



Senate

General Assembly

File No. 758

January Session, 2009

Substitute Senate Bill No. 844

Senate, April 21, 2009

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, 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, 2009*):

3 (NEW) (59) "Methamphetamine-type substance" means a
4 methamphetamine and structural analogue, including, but not limited
5 to, methylenedioxymethamphetamine and other substituted
6 phenylethylamine compounds, their salts, isomers and salts of isomers
7 and chemical compounds that are similar thereto in chemical structure
8 or that are similar thereto in physiological effect, and that show a like
9 potential for abuse or that are controlled substances under this chapter,
10 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 Section 21a-277 of the general statutes is repealed and the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, 2009*):

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] that is
17 (1) a 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 any controlled substance, except [a narcotic substance,
31 or] (1) a hallucinogenic substance other than marijuana, (2) a narcotic
32 substance, or (3) a methamphetamine-type substance, except as
33 authorized in this chapter, may, for the first offense, be fined not more
34 than twenty-five thousand dollars or be imprisoned not more than
35 seven years or be both fined and imprisoned; and, for each subsequent
36 offense, may be fined not more than one hundred thousand dollars or
37 be imprisoned not more than fifteen years, or be both fined and
38 imprisoned.

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

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

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

66 Sec. 3. Subsection (a) of section 21a-278 of the general statutes is
67 repealed and the following is substituted in lieu thereof (*Effective*
68 *October 1, 2009*):

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

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

89 Sec. 4. (NEW) (*Effective October 1, 2009*) (a) Any person who sells or
90 offers for sale at retail any drug product or combination of drug
91 products containing ephedrine, pseudoephedrine or
92 phenylpropanolamine, or their salts, isomers or salts of isomers shall:
93 (1) Store such drug product or combination of drug products in a
94 location that is inaccessible to consumers, and (2) require consumers to
95 request and purchase such drug product or combination of drug
96 products at the counter.

97 (b) A person who sells or offers for sale at retail any drug product or
98 combination of drug products pursuant to subsection (a) of this section
99 shall maintain a log book containing: (1) The signature of the
100 purchaser of the product, (2) the name of the purchaser of the product,
101 (3) the address of the purchaser of the product, (4) the date of the
102 purchase, (5) the time of the purchase, (6) the name of the seller, (7) the
103 name of the product purchased, and (8) the quantity of the product
104 purchased. Such seller shall maintain the log book for not less than two
105 years after the date the last entry is made in the log book. Such seller
106 shall obtain positive identification of the purchaser to verify the
107 information provided by the purchaser and contained in the log book.
108 The provisions of this subsection shall not apply to the purchase of a
109 single package containing not more than sixty milligrams of
110 pseudoephedrine.

111 (c) A person who sells or offers for sale at retail any drug product or
112 combination of drug products pursuant to subsection (a) of this section
113 shall maintain a written certification that all individuals who are

114 responsible for the delivery of such drug products to purchasers or
 115 who deal directly with purchasers by obtaining payments for such
 116 drug products have completed training provided by such seller to
 117 ensure that such individuals understand the requirements of this
 118 section.

119 (d) No individual shall purchase, receive or otherwise acquire more
 120 than three and six-tenths grams per day or more than nine grams
 121 during a thirty-day period of any drug product or combination of drug
 122 products containing ephedrine, pseudoephedrine or
 123 phenylpropanolamine, or their salts, isomers or salts of isomers.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	21a-240
Sec. 2	October 1, 2009	21a-277
Sec. 3	October 1, 2009	21a-278(a)
Sec. 4	October 1, 2009	New section

Statement of Legislative Commissioners:

In sections 2(a), 2(b) and 3(a), technical changes were made for consistency with the style of the general statutes.

JUD *Joint Favorable Subst.-LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Judicial Dpt (Probation); Correction, Dept.	GF - Cost	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill increases criminal penalties for trafficking in methamphetamine-type substances and the criminal penalty for a first-time offense for violating the drug paraphernalia law in connection with them. 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 therefore any revenue gain from them is expected to be minimal. The bill provides for potential terms of imprisonment of up to 10 years and therefore its cost could be significant. On average, it costs the state \$3,736 to supervise an offender on probation in the community as compared to \$44,165 to incarcerate the offender.

The Out Years

The annualized ongoing costs for incarceration and probation identified above would continue into the future subject to inflation; the annualized ongoing revenues would remain constant since fine

amounts are set by statute.

OLR Bill Analysis**sSB 844****AN ACT CONCERNING METHAMPHETAMINES.****SUMMARY:**

This bill:

1. increases the penalties for trafficking in methamphetamine-type substances and defines the term;
2. subjects non-drug dependent people who traffic in at least 50 grams of a methamphetamine-type substance to the same penalty as those who traffic in specified amounts of heroin, cocaine, crack, or lysergic acid diethylamide (LSD);
3. increases the penalty for possessing drug paraphernalia in a drug factory situation; and
4. like federal law, requires drugs used in methamphetamine manufacturing, such as pseudoephedrine, to be kept behind a counter and requires sellers to keep a log book of purchasers.

EFFECTIVE DATE: October 1, 2009

TRAFFICKING IN METHAMPHETAMINE-TYPE SUBSTANCES

The bill subjects anyone who traffics in a methamphetamine-type controlled substance to the same penalties as someone who illegally traffics in controlled substances that are narcotics or hallucinogens, other than marijuana. This means they are subject to: (1) for a first offense, up to 15 years imprisonment, a \$50,000 fine, or both; (2) for a second offense, up to 30 years imprisonment, a \$100,000 fine, or both; and (3) for subsequent offenses, up to 30 years, a \$250,000 fine, or both. Under the bill a "methamphetamine-type substance" is methamphetamine and structural analogues, including

methylenedioxyamphetamine (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 show a similar potential for abuse or that are controlled substances, unless modified.

Under current law, someone who traffics in methamphetamine-type substances is subject to penalties of up to seven years imprisonment, a \$25,000 fine, or both for a first offense and up to 15 years imprisonment, a \$100,000 fine, or both, for subsequent offenses.

Sales by a Non-Drug Dependent Person

A non-drug dependent person trafficking in narcotic substances in amounts greater than certain thresholds must, under current law, serve a minimum of five years in prison and may be imprisoned for life. The thresholds are: one ounce of heroin or methadone, one-half ounce of cocaine or crack, and five milligrams of LSD.

The bill subjects the same penalty to a non-drug dependent person who traffics in at least 50 grams of a methamphetamine-type substance.

DRUG PARAPHERNALIA

The law prohibits anyone from 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. Violators are subject to a penalty of up to two years imprisonment, up to a \$1,000 fine, or both, for a first offense, and up to 10 years imprisonment, a \$10,000 fine, or both, for subsequent offenses (CGS § 21a-255).

The bill increases the penalty for a first offense that involves paraphernalia used to prepare a methamphetamine-type substance to up to five years imprisonment, up to a \$5,000 fine, or both.

RETAIL SALES OF RELATED DRUGS

The bill prohibits a person from buying, receiving, or otherwise

acquiring more than 3.6 grams per day, or more than nine grams during a 30-day period, of a drug product, or combination of drug products, containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers.

It requires retail sellers of these products to (1) store them in a location inaccessible to consumers, (2) require consumers to ask for and purchase them at a counter, and (3) keep a log book of purchasers. The log book must contain (a) the purchaser's name, signature, and address; (b) the purchase date and time; (c) the seller's name; and (d) the name and quantity of the product purchased. 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. These provisions do not apply to the purchase of a single package containing 60 milligrams or less of pseudoephedrine.

The bill requires sellers to keep a written certification that everyone responsible for delivering drug products to purchasers or dealing directly with purchasers by taking payment has completed training the seller provides to ensure that they understand the bill's requirements relating to selling these drug products.

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 limits the amount an individual may purchase in a 30-day period, requires consumers to present photo identification, and

requires retailers to keep a log book of purchasers and personal information about the consumers for at least two years (Title VI of PL 107-177).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 41 Nay 0 (04/03/2009)