



Senate

General Assembly

File No. 629

January Session, 2011

Substitute Senate Bill No. 952

Senate, April 26, 2011

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.

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

1 Section 1. Section 21a-267 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) No person shall use or possess with intent to use drug
4 paraphernalia, as defined in subdivision (20) of section 21a-240, to
5 plant, propagate, cultivate, grow, harvest, manufacture, compound,
6 convert, produce, process, prepare, test, analyze, pack, repack, store,
7 contain or conceal, or to ingest, inhale or otherwise introduce into the
8 human body, any controlled substance as defined in subdivision (9) of
9 section 21a-240. Any person who violates any provision of this
10 subsection shall be guilty of a class C misdemeanor.

11 (b) No person shall deliver, possess with intent to deliver or
12 manufacture with intent to deliver drug paraphernalia knowing, or

13 under circumstances where one reasonably should know, that it will
14 be used to plant, propagate, cultivate, grow, harvest, manufacture,
15 compound, convert, produce, process, prepare, test, analyze, pack,
16 repack, store, contain or conceal, or to ingest, inhale or otherwise
17 introduce into the human body, any controlled substance. Any person
18 who violates any provision of this subsection shall be guilty of a class
19 A misdemeanor.

20 (c) Any person who violates subsection (a) or (b) of this section in or
21 on, or within one thousand five hundred feet or, in a town having a
22 population in excess of sixty thousand, two hundred feet of the
23 perimeter of, the real property comprising a public or private
24 elementary or secondary school during regular school hours or the
25 hours of any school-sponsored activity conducted on such property
26 where students are present and who is not enrolled as a student in
27 such school shall be imprisoned for a term of one year, which [shall not
28 be suspended and] shall be in addition and consecutive to any term of
29 imprisonment imposed for violation of subsection (a) or (b) of this
30 section.

31 Sec. 2. Section 21a-278a of the general statutes is repealed and the
32 following is substituted in lieu thereof (*Effective October 1, 2011*):

33 (a) Any person eighteen years of age or older who violates section
34 21a-277 or 21a-278, and who is not, at the time of such action, a drug-
35 dependent person, by distributing, selling, prescribing, dispensing,
36 offering, giving or administering any controlled substance to another
37 person who is under eighteen years of age and is at least two years
38 younger than such person who is in violation of section 21a-277 or 21a-
39 278, shall be imprisoned for a term of two years, which shall not be
40 suspended and shall be in addition and consecutive to any term of
41 imprisonment imposed for violation of section 21a-277 or 21a-278.

42 (b) Any person who violates section 21a-277 or 21a-278 by
43 manufacturing, distributing, selling, prescribing, dispensing,
44 compounding, transporting with the intent to sell or dispense,
45 possessing with the intent to sell or dispense, offering, giving or

46 administering to another person any controlled substance in or on, or
47 within one thousand five hundred feet or, in a town having a
48 population in excess of sixty thousand, two hundred feet of the
49 perimeter of, the real property comprising (1) a public or private
50 elementary or secondary school [, a public housing project] during
51 regular school hours or the hours of any school-sponsored activity
52 conducted on such property where students are present, or (2) a
53 licensed child day care center, as defined in section 19a-77, [that]
54 during the operating hours of such center, which center is identified as
55 a child day care center by a sign posted in a conspicuous place, shall be
56 imprisoned for a term of three years, which [shall not be suspended
57 and] shall be in addition and consecutive to any term of imprisonment
58 imposed for violation of section 21a-277 or 21a-278. To constitute a
59 violation of this subsection, an act of transporting or possessing a
60 controlled substance shall be with intent to sell or dispense in or on, or
61 within one thousand five hundred feet or, in a town having a
62 population in excess of sixty thousand, two hundred feet of the
63 perimeter of, the real property comprising (A) a public or private
64 elementary or secondary school [, a public housing project] during
65 regular school hours or the hours of any school-sponsored activity
66 conducted on such property where students are present, or (B) a
67 licensed child day care center, as defined in section 19a-77, [that]
68 during the operating hours of such center, which center is identified as
69 a child day care center by a sign posted in a conspicuous place. [For
70 the purposes of this subsection, "public housing project" means
71 dwelling accommodations operated as a state or federally subsidized
72 multifamily housing project by a housing authority, nonprofit
73 corporation or municipal developer, as defined in section 8-39,
74 pursuant to chapter 128 or by the Connecticut Housing Authority
75 pursuant to chapter 129.]

76 (c) Any person who employs, hires, uses, persuades, induces,
77 entices or coerces a person under eighteen years of age to violate
78 section 21a-277 or 21a-278 shall be imprisoned for a term of three
79 years, which shall not be suspended and shall be in addition and
80 consecutive to any term of imprisonment imposed for violation of

81 section 21a-277 or 21a-278.

82 Sec. 3. Section 21a-279 of the general statutes is repealed and the
83 following is substituted in lieu thereof (*Effective October 1, 2011*):

84 (a) Any person who possesses or has under his control any quantity
85 of any narcotic substance, except as authorized in this chapter, for a
86 first offense, may be imprisoned not more than seven years or be fined
87 not more than fifty thousand dollars, or be both fined and imprisoned;
88 and for a second offense, may be imprisoned not more than fifteen
89 years or be fined not more than one hundred thousand dollars, or be
90 both fined and imprisoned; and for any subsequent offense, may be
91 imprisoned not more than twenty-five years or be fined not more than
92 two hundred fifty thousand dollars, or be both fined and imprisoned.

93 (b) Any person who possesses or has under his control any quantity
94 of a hallucinogenic substance other than marijuana or four ounces or
95 more of a cannabis-type substance, except as authorized in this
96 chapter, for a first offense, may be imprisoned not more than five years
97 or be fined not more than two thousand dollars or be both fined and
98 imprisoned, and for a subsequent offense may be imprisoned not more
99 than ten years or be fined not more than five thousand dollars or be
100 both fined and imprisoned.

101 (c) Any person who possesses or has under his control any quantity
102 of any controlled substance other than a narcotic substance, or a
103 hallucinogenic substance other than marijuana or who possesses or has
104 under his control less than four ounces of a cannabis-type substance,
105 except as authorized in this chapter, for a first offense, may be fined
106 not more than one thousand dollars or be imprisoned not more than
107 one year, or be both fined and imprisoned; and for a subsequent
108 offense, may be fined not more than three thousand dollars or be
109 imprisoned not more than five years, or be both fined and imprisoned.

110 (d) Any person who violates subsection (a), (b) or (c) of this section
111 in or on, or within one thousand five hundred feet or, in a town having
112 a population in excess of sixty thousand, two hundred feet of the

113 perimeter of, the real property comprising (1) a public or private
 114 elementary or secondary school during regular school hours or the
 115 hours of any school-sponsored activity conducted on such property
 116 where students are present and who is not enrolled as a student in
 117 such school, or (2) a licensed child day care center, as defined in
 118 section 19a-77, [that] during the operating hours of such center, which
 119 center is identified as a child day care center by a sign posted in a
 120 conspicuous place, shall be imprisoned for a term of two years, which
 121 [shall not be suspended and] shall be in addition and consecutive to
 122 any term of imprisonment imposed for violation of subsection (a), (b)
 123 or (c) of this section.

124 (e) As an alternative to the sentences specified in subsections (a) and
 125 (b) and specified for a subsequent offense under subsection (c) of this
 126 section, the court may sentence the person to the custody of the
 127 Commissioner of Correction for an indeterminate term not to exceed
 128 three years or the maximum term specified for the offense, whichever
 129 is the lesser, and at any time within such indeterminate term and
 130 without regard to any other provision of law regarding minimum term
 131 of confinement, the Commissioner of Correction may release the
 132 convicted person so sentenced subject to such conditions as he may
 133 impose including, but not limited to, supervision by suitable authority.
 134 At any time during such indeterminate term, the Commissioner of
 135 Correction may revoke any such conditional release in his discretion
 136 for violation of the conditions imposed and return the convicted
 137 person to a correctional institution.

138 (f) To the extent that it is possible, medical treatment rather than
 139 criminal sanctions shall be afforded individuals who breathe, inhale,
 140 sniff or drink the volatile substances defined in subdivision (49) of
 141 section 21a-240.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	21a-267
Sec. 2	October 1, 2011	21a-278a

Section 1	October 1, 2011	21a-267
Sec. 2	October 1, 2011	21a-278a

Sec. 3	October 1, 2011	21a-279
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JUD *Joint Favorable Subst.*

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 12 \$	FY 13 \$
Judicial Dept.	GF - Potential Revenue Loss	500	500

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill revises the distance a person can be subject to enhanced penalties for the sale or possession of controlled substances or drug paraphernalia near schools, day care centers and public housing projects. To the extent that less people would be subject to enhanced fines as a result of the bill, a potential revenue loss to the General Fund of less than \$500 would result.¹

The Out Years

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

Sources: *Judicial Department Offenses and Revenue Database*

¹ Since 2003, a total of 7 individuals have been subject to these enhanced penalties, totaling \$1,250 in revenue collected.

OLR Bill Analysis**sSB 952*****AN ACT CONCERNING THE ENHANCED PENALTY FOR THE SALE OR POSSESSION OF DRUGS NEAR SCHOOLS, DAY CARE CENTERS AND PUBLIC HOUSING PROJECTS.*****SUMMARY:**

This bill makes several changes in the laws that enhance the penalties for illegal drug activities near schools, day care centers, and public housing projects. Under current law, a mandatory sentence applies in addition and consecutive to any prison term imposed for the underlying crime as follows:

1. one year for possessing drug paraphernalia within 1,500 feet of property comprising a public or private elementary or secondary school when the perpetrator is not enrolled as a student there;
2. three years for selling illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign, (b) public or private elementary or secondary school, or (c) public housing project; and
3. two years for possessing illegal drugs within 1,500 feet of property comprising a (a) licensed child day care center identified by a conspicuous sign or (b) public or private elementary or secondary school when the perpetrator is not enrolled as a student there.

Under the bill, the prison sentence under these provisions remains a term that is in addition and consecutive to any prison term imposed for the underlying crime but the court can suspend all or a portion of it without meeting the criteria required by current law (see BACKGROUND). The bill also limits the scope of these provisions by:

1. reducing the size of the zones around the locations from 1,500 to 200 feet in cities with a population of more than 60,000 (see BACKGROUND);
2. for schools, requiring the illegal activity to occur during regular school hours or hours of any school-sponsored activity conducted on the property where students are present;
3. for day care centers, requiring the illegal activity to occur during the center's operating hours; and
4. eliminating the zones around public housing projects for drug crimes.

The bill specifies that the zones are measured from the perimeter of the property.

EFFECTIVE DATE: October 1, 2011

BACKGROUND

Cities With Population Over 60,000

According to the 2010 Census, the following cities have a population of over 60,000 people:

1. Bridgeport
2. Bristol
3. Danbury
4. Greenwich
5. Hamden
6. Hartford
7. Meriden
8. New Britain

9. New Haven
10. Norwalk
11. Stamford
12. Waterbury
13. West Hartford

Departing From a Mandatory Minimum

Judges can impose less than the law's mandatory minimum sentence under these laws when no one was hurt during the crime and the defendant (1) did not use or attempt or threaten to use physical force; (2) was unarmed; and (3) did not use, threaten to use, or suggest that he or she had a deadly weapon (such as a gun or knife) or other instrument that could cause death or serious injury.

Defendants must show good cause and can invoke these provisions only once. Judges must state at sentencing hearings their reasons for (1) imposing the sentence and (2) departing from the mandatory minimum (CGS § 21a-283a).

Penalties for Illegal Drug Crimes

By law, the penalty for using or possessing with intent to use drug paraphernalia is a class C misdemeanor, punishable by up to three months in prison, a fine of up to \$500, or both. Delivering, possessing with intent to deliver, or manufacturing drug paraphernalia is a class A misdemeanor punishable by up to one year in prison, a fine of up to \$2,000, or both (CGS § 21a-267).

By law, selling, manufacturing, or distributing a hallucinogen (not marijuana) or narcotic is punishable (1) for a first offense, by up to 15 years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 30 years, a fine of up to \$100,000, or both; and (3) for a subsequent offense, up to 30 years, a fine of up to \$250,000, or both. For marijuana and other controlled substances, the penalty is (1) for a first offense, up to seven years, a fine of up to \$25,000, or both and (2) for a

subsequent offense, up to 15 years, a fine of up to \$100,000, or both (CGS § 21a-277).

By law, a non-drug dependent person selling, manufacturing, or distributing at least one ounce of heroin or methadone, one half ounce of cocaine or crack, or five milligrams of LSD is subject to five to 20 years in prison to life. For narcotics, hallucinogens, one kilogram or more of cannabis, or amphetamines, the penalty is (1) for a first offense five to 20 years and (2) for a subsequent offense, 10 to 25 years. There is an exception to the mandatory minimum sentence if the offender is under age 18 or had a significantly impaired mental capacity at the time (CGS § 21a-278).

By law, possession of narcotics is punishable (1) for a first offense, by up to seven years in prison, a fine of up to \$50,000, or both; (2) for a second offense, up to 15 years, a fine of up to \$100,000, or both; (3) for subsequent offenses, up to 25 years, a fine of up to \$250,000, or both. Possession of a hallucinogen or four or more ounces of marijuana is punishable (1) for a first offense, by up to five years in prison, a fine of up to \$2,000, or both and (2) for a subsequent offense, by up to 10 years, a fine of up to \$5,000, or both. Possession of other controlled substances or less than four ounces of marijuana is punishable (1) for a first offense, by up to one year in prison, a fine of up to \$1,000, or both and (2) for a subsequent offense, up to five years, a fine of up to \$3,000, or both (CGS § 21a-279).

BACKGROUND

Related Bill

sSB 1014, reported favorably by the Judiciary Committee, reduces the penalty for possessing less than one-half ounce of marijuana from a crime to an infraction for a first offense. It makes a subsequent offense punishable by a fine of \$200 to \$500. The bill also reduces the penalty for using drug paraphernalia from a crime to an infraction when the use relates to less than one-half ounce of marijuana. The bill requires the motor vehicle commissioner to suspend the driver's license of anyone under age 21 who is convicted of one of these violations.

HB 6391, File 536, allows the correction commissioner to immediately release an inmate to his or her residence subject to certain conditions if he or she was sentenced for (1) possessing a controlled substance other than a narcotic, a hallucinogen, or less than four ounces of marijuana or (2) drug paraphernalia crimes.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 22 Nay 17 (04/06/2011)