.

Include Registrant's Photograph. The bill requires DESPP to include in the registry the most recent photographic image of each registrant taken by DESPP, DOC, a law enforcement agency, or the judicial branch's Court Support Services Division (CSSD). It also requires DESPP to retake the photographic image at least once every five years.

Update Registry When The Court Orders a Registrant's Name Change. Existing law requires Superior and probate courts to notify DESPP when they issue orders allowing people required to register as sex offenders to change their names. The bill also requires the DESPP commissioner, after receiving such a notice from superior or probate

court and determining that the person is a registrant, to revise the registrant's registration information accordingly.

Develop Notification Protocol. The bill requires the DESPP commissioner to develop a protocol for notifying other state agencies, the Judicial Department, and local police departments whenever (1) a registrant changes his or her name and so notifies the commissioner or (2) the commissioner determines that a registrant has changed his or her name (i.e., through the Superior Court or probate court).

§§ 1, 4 & 14 — THE PUBLIC REGISTRY

The bill designates the current sexual offender registry as the public registry and establishes new requirements for offenders who are required to register on or after July 1, 2020. Many of the bill's registration requirements for the public registry are substantially similar to the registration requirements under (1) current law, for the current sexual offender registry and (2) the bill, for the law enforcement agency registry. (The bill specifically applies a narrow definition to the term "public registry" (§§ 1 & 4) yet applies the term broadly to the current registry in the conforming provisions (e.g., § 14).)

New Registration Requirements

Under the bill, sexual offenders who are required to register on or after July 1, 2020 are placed on the public registry based on the Sexual Offender Registration Board's individualized risk assessment (i.e., the placement is risk-based). Under current law, placement on the registry is based on the category of crime for which a sex offender has been convicted (i.e., the placement is conviction-based).

The bill maintains current law's registration requirements for registrants required to register before July 1, 2020. For registrants required to register on the public registry on or after July 1, 2020, the bill maintains many of the current requirements but establishes a new registration period. It also establishes (1) an opportunity for registrants on the public registry to be transferred to the law enforcement registry and (2) related notification requirements.

Registration Period. The bill requires a registrant on the public registry to maintain registration for life or as otherwise directed by the board after considering an application from the registrant to be moved to the law enforcement agency registry.

Under current law, the required registration period is based on the offense as follows:

1. generally 10 years for the first conviction, and lifetime for a subsequent conviction of a criminal offense against a victim who is a minor;
2. generally 10 years for the first conviction, and lifetime for a subsequent conviction of a nonviolent sexual offense; and
3. lifetime for sexually violent offenses.

Under current law, the court may also impose registration for 10 years for a felony the court finds was committed for a sexual purpose.

Petition to Move to the Law Enforcement Agency Registry. The bill allows a registrant, 10 years after being placed on the public registry, to petition the board to be moved to the law enforcement agency registry for 20 years. Any offender petitioning for a change in registration requirements must be in compliance with the registry at the time of the request. The bill also allows a probation or parole officer or a state's attorney to make a recommendation at the time of the petition regarding an offender who is or has been under probation or parole supervision. The board must review each petition and any evidence supporting or opposing it and issue its determination.

Notice to OVS, VSU, and Victims of Application. The bill requires anyone who files an application with the board to be moved to the law enforcement agency registry to notify OVS and VSU. As is required under existing law when a sexual offender seeks release, the bill requires OVS, VSU, or both units to notify any victim who has requested notification that the registrant has filed an application to transfer to the law enforcement agency register. The bill requires the

board, before granting or denying the application, to consider any information or statement provided by a victim.

Requirements Similar to Law Enforcement Agency Registry Requirements

Except as described above, the registration requirements for registrants placed on the public register under the bill are substantially similar to registration requirements under current law and under the bill for the law enforcement agency registry. As is the case with the law enforcement agency registry and current law, generally, registrants placed on the public registry by a placement panel must register within three days of release or as directed by the DOC commissioner and must be:

1. required to register their name, identifying factors (including a photograph and fingerprints), criminal history record, residential address, and email and instant message addresses and other similar Internet communication identifiers;
2. required to report changes to their information (such as name or address changes);
3. subject to a class D felony for failure to comply with the registration requirements;
4. informed by the court of the consequences of certain plea deals;
5. subject to address verification and the retaking of photographs; and
6. subject to the notification provisions that apply to victims and certain students and employees.

DESPP's In-Person Verification of All Registrants on the Public Registry

The bill requires that the public registry cover current registrants as well as those placed on the public registry on or after July 1, 2020. It requires DESPP to annually verify, in person, all registrants' reported addresses. DESPP or a municipal police department may conduct the

in-person verification.

By law, unchanged by the bill, in the event that a registrant on the public registry fails to return the address verification form, DESPP must notify the local police department or the state police troop having jurisdiction over the registrant's last reported address. Current law requires the agency to apply for a warrant to be issued for the registrant's arrest. The bill allows, rather than requires, the agency to do so.

§ 5 — EXEMPTION FROM THE LAW ENFORCEMENT AGENCY REGISTRY REQUIREMENTS

The bill establishes a process by which certain registrants, on or after July 1, 2020, may apply to the Superior Court for a registration exemption.

Eligibility Criteria

The bill allows the lowest-risk offenders subject to a 10-year registration period to apply to the court for an exemption from the registration requirements of the law enforcement agency registry. It allows the court to grant the exemption if it finds that the person has been compliant with the registration requirements for at least five years.

The bill allows moderate-risk offenders subject to a 20-year registration period to apply to the court for an exemption from the registration requirements of the law enforcement agency registry. It allows the court to grant the exemption if it finds that the person has been compliant with the registration requirements for at least 10 years.

The bill prohibits certain registrants from applying for a registration exemption. Specifically, a sex offender may not apply if he or she has been convicted of a:

1. felony offense during the five-year period before applying,
2. class A misdemeanor offense during the three-year period before applying, or

3. misdemeanor offense during the one-year period before applying.

Court Procedures

Before the hearing on the application for exemption from registration, the court must notify the Office of the Chief Public Defender, the appropriate state's attorney, DOC's VSU, the victim advocate, and OVS of the registrant's hearing date. The Office of the Chief Public Defender must assign counsel for such registrant if he or she is indigent.

The court must order a risk assessment of the registrant, unless the requirement is waived for good cause. The court may refer such application to the Sexual Offender Registration Board for a risk assessment and recommendation concerning such person's application for exemption.

As part of the hearing, the court must permit:

1. the registrant to make a statement on his or her behalf,
2. the registrant's attorney and the state's attorney to present evidence, and
3. any victim of the crime or crimes to make a statement or to submit a written statement which the court must consider before granting or denying the application.

Removal from Registry

The court may order an applicant's removal from the law enforcement registry if it believes that removal (1) will assist the applicant in reintegration into the community and (2) is consistent with public safety.

The court must consider the nature of the offense and the applicant's conduct since the commission of the sexual offense causing him or her to register, including:

1. the applicant's history of sex offender or behavioral health

treatment;

2. the results of any relevant actuarial risk assessments and evaluations by behavioral health professionals;
3. the applicant's employment and education history;
4. the applicant's compliance with (a) the terms of parole and probation and (b) registry requirements; and
5. any other factors bearing on the applicant's reintegration into the community.

Under the bill, the applicant must have the burden of proof by a preponderance of the evidence.

If the court orders an offender removed from the registry, the court must notify DESPP; CSSD, if applicable; OVS; the Parole and Community Services Division, if applicable; VSU; and the local police department or the state police troop with jurisdiction over the applicant's residence address.

Opportunity to Appeal or Reapply

Under the bill, the applicant and the state's attorney must have the right to appeal the court's decision, which must be subject to review for abuse of discretion. If the court denies the application, the applicant may reapply ten years after such denial. An applicant may request and the court may consider an earlier period for reapplication for good cause shown.

Current Registrants: Application for Removal

The bill allows certain registrants on the current sexual offender registry to apply to the court for exemption from current law's registration requirement. The bill specifies that an application for removal from the current registry is subject to its application requirements for exemption from the law enforcement agency registry.

Generally, this authorization applies to sexual offenders convicted (1) prior to January 1, 1998, of a sexual offense (i.e., before the current

registry was established) or (2) on or after January 1, 1998, of a sexual offense and required to maintain a registration because the registration period increased due to changes in the law following conviction.

§ 6 — TRANSFER FROM THE PUBLIC REGISTRY TO THE LAW ENFORCEMENT REGISTRY

The bill establishes a process by which, beginning July 1, 2020, certain registrants required to register under current law may petition the Sexual Offender Registration Board for transfer from the public registry to the law enforcement agency registry, as outlined below. However, it prohibits any such offender who is moved to the law enforcement agency registry from applying from exemption from those registration requirements. The bill does not establish standards for the board's review of these petitions (see COMMENT).

Eligibility Criteria

Under the bill, sexual offenders required to register on the public registry may petition the board to be moved to the law enforcement registry if they:

1. have been compliant with the registration requirements for a period of at least (a) five years, in the case of a person required to maintain such registration for 10 years, or (b) 10 years, in the case of a person required to maintain such registration for life; and
2. are not eligible to petition the court to be moved from the law enforcement agency registry.

The bill specifies that the petition is subject to the same criteria as an application for exemption from the law enforcement agency registry requirements. If the board grants the petition, the petitioner must register on the law enforcement agency registry and maintain that registration for the same period of time that remained on the public registry.

§§ 17-19 — REPORTING REQUIREMENTS

Judicial Branch's Annual Report

The bill requires the Judicial Branch, in collaboration with DESPP, to report annually to the Judiciary Committee on certain sexual offense data. (The bill does not establish a deadline for this report.)

The report must provide the following:

1. number of sexual assault cases presented in the Superior Court; details on any initial charge, plea, conviction, and sentence; and information indicating whether the defendant was a registrant at the time of the offense, and
2. registry data pertaining to any such sexual offense conviction and registration terms.

Sexual Offender Registration Board's Preparedness Report

The bill requires the board to report to the Judiciary Committee on how prepared it is to begin by July 1, 2020, the classifications, processing, and other registry-related requirements of the bill. The board must report by February 1, 2020.

Sentencing Commission's Implementation Report

It also requires the Sentencing Commission, by January 1, 2021, to report to the Judiciary Committee on the implementation of the bill's sexual offender registry-related requirements. The commission may consult with the Connecticut Alliance to End Sexual Violence or any similar entity and DESPP in developing this report.

§§ 21-24 — PARENTAL RIGHTS OF INCARCERATED PARENTS

Parental Rights of a Child in DCF's Custody for 15 Months

Best Interest of the Child. By law, with some exceptions, DCF must petition the court to terminate parental rights under certain conditions (e.g., when a child has been in the department's custody for at least 15 consecutive months, or at least 15 months during the 22 months, immediately preceding the filing of such petition). Under existing law, the commissioner is not required to file such a petition if there is compelling reason to believe that doing so is not in the child's best interest.

The bill establishes factors DCF may consider in determining whether there is a compelling reason to believe that a petition to terminate the parental rights of an incarcerated parent is not in the best interests of the child. Under the bill such factors may include:

1. the parent's maintenance of a meaningful role in the child's life (see below);
2. the parent's incarceration is the primary reason why the child has been in foster care for at least 15 consecutive months, or at least 15 months during the 22 months, immediately preceding the filing of the petition; and
3. other than such incarceration, there is no other applicable ground for filing the petition.

Meaningful Role in the Child's Life. Under the bill, the commissioner's assessment of whether an incarcerated parent maintains a meaningful role in the child's life may include consideration of the following factors:

1. the parent's expressions or acts of concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child;
2. the parent's efforts to (a) communicate and work with the commissioner or other individuals for the purpose of complying with the department's written case plan for the care, treatment, and permanent placement of the child and (b) repair, maintain, or build the relationship between the parent and child;
3. a positive response by the parent to the commissioner's reasonable efforts;
4. information provided by individuals or agencies in a reasonable position to assist the commissioner in making such an assessment, including the parent's attorney, DOC personnel, mental health care providers, or other individuals providing the parent services;

5. limitations on the parent's ability to access family support programs, therapeutic services, child visitation opportunities, and telephone and mail services;
6. the parent's (a) inability to participate in case plan review meetings and (b) difficulty participating meaningfully in court proceedings concerning such child; and
7. whether the continued involvement of the parent in the child's life is in the child's best interests.

Parental Rights of a Neglected or Abused Child

Ex Parte Order (Temporary Placement). By law, when an allegation of child abuse or neglect has been made and there is reasonable cause to believe the allegations, the court may issue an ex parte order (i.e., prior to a preliminary hearing) vesting the child's or youth's temporary care and custody in a relative of the child, some other person, or a suitable agency. The law requires DCF to investigate any such person and to give primary consideration to placing the child or youth in the town where he or she lives.

Under existing law, if DCF places the child or youth outside of the town where he or she lives, the department must file a written explanation with the court of the reasons for doing so. The bill requires DCF to include in its filing the use of any services available to and reasonably accessible by an incarcerated parent or guardian at the facility where such parent or guardian is confined.

Interim Orders. By law, the court holds a preliminary hearing so that it can, among other things, make any interim orders that the court determines are in the child's or youth's best interests, including visitation orders. The court, after such a hearing, must order specific steps that the commissioner and the parent or guardian must take for the parent or guardian to regain or retain custody of the child or youth. The bill specifies that this must include the use of any services available to and reasonably accessible by the child's or youth's incarcerated parent or guardian at the facility where the parent or

guardian is confined.

Permanency Plan. By law, within a specified time period after the placement of a child or youth in the DCF commissioner's care and custody, depending on the child's age, the commissioner must file a motion for review of a permanency plan by the court.

Under existing law, the court must approve the permanency plan if, among other things, it is in the child's or youth's best interest and takes into consideration his or her need for permanency. Under the bill, when an incarcerated parent or guardian has maintained a meaningful role in the child's or youth's life as evaluated under the conditions described earlier, and it is in the best interests of the child or youth, the court must consider a permanency plan that allows such parent or guardian to maintain a relationship with the child or youth, including transfer of guardianship or permanent legal guardianship.

Permanency Hearing. Under current law, at a permanency hearing, among other things, the court must determine the services to be provided to the parent if the court approves a permanency plan of reunification and the timetable for such services. Under the bill, such services must include any services available to and reasonably accessible by the child's or youth's incarcerated parent at the facility where such parent is confined, regardless of whether the court approves a permanency plan of reunification.

Under the bill, if a parent is incarcerated, the court must consider (1) the services available to and reasonably accessible by the parent at the facility where the parent is confined and (2) visitation provided for the parent and child or youth, unless such visitation is not in the best interests of the child or youth.

Court's Written Findings. In cases of neglect and abuse, existing law authorizes the DCF commissioner, an attorney who represented the child in a pending or prior proceeding, an attorney appointed by the Superior Court on its own motion, or an attorney retained by the child upon attaining age 14, to petition the court for termination of parental rights. In deciding whether to terminate parental rights in

abuse and neglect cases, the court must consider several factors and make written findings, regarding things such as (1) the feelings or emotional ties of the child with his or her parents or guardian, (2) the child's age, and (3) the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of someone else, or by the parent's economic circumstances.

In a case where the parent is incarcerated, the bill requires the court to also consider and make written findings regarding:

1. whether the parent has maintained a meaningful role in the child's life as evaluated under the conditions outlined above and
2. any delays or barriers that the parent may have experienced in keeping DCF apprised of his or her location and in accessing visitation or other contact with the child.

Treatment and Permanent Placement Plan

Plan of Treatment Services. By law, the DCF commissioner must prepare and maintain a written case plan for the treatment and placement of each child in her custody. Under existing law, such a plan must include a diagnosis of the child's problems, proposed treatment services and temporary placement, and a goal of permanent placement. Under the bill, if the parent is incarcerated, the proposed plan of treatment services must (1) include the use of services available to and reasonably accessible by the parent at the facility where the parent is confined and (2) provide for visitation with the child or youth, unless visitation is not in the child's or youth's best interests.

Plan Review. The law requires the commissioner to, among other things, (1) review the case plan every six months to determine its appropriateness and (2) inform the child's attorney or guardian ad litem, if any, of the review meeting at least 21 days prior to the meeting. Under the bill, if a parent is unable to participate in the review meeting because he or she is incarcerated at the time of the review, he or she may participate through telephone or video services.

(The bill does not establish how the incarcerated parent will be informed of the meeting and by whom.)

§§ 25 & 26 — SENTENCE REVIEW AND MODIFICATION

Sentence Review

By law, with some exceptions, a person may apply for sentence review if he or she (1) was sentenced to a term of imprisonment for which the total sentence of all counts of an information, amounts to confinement for three years or more or (2) received a suspended sentence with a maximum confinement of three years or more. An application for sentence review may be filed within 30 days after the date such sentence was imposed or such suspension was revoked, as applicable. The application must be filed with the clerk of the court for the judicial district in which the judgment was rendered, for sentence review by the review division.

Under current law, a person is ineligible for sentence review in a case in which:

1. a different sentence could not have been imposed,
2. the sentence or commitment imposed resulted from the court's acceptance of a plea agreement, or
3. the sentence imposed was for a lesser term than was proposed in a plea agreement.

The bill expands the cases under which a person is ineligible for sentence review to include cases in which the plea agreement provides that the term of imprisonment will not exceed an agreed upon maximum term but provides that the person sentenced may request a term of imprisonment lower than the agreed upon maximum term (e.g., by arguing to the trial court).

In doing so, the bill overturns the Connecticut Supreme Court's decision in *State of Connecticut v. Byron Anderson* (see BACKGROUND).

Sentence Modification

Court on its Own Motion. The bill expands the types of sentences the court may modify on its own motion. Under current law, at any time during a period of a “definite sentence” of three years or less, the court on its own motion may, after a hearing and for good cause shown, reduce the sentence or discharge the defendant with or without conditions. (The bill does not define “definite sentence.” Presumably, it is the executed period of incarceration plus any period of suspended incarceration.) The bill instead allows the court to do so during the period of a sentence in which the defendant has been sentenced to an executed period of incarceration (i.e., actual incarceration) of three years or less.

Defendant and State’s Attorney Seek Review. The bill correspondingly changes the threshold for sentences that require the state’s attorney to agree to sentence modification. Under current law, at any time during the period of a definite sentence of more than three years, upon agreement of the defendant and the state's attorney to seek sentence review, the sentencing court or judge may, after a hearing and for good cause shown, reduce the sentence or discharge the defendant with or without conditions. The bill instead allows the court to do so during the period of a sentence in which the defendant has been sentenced to an executed period of incarceration of more than three years.

BACKGROUND

Related Case

In *State of Connecticut v. Byron Anderson*, the Connecticut Supreme Court held that a defendant who agreed to plead guilty in consideration of the state’s promise to recommend a sentence below the statutory maximum, while reserving the right to argue for lesser sentence, did not enter into “plea agreement” that would preclude judicial review of the sentence (*State of Connecticut v. Byron Anderson*, 220 Conn. 400 (1991)).

COMMENTS

Timeline for Risk Assessment and Registry Placement

In § 2, the bill requires the placement panels to complete offenders' risk assessments and placement decisions. However, it does not establish a timeline for the panels to do so. Also, the bill requires registrants to register within a specified time period after release, subjecting violators to a class D felony. This creates potential time gaps between placement decisions and actual registration. The bill does not address how any such occurrence should be resolved.

Non-Public Registry

Under §§ 3 & 13, the bill deems the law enforcement agency registry a non-public registry. However, it contains a conflicting provision in § 12 where the bill requires the court to provide information on registrants from the law enforcement registry to DESPP to be made available to the public through the internet. Additionally, in practice, court orders requiring a person to register as sexual offenders are public records.

Reviews of Transfer Petitions or Recommendations

Under § 6, the bill does not establish (1) a standard for the board's review of transfer petitions or recommendations or (2) whether the risk assessment tool must be used for such reclassifications. It also does not specify what factors the board or panel must consider, whether written findings must be made, or whether the board's or the panel's decision must be unanimous or by majority or is subject to review.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 26 Nay 12 (04/08/2019)