
OLR Bill Analysis

sHB 5586

AN ACT CONCERNING REVISIONS TO VARIOUS STATUTES CONCERNING THE CRIMINAL JUSTICE SYSTEM.

SUMMARY:

This bill makes a number of unrelated changes to criminal justice statutes, including:

1. altering the forfeiture procedures for property connected to criminal offenses other than certain drug crimes and allowing forfeiture of proceeds of these crimes;
2. expanding forfeiture provisions for sexual exploitation and human trafficking crimes to cover more property;
3. giving probation officers serving violation of probation warrants the same responsibilities as police officers when arresting someone under a warrant, including allowing them to release someone arrested on a violation of probation warrant;
4. making a minor change to the crime of 1st degree harassment;
5. allowing blood alcohol content (BAC) tests taken more the two hours after a person was operating a motor vehicle to be admissible in driving under the influence (DUI) prosecutions and administrative per se hearings regarding DUI if evidence shows their analysis accurately indicates a person's BAC at the time of the alleged offense;
6. makes a minor change regarding admissibility of BAC tests in boating under the influence cases;
7. increasing the penalty for fraudulent use of an ATM;
8. doubling the monetary thresholds for the different penalties that

apply to issuing bad checks based on the value of the checks issued, thereby reducing the penalty in some cases; and

9. allowing the Eyewitness Identification Task Force to continue until June 30, 2016 for certain purposes.

EFFECTIVE DATE: October 1, 2014, except for the task force provision, which is effective upon passage.

§ 1 — FORFEITURE OF PROPERTY RELATED TO CRIMES

The bill makes a number of changes to the law authorizing forfeiture of property connected to a crime other than most drug crimes, making them similar to procedures for forfeiture of property related to other crimes such as drug crimes and sexual exploitation and human trafficking crimes.

Property Subject to Forfeiture

Current law subjects to forfeiture property possessed, controlled, designed, intended for use, or which is, has been, or may be used to commit a crime. The bill also subjects to forfeiture the proceeds of a crime.

Notice

Currently, the judge issuing the warrant or the arraignment court must notify the property owner and anyone with a recorded mortgage, assignment of lease or rent, lien, or security interest in the property through a summons within 10 days of the seizure. The bill instead:

1. allows a prosecutor to petition the court, within 90 days after seizure, for a civil proceeding to forfeit the property;
2. requires the court to identify owners and any others who appear to have an interest in the property; and
3. requires the state to notify owners and interested parties.

Current law allows a police officer to serve the notice by leaving it with the person, at his or her usual place of abode, or at the place where the property was seized if the person's address is unknown. The

bill instead requires the state to provide notice by certified or registered mail.

The bill eliminates requirements that the notice describe the property with reasonable certainty; state when, where, and why it was seized; and the date and place of the hearing.

Hearing

Current law requires the court to hold a hearing between six and 12 days after serving the notice. The bill instead requires the hearing to be at least two weeks after the notice.

It eliminates a provision making parties of those with an interest who appear at the court hearing. The bill makes the action an in rem action (an action against the property) that is a civil action. As under current law, the state must prove the material facts by clear and convincing evidence.

Disposition of Property

As under current law, the court can determine the property is a nuisance and order it destroyed or disposed of to a charitable or educational institution or a government agency or institution. Property may also be sold at public auction. It cannot be destroyed or disposed of in violation of a mortgage, assignment, lien, or security interest.

Currently, seized money is deposited in the General Fund but remains subject to a bona fide mortgage, assignment of lease or rent, lien, or security interest. The bill instead requires the money to be distributed as follows: (1) 70% to the law enforcement agency that investigated the crime and seized the funds, for use in the agency's law enforcement activities; (2) 20% to the Criminal Injuries Compensation Fund (which provides compensation and restitution to crime victims); and (3) 10% to the Division of Criminal Justice, for use in prosecutions.

Currently, a seized valuable prize can become the state's property subject to a mortgage, assignment, lien, or security interest. The bill no longer requires it to become state property and thus allows it to be disposed of to other entities. Current law also allows selling the prize

at public auction and depositing proceeds in the General Fund but preserves the rights of those with interests. The bill instead allows its sale according to procedures approved by the administrative services commissioner. The bill requires (1) using sale proceeds to pay any mortgage, assignment of lease or rent, lien, or security interest and (2) distributing any remaining amount in the manner described above for seized money.

The bill makes secondary evidence (evidence about the property rather than the property itself) of property condemned and destroyed under these provisions admissible against the defendant in a prosecution, to the same extent the evidence would have been admissible if the property was not destroyed.

§ 2 — FORFEITURE OF PROPERTY RELATED TO SEXUAL EXPLOITATION AND HUMAN TRAFFICKING

The bill expands the types of property related to sexual exploitation and human trafficking crimes that can be seized and forfeited.

Current law authorizes forfeiture of property (1) derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from these criminal violations and (2) used or intended for use, in any manner or part, to commit or facilitate the violation of those laws for pecuniary gain. The bill no longer requires these actions be connected to pecuniary gain.

By law, other funds and property are subject to forfeiture if they are (1) money used or intended for use in certain crimes or (2) property constituting the proceeds obtained, directly or indirectly, from these crimes.

By law, the sexual exploitation and human trafficking forfeiture procedure relates to property connected with the crimes of:

1. risk of injury to a minor, involving sale of a child under age 16;
2. prostitution and 1st, 2nd, and 3rd degree promoting prostitution;
3. enticing a minor using an interactive computer;

4. voyeurism, disseminating voyeuristic material, and employing or promoting a minor in an obscene performance;
5. human trafficking;
6. importing child pornography, and
7. commercial sexual exploitation of a minor.

§ 3 — PROBATION

The bill gives a probation officer serving a violation of probation warrant the same responsibilities current law gives a police officer serving most warrants, including violation of probation warrants. Under the bill, the probation officer must:

1. advise the subject of the warrant of his or her right to (a) counsel and (b) refuse to make statements and that statements may be introduced as evidence against him or her;
2. interview the subject to obtain information relevant to terms and conditions of the subject's release, unless the person waives or refuses the interview, and independently verify information when necessary;
3. release the person on a written promise to appear or on posting a bond with conditions set by the officer (conditions may not modify those set by the court), except for those charged with a family violence crime;
4. check the National Crime Information Center criminal information database before setting conditions of release; and
5. immediately notify a bail commissioner or intake, assessment, and referral specialist if the person does not post bail.

§ 4 — 1ST DEGREE HARASSMENT

Under the bill, someone who commits 1st degree harassment is deemed to have committed the crime where the harassing communication originated or where it was received. Current law only

deems the crime to have been committed in both places when the conduct involves telephone calls, although someone can commit 1st degree harassment through a telephone, telegraph, mail, computer network, or other form of communication. A similar provision already applies to 2nd degree harassment.

By law, 1st degree harassment is a class D felony punishable by up to five years in prison, a fine of up to \$5,000, or both.

§§ 5-10 — BAC TESTS FOR DRIVERS AND BOATERS

Under current law, a BAC test or analysis must be administered to a person within two hours of his or her operating a motor vehicle for the results to be admissible in a criminal prosecution for operating a motor vehicle while under the influence of drugs or alcohol or having an elevated BAC. The two-hour deadline also applies to an administrative per se hearing for operating a motor vehicle under the influence. (By law, drivers implicitly consent to testing and administrative per se license suspension procedures apply to drivers who refuse a test or whose test results indicate an elevated BAC (CGS § 14-227b).)

The bill allows a BAC test taken after the two-hour deadline to be admissible in a prosecution or per se hearing if evidence is presented that the results and analysis accurately indicate the BAC at the time of the alleged offense. By law, the BAC level must be confirmed by a second test taken within 10 minutes of the first test.

For boating under the influence crimes, current law requires expert testimony to establish a BAC test's reliability when the test was given to the person more than two hours after he or she operated the vessel. The bill instead requires evidence demonstrating that the test results and analysis accurately indicate the person's BAC at the time of the offense.

The bill also makes technical changes.

§ 11 — FRAUDULENT USE OF AN ATM

The bill increases, from a class C to class A misdemeanor, the penalty for fraudulently using an ATM. By law, a person commits this

crime when he or she knowingly uses an ATM in a fraudulent way to obtain property, with intent to deprive someone of property or appropriate it to someone.

By law, a class C misdemeanor is punishable by up to three months in prison, a fine of up to \$500, or both. A class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both.

§ 12 — ISSUING A BAD CHECK

By law, the penalty for knowingly issuing bad checks depends on the value of the checks issued. The bill doubles the monetary thresholds for the different penalties, as shown in Table 1. Thus, the bill reduces the penalty in some cases. For example, under current law, writing a \$1,500 bad check is a class D felony but under the bill it is a class A misdemeanor.

Table 1: Penalties for Issuing a Bad Check

<i>Penalty</i>	<i>Amount of Bad Checks Issued</i>	
	<i>Current Law</i>	<i>Under the Bill</i>
Class D felony (up to five years in prison, fine of up to \$5,000, or both)	Over \$1,000	Over \$2,000
Class A misdemeanor (up to one year in prison, a fine of up to \$2,000, or both)	\$500.01 to \$1,000	\$1,000.01 to \$2,000
Class B misdemeanor (up to six months in prison, a fine of up to \$1,000, or both)	\$250.01 to \$500	\$500.01 to \$1000
Class C misdemeanor (up to three months in prison, a fine of up to \$500, or both)	\$250 or less	\$500 or less

§ 13 — EYEWITNESS IDENTIFICATION TASK FORCE EXTENSION

The bill allows this task force to continue until June 30, 2016 to (1) collect statistics about eyewitness identification procedures conducted by law enforcement agencies, (2) collect and assist in archiving eyewitness identification procedures used by law enforcement in Connecticut, and (3) consider best practices adopted by agencies in other states. The bill prohibits task force members and advisors from

receiving any compensation for their services.

The law previously charged this task force with studying issues concerning eyewitness identification in criminal investigations. The law allowed the task force to continue in existence in order to:

1. assist the Police Officer Standards and Training Council (POST) and State Police in developing policies and guidelines for eyewitness identification procedures,
2. research and evaluate best practices for these procedures and recommend revisions to POST and the State Police,
3. collect statistics on eyewitness identification procedures,
4. monitor implementation of the statutory requirements for eyewitness identification procedures, and
5. report to the Judiciary Committee on its monitoring activities and any recommended legislative changes by February 5, 2014.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 41 Nay 0 (04/02/2014)