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judiciary’s power to impose specific types of sentences is therefore defined by the legislature.” [Citations omitted; internal quotation marks omitted.], cert. denied, 235 Conn. 939, 668 A.2d 376 (1995); see also *McLaughlin v. Bronson*, 206 Conn. 267, 271, 537 A.2d 1004 (1988) (“Ordinarily, the pardoning power resides in the executive. . . . In Connecticut, the pardoning power is vested in the legislature” [Citations omitted.]). It is the legislature that defines the parameters of a sentencing scheme, including whether it permits parole eligibility.¹⁷ See *Mead v. Commissioner of Correction*, 282 Conn. 317, 324, 920 A.2d 301 (2007) (“eligibility for parole [is] a part of the state’s sentencing scheme”). That is what the legislature did in enacting P.A. 15-84, § 1. The legislature did not change the length of the defendant’s sentence, but rather provided him with the possibility of parole.

Second, the power to impose or modify a judgment of conviction is not synonymous with the power of sentencing. A judgment of conviction is defined as “[t]he written record of a criminal judgment, consisting of the plea, the verdict or findings, the adjudication, and the sentence.” Black’s Law Dictionary (10th Ed. 2014) p. 972. “Sentencing,” however, is defined as “[t]he

¹⁷ As a matter of fact, the reason that the defendant’s original sentence violated *Miller* was because General Statutes § 54-125a (b) (1) denied the defendant the possibility of parole. See General Statutes (Rev. to 2001) § 54-125a (b) (1) (“[n]o person convicted of any of the following offenses, which was committed on or after July 1, 1981, shall be eligible for parole: . . . murder, as provided in section 53a-54a”).

Although the trial court had discretion to determine the length of the defendant’s sentence, it did not have discretion to grant the defendant the possibility of parole. Thus, by providing the possibility of parole through the enactment of P.A. 15-84, the legislature did not usurp the trial court’s exercise of discretion to determine whether the defendant was parole eligible but, rather, modified the sentencing scheme responsible for the defendant’s unconstitutional sentence.

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judicial determination of the penalty for a crime.” *Id.*, p. 1570; see *id.*, p. 1569 (defining “sentence” as “the punishment imposed on a criminal wrongdoer”). Public Act 15-84, § 1, does not alter the defendant’s judgment of conviction. He remains convicted of murder, conspiracy to commit murder, and assault in the first degree. In enacting P.A. 15-84, § 1, the legislature retroactively modified the sentencing scheme (although not any particular sentence), which is included in its power to prescribe and limit punishments for crimes.¹⁸

The defendant counters that, although the legislature has the power to create the scheme of punishment, it cannot do so retroactively without violating the separation of powers doctrine because the change effectively modifies his sentence. But the fact that the legislature, in exercising its power to create and modify the state’s sentencing scheme, has affected a particular defendant’s sentence does not mean that it has impermissibly encroached upon the judiciary’s powers to impose or modify a sentence. It is well established that judicial and legislative powers necessarily overlap in many areas, including sentencing. See, e.g., *State v. Campbell*, *supra*, 224 Conn. 178 (“[a]lthough the judiciary unquestionably has power over criminal sentencing . . . the judiciary does not have exclusive authority in that area”).

¹⁸ Our analysis accords with other jurisdictions that have held that the legislature does not intrude on the realm of the judiciary by retroactively changing a sentencing scheme to create more lenient penalty provisions. See *State ex rel. Esteen v. State*, 239 So. 3d 233, 237 (La. 2018) (“[T]he legislature exercised its exclusive authority to determine the length of punishment for crimes classified as felonies, and further declared those more lenient penalties shall be applied retroactively to those already sentenced. Nothing in the constitution prohibits the legislature from enacting more lenient penalty provisions and declaring they be applied retroactively in the interest of fairness in sentencing.”); see also *State v. Vera*, 235 Ariz. 571, 576–77, 334 P.3d 754 (App. 2014) (legislature did not violate separation of powers by providing defendant with possibility of parole after sentencing), review denied, Arizona Supreme Court (March 17, 2015), cert. denied, U.S. , 136 S. Ct. 121, 193 L. Ed. 2d 95 (2015).

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The fact that certain governmental powers overlap is not only necessary to ensure the smooth and effective operation of government; see *In re Application of Clark*, supra, 65 Conn. 38 (rigid application of separation of powers doctrine would “result in the paralysis of government”); but also is a product of the historical evolution of Connecticut’s governmental system, which established a “tradition of harmony” among the separate branches of government that the separate branches of the federal governmental system did not have. R. Kay, “The Rule-Making Authority and Separation of Powers in Connecticut,” 8 Conn. L. Rev. 1, 7 (1975). As it relates to the Judicial Branch, this tradition might be explained in part by the fact that, before the constitution of 1818, Connecticut did not have a separate judicial system. Rather, the executive and legislative branches shared judicial power, with the governor sitting on the five judge panel of the Superior Court and the General Assembly having the power of final review over decisions. W. Horton, *The History of the Connecticut Supreme Court* (West 2008) pp. 9–12.

Nor was a strict separation of powers enshrined in the state constitution. Although delegates adopted the provision currently contained in article second, they rejected another provision that would have barred one branch of government from exercising the powers of another.¹⁹ “[T]he [1818 state constitutional] convention [did] not seem to have been interested either in a particularly stringent version of separation of powers or in

¹⁹ The rejected provision provides: “No person or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances herein after expressly directed or permitted.” Journal of the Proceedings of the Convention of Delegates Convened at Hartford, August 26, 1818 (1901) p. 78; see *Norwalk Street Railway Co.’s Appeal*, 69 Conn. 576, 604, 37 A. 1080 (1897) (*Baldwin, J.*, dissenting).

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a careful restriction of the powers of the legislature. The convention struck the provision that would have expressly prohibited the officers of each department from exercising powers properly classified as belonging to another. Such explicit provisions were common in constitutions of other states being written at this time. . . . Given [the] tradition of harmony between executive and legislative departments, it may be that the convention did not feel the necessity for a strict expression of separation of powers. . . . The 1818 Constitution thus established a government with a flexible separation of powers and a distinctly dominant legislative branch.” R. Kay, *supra*, 8 Conn. L. Rev. 7.

“The Connecticut history with regard to separation of powers stands in marked contrast, therefore, to that of the federal [c]onstitution.” E. Peters, “Getting Away from the Federal Paradigm: Separation of Powers in State Courts,” 81 Minn. L. Rev. 1543, 1552 (1997). “Diverse [state] histories²⁰ demonstrate that even though state constitutional provisions may textually resemble those found in the federal [c]onstitution, they may reflect distinct state identities that will result in differences in how courts apply and construe such texts. Far from being arbitrary departures from a superior federal model, these interpretations have the legitimacy of differences rooted in the past and adaptable for the future.” (Footnote added.) *Id.*, 1553.

²⁰ For example, unlike Connecticut, “Massachusetts had a . . . colonial heritage, colored by numerous perceived injustices at the hands of various royal mandates. Not surprisingly, revolutionary political leaders drafting the Massachusetts Constitution of 1780 provided expressly for the separation of powers. Other states, including Maryland, New Hampshire, North Carolina, and Virginia, did likewise.” (Footnotes omitted.) E. Peters, *supra*, 81 Minn. L. Rev. 1552–53; see also, e.g., Mass. Const., pt. 1, art. XXX (“[i]n the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them”).

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This is not to say that one branch cannot unconstitutionally intrude upon the authority of another branch, or has not done so. This court is appropriately vigilant in guarding against such intrusions. See, e.g., *State v. McCahill*, 261 Conn. 492, 512, 811 A.2d 667 (2002) (legislative intrusion on judiciary); *Savage v. Aronson*, 214 Conn. 256, 269, 571 A.2d 696 (1990) (executive intrusion on judiciary); *Stolberg v. Caldwell*, 175 Conn. 586, 604, 402 A.2d 763 (1978) (executive intrusion on legislature), appeal dismissed sub nom. *Stolberg v. Davidson*, 454 U.S. 958, 102 S. Ct. 496, 70 L. Ed. 2d 374 (1981); see also *Spiotti v. Wolcott*, 326 Conn. 190, 201–202, 163 A.3d 46 (2017) (“[w]hen we construe a statute . . . our only responsibility is to determine what the legislature, within constitutional limits, intended to do” [internal quotation marks omitted]).

In the present circumstances, however, the original constitutional intrusion was not upon another branch, but upon the rights of individuals not to have cruel and unusual punishments imposed upon them. Those punishments, although judicially levied, were legislatively authorized or even, in some cases, mandated. It is hardly incongruous—or unconstitutional—then, for the legislature to be a part of the solution to the intrusion on individual liberty it caused. This seems particularly true when the United States Supreme Court has suggested this very remedy; see *Montgomery v. Louisiana*, supra, 136 S. Ct. 736; and when we have invited the legislature to take such action. See *State v. Riley*, supra, 315 Conn. 662; see also *Casiano v. Commissioner of Correction*, supra, 317 Conn. 79.

Accordingly, we conclude that P.A. 15-84, § 1, is not unconstitutional because the legislature did not impro-

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erly exceed its authority by providing the defendant with the possibility of parole.²¹

2

The defendant also argues that, in its quest to cure a *Miller* violation via the parole board's future consideration of the *Miller* factors, P.A. 15-84, § 1, violates the separation of powers doctrine by impermissibly delegating sentencing authority to the board. This argument is premised on a misreading of *Delgado* and the act.

To reiterate, in *Delgado*, we held that after passage of P.A. 15-84, § 1, if a sentence includes parole eligibility, it “no longer falls within the purview of *Miller* *Miller* simply does not apply” (Citations omitted.) *State v. Delgado*, 323 Conn. 811. Thus, as mentioned before, we did not hold in *Delgado* that P.A. 15-

²¹ Rather than implicating separation of powers issues, by retroactively modifying the sentencing scheme, P.A. 15-84, § 1, presents the possibility of an ex post facto issue. However, because P.A. 15-84, § 1, does not increase the length of time that the defendant will be incarcerated but, rather, provides for the possibility that he will be released on parole sooner than the expiration of his sentence, P.A. 15-84, § 1, does not present any ex post facto concerns. See *Johnson v. Commissioner of Correction*, 258 Conn. 804, 818, 786 A.2d 1091 (2002) (“[T]he primary focus of an ex post facto claim is the probability of increased punishment. . . . [T]he new law [must] [create] a genuine risk that [an individual] will be incarcerated longer under that new law than under the old law.”); see also *Perez v. Commissioner of Correction*, 326 Conn. 357, 377, 163 A.3d 597 (2017) (amendments to parole eligibility statute did not give rise to ex post facto issue because “the challenged parole hearing provision does not increase the petitioner’s overall sentence, alter his initial parole eligibility date, or change the standard used by the [B]oard [of Pardons and Paroles] to determine parole suitability”).

We note, however, that should the legislature amend or repeal P.A. 15-84, § 1, possible ex post facto issues might arise. See *Petaway v. Commissioner of Correction*, 160 Conn. App. 727, 733, 125 A.3d 1053 (2015) (if there is change in law affecting parole eligibility, such change violates ex post facto clause if change “extend[s] the length of [a defendant’s] incarceration or delay[s] the date of his first eligibility for parole consideration beyond the time periods in existence at the time of his criminal conduct”), cert. dismissed, 324 Conn. 912, 153 A.3d 1288 (2017). Under those circumstances, criminal defendants possibly could file a motion to correct an illegal sentence or a petition for a writ of habeas corpus.

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84, § 1, cures a *Miller* violation. Rather, more accurately, parole eligibility under P.A. 15-84, § 1, negates a *Miller* violation. As a result, because the defendant is parole eligible under the act, he is not entitled to have the *Miller* factors considered, and, thus, there is no need for resentencing. Therefore, the board's power at the parole stage is distinct from the judiciary's sentencing power.

Instead, the board has the power to determine whether a parole eligible offender is entitled to parole. This is to ensure that defendants have "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." *Graham v. Florida*, supra, 560 U.S. 75. In furtherance of this goal, the act requires the board to consider certain factors, including the offender's age and circumstances at the time of the offense. But, although these factors echo the *Miller* factors, they are not identical.²² Even if they were, just because the constitution requires the *Miller* factors to be considered at sentencing going forward does not mean that the legislature may not also require that the board consider those factors at other times.

Therefore, we conclude that P.A. 15-84, § 1, does not violate the separation of powers doctrine by improperly delegating sentencing power to the board.

²² Compare footnote 1 of this opinion (reciting *Miller* factors), with P.A. 15-84, § 1, codified at General Statutes (Supp. 2016) § 54-125a (f) (4) ("the board may allow such person to go at large on parole . . . if it appears . . . [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").

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C

In his reply brief, the defendant also claims that we should overrule *Delgado* because it renders P.A. 15-84, § 1, unconstitutional by violating federal due process requirements. Specifically, he argues that, because the legislature has the power to change or repeal P.A. 15-84, § 1, in the future, he is deprived of due process in light of the rule that “[s]entences in criminal cases should reveal with fair certainty the intent of the court and exclude any serious misapprehensions by those who must execute them.’ *United States v. Daugherty*, 269 U.S. 360, 363, 46 S. Ct. 156, 70 L. Ed. 309 (1926).” He argues that his sentence is not fairly certain if the legislature has the power to continually change it.

The defendant’s analysis of this claim consists of one short paragraph in his reply brief. He does not provide any case law or analysis beyond his single citation to *Daugherty*. Nor does he specify whether he is making a procedural or substantive due process claim. There is no reference to the interest balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 334–35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976), as required under a procedural due process claim that implicates a liberty interest; see *State v. Anderson*, 319 Conn. 288, 314–15, 127 A.3d 100 (2015); or to the rational basis test applied to a substantive due process claim that does not involve a fundamental right. See *State v. Moran*, 264 Conn. 593, 615, 825 A.2d 111 (2003).

Because the defendant has not briefed the analytic complexities of his due process claim, we deem it inadequately briefed. See, e.g., *State v. Buhl*, 321 Conn. 688, 726–29, 138 A.3d 868 (2016) (upholding determination that due process claim was inadequately briefed). Nevertheless, we emphasize that our holdings in *Delgado* and the present case are premised on P.A. 15-84, § 1, as enacted. It is on the basis of this legislation that we

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hold that any *Miller* violation has been negated and that there are no separation of powers violations. See also footnote 21 of this opinion.

III

Finally, the defendant claims that P.A. 15-84, § 1, violates his right to equal protection under the federal constitution.²³ He argues that, as a juvenile convicted of murder, he is entitled to resentencing because, pursuant to P.A. 15-84, § 6, a juvenile convicted of capital felony, in violation of General Statutes § 53a-54b,²⁴ is entitled to resentencing. See footnote 25 of this opinion. We are not persuaded.

The defendant's argument proceeds in three parts. First, he contends that, as a juvenile convicted of murder with a discretionary sixty year sentence, he is similarly situated to another type of juvenile offender—one who has been convicted of capital felony with a mandatory life sentence, but without an underlying sentence for murder (which is a lesser included offense of capital felony). See *State v. Reynolds*, 264 Conn. 1, 24 n.13, 836 A.2d 224 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004). Second, he argues that these groups are treated differently under P.A. 15-84. Under § 1 of the act, a juvenile murderer is

²³ The defendant's constitutional claim was not raised before the trial court. To the extent that the record supports it, we nonetheless review it under *State v. Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989), as modified by *In re Yasiel R.*, 317 Conn. 773, 781, 120 A.3d 1188 (2015). The defendant also cites the Connecticut constitution as a basis for his equal protection claim but provides no separate discussion. Therefore, we limit our analysis to the federal constitution. See, e.g., *Perez v. Commissioner of Correction*, 326 Conn. 357, 382 and n.10, 163 A.3d 597 (2017).

²⁴ Section 53a-54b was amended by No. 12-5, § 1, of the 2012 Public Acts to substitute "murder with special circumstances" for "capital felony." *State v. Medina*, 170 Conn. App. 609, 610 n.1, 155 A.3d 285, cert. denied, 325 Conn. 914, 159 A.3d 231 (2017). We refer to § 53a-54 as "capital felony" for convenience and because that is the nomenclature employed by the parties and the trial court.

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parole eligible, but under § 6,²⁵ he contends, a juvenile capital felony offender's conviction may be vacated. Therefore, because the capital felony offender then lacks a conviction (and sentence), his conviction for murder is revived, he receives a new sentencing proceeding for murder, and he becomes parole eligible as a result of § 1. In other words, the murderer receives only a parole hearing, whereas the capital felony offender receives both a second sentencing *and* a parole hearing. Third, he argues that this scheme is irrational because, regardless of the length of the resulting sentence, permitting a second sentencing proceeding and parole eligibility constitutes a less severe punishment than parole eligibility alone. Because capital felony is a crime that is more severe than murder, the defendant contends, no rational basis can support denying a juvenile convicted of murder the second sentencing proceeding that is provided to a juvenile convicted of capital felony. See *State v. Moran*, supra, 264 Conn. 614 ("it [is] impossible to conceive of a rational basis to support treating the less serious crime more severely than the more serious crime"). We disagree that the statutory scheme is irrational.

²⁵ Section 6 of P.A. 15-84 applies only to sentencing—not convictions—and, therefore, does not appear to support the defendant's argument. Public Act No. 15-84, § 6, codified at General Statutes (Supp. 2016) § 53a-46a (a), provides in relevant part: "A person shall be subjected to the penalty of death for a capital felony committed prior to April 25, 2012, under the provisions of section 53a-54b, as amended by this act, in effect prior to April 25, 2012, only if (1) a hearing is held in accordance with the provisions of this section, and (2) such person was eighteen years of age or older at the time the offense was committed."

Rather, the defendant's argument appears to be based on P.A. 15-84, § 7, codified at General Statutes (Supp. 2016) § 53a-54b, which provides in relevant part: "A person is guilty of [capital felony] who is convicted of any of the following *and was eighteen years of age or older at the time of the offense . . .*" (Emphasis in language added by P.A. 15-84, § 7.) The legislature specified that the amendment was retroactively "applicable to any person convicted prior to, on or after" October 1, 2015, the effective date of P.A. 15-84, § 7. We note that, shortly after the legislature's approval of P.A. 15-84, the court abolished the death penalty in *State v. Santiago*, supra, 318 Conn. 140.

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Even if we assume that the juvenile offenders the defendant identifies are similarly situated,²⁶ the legislature had a rational basis for treating them differently. “If the statute does not touch upon either a fundamental right or a suspect class, its classification need only be rationally related to some legitimate government purpose in order to withstand an equal protection challenge.” (Internal quotation marks omitted.) *Perez v. Commissioner of Correction*, 326 Conn. 357, 383, 163 A.3d 597 (2017). Under rational basis review, “[i]t is irrelevant whether the conceivable basis for the challenged distinction actually motivated the legislature. . . . [The law] must be upheld . . . if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” (Citation omitted; internal quotation marks omitted.) *Keane v. Fischetti*, 300 Conn. 395, 406, 13 A.3d 1089 (2011). “[T]he [statutory scheme] is presumed constitutional . . . and [t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it” (Internal quotation marks omitted.) *State v. Moran*, supra, 264 Conn. 606.²⁷

²⁶ The defendant argues that the classes of juvenile offenders he identifies are similarly situated because murder is a lesser included offense of capital felony. The state points out, however, that they are distinguishable because one sentence is discretionary and the other is mandatory. Although perhaps a sufficient distinction, we nonetheless assume, without deciding, that the offenders are similarly situated for equal protection purposes.

We note one further issue with regard to the defendant’s argument that a capital felony offender will be “resentenced[d]” A capital felony offender is not “resentenced” in the same way that the defendant claims he is entitled to be. Rather, a conviction and sentence for one crime (capital felony) are vacated and a sentence for a separate conviction (murder) is imposed. Conversely, the defendant wants to have a second sentencing for the same conviction (murder).

²⁷ The defendant argues that intermediate scrutiny applies to his claim because it involves “a significant interference with liberty” (Internal quotation marks omitted.) *Kerrigan v. Commissioner of Public Health*, 289 Conn. 135, 161, 957 A.2d 407 (2008). We have rejected similar arguments before and have applied rational basis scrutiny to claims involving interference with liberty as a result of criminal punishment. E.g., *State v. Higgins*, 265 Conn. 35, 66, 826 A.2d 1126 (2003); *State v. Wright*, 246 Conn. 132, 140–41, 716 A.2d 870 (1998).

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The manner in which mandatory sentences for capital felony and discretionary sentences for murder were imposed is distinct and, thus, they conceivably might have warranted distinct remedies. Specifically, a juvenile convicted of murder already had received an opportunity to make his case for leniency to a judge, whereas a juvenile convicted of capital felony had not. In this sense, offering resentencing only to the latter group would result in equal, not harsher, punishment, at least in a numerical sense—each group gets one chance to convince a judge to exercise discretion in its favor. Moreover, practical considerations potentially might have made drawing this distinction between the groups rational. Only 4 juveniles were serving mandatory life sentences for capital felony or arson murder, as compared to approximately 270 juveniles serving sentences of longer than ten years for other crimes.²⁸ See Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 2015 Sess., p. 1062, remarks of Sarah Eagan, Office of the Child Advocate (stating number of juveniles sentenced). Because of the judicial resources needed to conduct the proceedings, the legislature reasonably could have determined that resentencing was simply a more feasible task for a smaller group. We also note that the legislature potentially could have distinguished between actual life sentences (for capital felony) and those that are for the functional equivalent of life (for murder). Because the latter still offer the possibility of geriatric release, the legislature could have determined that this possibility was worth granting to even the most culpable offenders, particularly at an advanced age

²⁸ Although his assertion is not in the record, the defendant claims that forty juvenile offenders were serving sentences of more than fifty years as of November, 2014. Testimony before the Judiciary Committee regarding juvenile sentencing shows that, as of March 4, 2015, “[a]pproximately [fifty] people [were] serving [a] sentence of [fifty] years or more for crimes committed under [the] age [of eighteen], most without the chance of parole.” (Emphasis omitted.) Conn. Joint Standing Committee Hearings, Judiciary, Pt. 2, 2015 Sess., p. 1062, remarks of Sarah Eagan, Office of the Child Advocate.