



House of Representatives

General Assembly

File No. 554

January Session, 2007

Substitute House Bill No. 7087

House of Representatives, April 23, 2007

The Committee on Finance, Revenue and Bonding reported through REP. STAPLES of the 96th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING METHAMPHETAMINES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 21a-240 of the general statutes is amended by
2 adding subdivision (59) as follows (*Effective October 1, 2007*):

3 (NEW) (59) "Methamphetamine-type substances" means
4 methamphetamine and structural analogues, including, but not limited
5 to, methylenedioxymethamphetamine (MDMA) and other substituted
6 phenylethylamine compounds, their salts, isomers and salts of isomers
7 and chemical compounds which are similar thereto in chemical
8 structure or which are similar thereto in physiological effect, and
9 which show a like potential for abuse or which are controlled
10 substances under this chapter, unless modified.

11 Sec. 2. Section 21a-277 of the general statutes is repealed and the
12 following is substituted in lieu thereof (*Effective October 1, 2007*):

13 (a) Any person who manufactures, distributes, sells, prescribes,
14 dispenses, compounds, transports with the intent to sell or dispense,
15 possesses with the intent to sell or dispense, offers, gives or
16 administers to another person any controlled substance which is (1) a
17 hallucinogenic substance other than marijuana, [or] (2) a narcotic
18 substance, or (3) a methamphetamine-type substance, except as
19 authorized in this chapter, for a first offense, shall be imprisoned not
20 more than fifteen years and may be fined not more than fifty thousand
21 dollars or be both fined and imprisoned; and for a second offense shall
22 be imprisoned not more than thirty years and may be fined not more
23 than one hundred thousand dollars, or be both fined and imprisoned;
24 and for each subsequent offense, shall be imprisoned not more than
25 thirty years and may be fined not more than two hundred fifty
26 thousand dollars, or be both fined and imprisoned.

27 (b) Any person who manufactures, distributes, sells, prescribes,
28 dispenses, compounds, transports with intent to sell or dispense,
29 possesses with intent to sell or dispense, offers, gives or administers to
30 another person (1) any controlled substance, except a narcotic
31 substance, [or] (2) a hallucinogenic substance other than marijuana, or
32 (3) a methamphetamine-type substance, except as authorized in this
33 chapter, may, for the first offense, be fined not more than twenty-five
34 thousand dollars or be imprisoned not more than seven years or be
35 both fined and imprisoned; and, for each subsequent offense, may be
36 fined not more than one hundred thousand dollars or be imprisoned
37 not more than fifteen years, or be both fined and imprisoned.

38 (c) No person shall knowingly possess drug paraphernalia in a drug
39 factory situation, as defined by subdivision (20) of section 21a-240, for
40 the unlawful mixing, compounding or otherwise preparing any
41 controlled substance for purposes of violation of this chapter. Any
42 person who violates the provisions of this subsection may, for the first
43 offense, be fined not more than one thousand dollars or be imprisoned
44 not more than two years, or be both fined and imprisoned, except that
45 if such drug paraphernalia is for the unlawful mixing, compounding
46 or otherwise preparing a methamphetamine-type substance, such

47 person may be fined not more than five thousand dollars or be
48 imprisoned not more than five years, or be both fined and imprisoned.
49 Any person who violates the provisions of this subsection may, for a
50 subsequent offense, be fined not more than ten thousand dollars or be
51 imprisoned not more than ten years, or be both fined and imprisoned.

52 (d) As an alternative to the sentences specified in subsections (a)
53 and (b) of this section, the court may sentence the person to the
54 custody of the Commissioner of Correction for an indeterminate term
55 not to exceed three years or the maximum term specified for the
56 offense, whichever is the lesser, and, at any time within such
57 indeterminate term and without regard to any other provision of law
58 regarding minimum term of confinement, the Commissioner of
59 Correction may release the convicted person so sentenced subject to
60 such conditions as he may impose including, but not limited to,
61 supervision by suitable authority. At any time during such
62 indeterminate term, the Commissioner of Correction may revoke any
63 such conditional release in his discretion for violation of the conditions
64 imposed and return the convicted person to a correctional institution.

65 Sec. 3. Subsection (a) of section 21a-278 of the general statutes is
66 repealed and the following is substituted in lieu thereof (*Effective*
67 *October 1, 2007*):

68 (a) Any person who manufactures, distributes, sells, prescribes,
69 dispenses, compounds, transports with the intent to sell or dispense,
70 possesses with the intent to sell or dispense, offers, gives or
71 administers to another person one or more preparations, compounds,
72 mixtures or substances containing an aggregate weight of one ounce or
73 more of heroin or methadone or an aggregate weight of one-half ounce
74 or more of cocaine or one-half ounce or more of cocaine in a free-base
75 form, or an aggregate weight of fifty grams or more of
76 methamphetamine or fifty grams or more of a mixture or substance
77 containing a detectable amount of methamphetamine-type substance,
78 or a substance containing five milligrams or more of lysergic acid
79 diethylamide, except as authorized in this chapter, and who is not, at

80 the time of such action, a drug-dependent person, shall be imprisoned
81 for a minimum term of not less than five years or more than twenty
82 years; and, a maximum term of life imprisonment. The execution of the
83 mandatory minimum sentence imposed by the provisions of this
84 subsection shall not be suspended, except the court may suspend the
85 execution of such mandatory minimum sentence if at the time of the
86 commission of the offense (1) such person was under the age of
87 eighteen years, or (2) such person's mental capacity was significantly
88 impaired, but not so impaired as to constitute a defense to prosecution.

89 Sec. 4. Subsection (b) of section 21a-267 of the general statutes is
90 repealed and the following is substituted in lieu thereof (*Effective*
91 *October 1, 2007*):

92 (b) No person shall deliver, possess with intent to deliver or
93 manufacture with intent to deliver drug paraphernalia knowing, or
94 under circumstances where one reasonably should know, that it will
95 be used to plant, propagate, cultivate, grow, harvest, manufacture,
96 compound, convert, produce, process, prepare, test, analyze, pack,
97 repack, store, contain or conceal, or to ingest, inhale or otherwise
98 introduce into the human body, any controlled substance. Any person
99 who violates any provision of this subsection shall be guilty of a class
100 [A misdemeanor] D felony.

101 Sec. 5. (NEW) (*Effective October 1, 2007*) (a) There is established an
102 account to be known as the "methamphetamine laboratory clean-up
103 account" which shall be a separate nonlapsing account within the
104 General Fund. The account may contain any moneys required by law
105 to be deposited in the account. Any balance remaining in the account
106 at the end of any fiscal year shall be carried forward in the account for
107 the next fiscal year. All moneys deposited in the account shall be used
108 for the purposes of this section.

109 (b) The court, when sentencing a defendant convicted of an offense
110 involving the manufacture of a methamphetamine-type substance, as
111 defined in section 21a-240 of the general statutes, as amended by this
112 act, shall order the defendant to reimburse the state for the costs

113 incurred for any clean-up associated with the manufacture of such
114 methamphetamine-type substance by the defendant.

115 (c) All moneys reimbursed to the state pursuant to subsection (b) of
116 this section shall be deposited in the methamphetamine laboratory
117 clean-up account established in subsection (a) of this section. The
118 Commissioner of Environmental Protection shall have the authority to
119 authorize expenditures from said account to reimburse any state or
120 municipal agency for costs associated with cleaning to proper
121 environmental standards any site where a methamphetamine-type
122 substance was manufactured.

123 Sec. 6. Section 21a-243 of the general statutes is amended by adding
124 subsection (h) as follows (*Effective October 1, 2007*):

125 (NEW) (h) (1) Any person who sells or offers for sale at retail any
126 drug product or combination of drug products containing ephedrine,
127 pseudoephedrine or phenylpropanolamine, or their salts, isomers or
128 salts of isomers, shall: (A) Store such drug product or combination of
129 drug products in a location that is inaccessible to consumers, and (B)
130 require consumers to request and purchase such drug product or
131 combination of drug products at the counter.

132 (2) A person who sells or offers for sale at retail any drug product or
133 combination of drug products pursuant to subdivision (1) of this
134 subsection shall maintain a log book. The log book shall contain: (A)
135 The signature of the purchaser of the product, (B) the name of the
136 purchaser of the product, (C) the address of the purchaser of the
137 product, (D) the date of the purchase, (E) the time of purchase, and (F)
138 the name of the seller. The seller shall maintain the log book for not
139 less than two years after the date the last entry is made in the log book.
140 The seller shall obtain positive identification of the purchaser to verify
141 the information in the log book.

142 (3) Each seller shall maintain a self certification that all individuals
143 who are responsible for the delivery of drug products to purchasers or
144 who deal directly with purchasers by obtaining payments for such

145 products have completed training provided by the seller to ensure
146 such individuals understand the requirements of this section.

147 (4) No person shall purchase, receive or otherwise acquire more
148 than seven and one-half grams of any drug product or combination of
149 drug products containing ephedrine, pseudoephedrine or
150 phenylpropanolamine, or their salts, isomers or salts of isomers within
151 any thirty-day period.

152 (5) Sellers of such drug products shall comply with applicable
153 federal laws and regulations.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	21a-240
Sec. 2	<i>October 1, 2007</i>	21a-277
Sec. 3	<i>October 1, 2007</i>	21a-278(a)
Sec. 4	<i>October 1, 2007</i>	21a-267(b)
Sec. 5	<i>October 1, 2007</i>	New section
Sec. 6	<i>October 1, 2007</i>	21a-243

FIN *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Various Criminal Justice Agencies	GF - Cost	Potential	Potential
Judicial Dept.	GF - Potential Revenue Gain	Minimal	Minimal
Dept. of Environmental Protection - Methamphetamine Laboratory Clean-Up Account"	GF - Revenue Gain	Potential	Potential
Various State Agencies	GF - Savings	Potential	Potential

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 08 \$	FY 09 \$
All Municipalities	Savings	Potential	Potential

Explanation

The bill increases criminal penalties for offenses involving methamphetamine-type substances and trafficking in drug paraphernalia. To the extent that these changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. It is anticipated that relatively few criminal fines would be imposed on an annual basis, and, consequently, any revenue gain from them is expected to be minimal. On average, it costs the state approximately \$2,500 annually to supervise an offender on probation in the community as compared to \$41,600 to incarcerate the offender (note that both figures include fringe benefits).

The bill establishes a restricted, non-lapsing account within the General Fund that may be used to reimburse any state or municipal agency charged with cleaning a site where a methamphetamine-type

substance was manufactured. The Commissioner of Environmental Protection is authorized under the bill to make payments from this account. The bill requires any person convicted of manufacturing methamphetamine to reimburse the state for payments made from this account to clean up the site with which the defendant is associated. In 2005, there were three sites discovered in Connecticut. The average cost to clean up a site is estimated to be \$5,000 per incident, but could be much more. To the extent that a state or municipal agency would otherwise be liable to clean up such a site, the bill could yield savings by shifting the cost to the convicted defendant.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 7087

AN ACT CONCERNING METHAMPHETAMINES.

SUMMARY:

This bill:

1. eliminates the penalty for trafficking in marijuana;
2. establishes a statutory definition of “methamphetamine-type substances”;
3. establishes two different penalties for trafficking in methamphetamine-type substances and hallucinogens other than marijuana;
4. establishes a minimum sentence for a non-drug dependent person who sells amounts of methamphetamine-type substances over certain thresholds;
5. increases the penalty for a first-time offense for violating the drug paraphernalia law in connection with methamphetamine-type substances;
6. increases the penalty for trafficking in drug paraphernalia;
7. creates an account to pay for cleaning up methamphetamine labs funded by defendants convicted of an offense that involves its manufacture; and
8. in a way similar to federal law, requires drugs used in its manufacture, like pseudoephedrine, to be kept behind a counter and requires sellers to keep a log book of purchasers.

EFFECTIVE DATE: October 1, 2007

METHAMPHETAMINE-TYPE SUBSTANCES

The bill defines “methamphetamine-type substances” as methamphetamine and structural analogues, including methylenedioxymethamphetamine (MDMA) and other substituted phenylethylamine compounds; their salts, isomers, and salts of isomers; and chemical compounds that are similar in chemical structure or physiological effect, and that show a like potential for abuse or that are controlled substances, unless modified.

PENALTIES

Trafficking in Methamphetamine-Type Substances

The bill establishes two different penalties for trafficking in methamphetamine-type substances and hallucinogens other than marijuana.

The law subjects anyone who trafficks in controlled substances that are hallucinogens, other than marijuana, or narcotics except as authorized by law, to the following maximum penalties: (1) for a first offense, 15 years imprisonment, \$50,000 fine, or both; (2) for a second offense, 30 years imprisonment, \$100,000 fine, or both; and (3) for subsequent offenses, 30 years, \$250,000, or both. The bill subjects someone who trafficks in a controlled substance that is a methamphetamine-type substance to the same penalties.

Current law subjects anyone who trafficks in controlled substances other than those described above to the following maximum penalties: seven years imprisonment, \$25,000 fine, or both, for a first offense and 15 years imprisonment, \$100,000 fine, or both, for subsequent offenses. Under current law, trafficking in methamphetamine-type substances is subject to these penalties. The bill explicitly subjects anyone who trafficks in (1) methamphetamine-type substances or (2) hallucinogens other than marijuana to the same penalties (see COMMENT).

Because the bill excludes trafficking in marijuana from both penalty provisions, it eliminates the penalty for trafficking in marijuana.

Sales by a Non-Drug Dependent Person

The law sets the penalty for a non-drug dependent person trafficking in narcotic substances in amounts greater than certain thresholds at a minimum of five years to life in prison. The thresholds are: one ounce of heroin or methadone, one-half ounce of cocaine or crack, and five milligrams of lysergic acid diethylamide. The bill subjects a non-drug dependent person to the same penalty if he trafficks in at least 50 grams of methamphetamine or a substance containing a detectable amount of methamphetamine-type substance.

Drug Paraphernalia

The law prohibits knowingly possessing drug paraphernalia in a drug factory situation to make or prepare a controlled substance in violation of the law on dependency-producing drugs. The maximum penalties are two years imprisonment, \$1,000 fine, or both for a first offense and 10 years imprisonment, \$10,000 fine, or both for subsequent offenses (CGS § 21a-255). The bill increases the maximum penalty for a first offense if the offense is in connection with paraphernalia used to prepare a methamphetamine-type substance to five years imprisonment, \$5,000 fine, or both.

The bill increases, from a class A misdemeanor to a class D felony, the penalty for delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia knowing, or under circumstances in which one should reasonably know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, ingest, inhale, or otherwise consume a controlled substance. Class D felonies are punishable by one to five years imprisonment, a fine of up to \$5,000, or both.

CLEAN-UP ACCOUNT

The bill establishes the “methamphetamine laboratory clean-up account” as a separate nonlapsing account within the General Fund. It requires a court, when sentencing a defendant convicted of an offense involving the manufacture of a methamphetamine-type substance, to

order the defendant to reimburse the state for the cost incurred for any clean-up associated with its manufacture by the defendant.

All money reimbursed to the state must be deposited into the account. The environmental protection commissioner may authorize expenditures from it to reimburse a state or municipal agency for its clean-up costs. Balances within the account at the end of the fiscal year are carried forward into the next fiscal year.

RETAIL SALES OF RELATED DRUGS

The bill prohibits buying, receiving, or otherwise acquiring more than seven and one-half grams of a drug product, or combination of drug products, containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers within a 30-day period.

It requires retail sellers of these products to (1) store them in a location inaccessible to consumers, (2) require consumers to ask for them and to purchase them at a counter, and (3) keep a log book of purchasers. The log book must include: (1) the purchaser's name, signature, and address; (2) purchase date and time; and (3) the seller's name. The book must be kept for at least two years after the date of the last entry. The bill requires sellers to obtain positive identification from the purchaser to verify the information entered in the log.

The bill requires sellers to keep a self-certification that all individuals who are responsible for delivering drug products to purchasers, or who deal directly with purchasers by taking payment, have completed training designed to ensure that they understand the bill's requirements relating to selling these drug products.

The bill requires sellers to comply with applicable federal law.

BACKGROUND

Controlled Substances

Controlled substances are grouped in Schedules I through V, according to their decreasing tendency to promote abuse or

dependency. Schedule I substances are the most strictly controlled because of their high potential for abuse. State and federal laws authorize prescribing drugs in Schedules II through V; most Schedule I drugs do not have any approved medical use.

Federal Law on Over-the-Counter (OTC) Sales of Drug Products Containing Pseudoephedrine

Federal law (1) limits the amount an individual may purchase in a 30-day period, (2) requires consumers to present photo identification, and (3) requires retailers to (a) store them in a place inaccessible to consumers and (b) keep a log book of purchasers and personal information about the consumers at least for two years (Title VI of PL 107-177).

Legislative History

The House referred the bill (File 53) to the Finance Committee, which reported a substitute that differs from the original bill by:

1. adding the second, less severe, penalty for trafficking in (a) methamphetamine-type substances and (b) hallucinogens that are not marijuana and
2. eliminating the penalty for trafficking in marijuana.

COMMENT

Multiple Penalties for Trafficking in Methamphetamine-Type Substances and Hallucinogens other than Marijuana

Depending on the illegal drug being trafficked, the law creates two significantly different penalties. The bill includes methamphetamine-type substances and hallucinogens other than marijuana in both penalty provisions and does not provide any standard for imposing the more severe penalty.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 18 Nay 0 (02/27/2007)

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 51 Nay 0 (04/10/2007)