

Transfer C.G.S. 46b-127

# Conn. Gen. Stat. Sec. 46b-127

- Pre 1995
  - Age 14 and up
  - Almost exclusively used for murder cases
- 1995 Major changes
  - Automatic -Class A and B felonies
    - No defense argument allowed
  - Discretionary -All other felonies
    - Completely at discretion of prosecutor, ex parte rulings

# Conn. Gen. Stat. Sec. 46b-127

- State v. Fernandes/State v. Bond B.
  - CT Supreme Court
    - Protected liberty interest in juvenile/YO status
    - Must have a hearing before a judge
    - By legislative history, hearing in adult court
- P.A. 12-1
  - Hearing in juvenile court
  - Set standard of review

# Conn. Gen. Stat. Sec. 46b-127

- P.A. 15-183 ( effective 10/1/15)
  - Raised transfer age to 15
  - Some B felonies moved to discretionary section

# Automatic Transfer C.G.S. 46b-127(a)

- A and Some B Felonies
- Age 15 or above
- Counsel appointed in SCJM, no argument allowed
  - What if age in questions?
  - What if PC in questions? (some courts won't release any reports to SCJM defense lawyer)

# Automatic Transfer C.G.S. 46b-127(a)

- State v. Angel C., 245 Conn. 93 (1998)
  - Mandatory transfer law not unconstitutional grant of prosecutorial discretion

# 46b-127(a)

## Automatic Transfer

- Class A Felonies (Murder, Sex 1, Arson)
- Class B Felonies except:
  - section 53a–55, Manslaughter 1
  - 53a–59b, Assault on Correctional Official
  - 53a–71 Sexual Assault 2
  - 53a–94 Kidnapping 2
  - subdivision (2) of subsection (a) of section 53a–101 Burglary 1
  - 53a–112, Arson 2
  - 53a–122 Larceny 1
  - 53a–129b Identity Theft
  - subdivision (1), (3) or (4) of subsection (a) of section 53a–134, Robbery 1 except if actually armed
  - section 53a–196c, Child Pornography
  - 53a–196d Possession of Child Porn
  - 53a–252
  - subsection (a) of section 53a–301 Computer Crime for Terrorism

# Discretionary

- Some B, all C, D and unclassified felonies
- Full evidentiary hearing
  - probable cause for act charged
  - the best interests of the child and the public will not be served by maintaining the case in the superior court for juvenile



# Discretionary Hearings

- Cross exam of state's witnesses
- Right to present own witnesses
- Right to call experts
- Lawyers should use the factors in the statute and the criteria set out in Miller v Alabama

# Evidence

- (i) any prior criminal or juvenile offenses committed by the child;
- (ii) the seriousness of such offenses;
- (iii) any evidence that the child has intellectual disability or mental illness;
- (iv) the availability of services in the docket for juvenile matters that can serve the child's needs.

# What findings must be made?

- (A) such offense was committed after such child attained the age of fifteen years;
- B) there is probable cause to believe the child has committed the act for which the child is charged;
- C) the best interests of the child and the public will not be served by maintaining the case in the superior court for juvenile matters.

Can argue that this is the framework that should be used when sentencing kids tried as adults. Miller v. Alabama

# Other areas where developmental framework can be used

- Waiver of rights
  - Counsel
  - Self Incrimination
  - Consent to search
- Accountability
  - Probation violation

# Transfer Back Provisions MV

- ❑ C.G.S. §46b-137(d) allows court to transfer Title 14 motor vehicle charges to juvenile court.
  - only applies to 16 year olds
  - does not affect transfers of other felonies under §46b-137 (a) and (b)
- ❑ The court will consider the facts and circumstances of the case and prior history of the youth and will determine:
  1. if the programs and services available in the juvenile court would more appropriately address the needs of the youth; and
  2. the youth and the community would be better served by treating the youth as delinquent.