

CONNECTICUT SENTENCING COMMISSION

No. 2016-02

**Proposed Resolution Regarding a Technical Reorganization of Statutes
Involving the Illegal Sale of Controlled Substances**

Resolution

1 **RESOLVED**, That the Connecticut Sentencing Commission requests that the Connecticut
2 General Assembly amend the Connecticut General Statutes by enacting, “An Act
3 Concerning the Recommendations of the Connecticut Sentencing Commission With
4 Respect to a Technical Reorganization of Statutes Involving the Illegal Sale of Controlled
5 Substances” dated December 2016.

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Proposed Changes

AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION WITH RESPECT TO A TECHNICAL REORGANIZATION OF STATUTES INVOLVING THE ILLEGAL SALE OF CONTROLLED SUBSTANCES.

Section 1. Section 21a-277 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

[(a) Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with the intent to sell or dispense, possesses with the intent to sell or dispense, offers, gives or administers to another person any controlled substance which is a hallucinogenic substance other than marijuana, or a narcotic substance, except as authorized in this chapter, for a first offense, shall be imprisoned not more than fifteen years and may be fined not more than fifty thousand dollars or be both fined and imprisoned; and for a second offense shall be imprisoned not more than thirty years and may be fined not more than one hundred thousand dollars, or be both fined and imprisoned; and for each subsequent offense, shall be imprisoned not more than thirty years and may be fined not more than two hundred fifty thousand dollars, or be both fined and imprisoned.

(b) Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with intent to sell or dispense, possesses with intent to sell or dispense, offers, gives or administers to another person any controlled substance, except a narcotic substance, or a hallucinogenic substance other than marijuana, except as authorized in this chapter, may, for the first offense, be fined not more than twenty-five thousand dollars or be imprisoned not more than seven years or be both fined and imprisoned; and, for each subsequent offense, may be fined not more than one hundred thousand dollars or be imprisoned not more than fifteen years, or be both fined and imprisoned.]

(a) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter, any controlled substance that is (A) a narcotic substance, or (B) a hallucinogenic substance.

(2) Any person who violates subdivision (1) of this subsection (A) for a first offense, shall be imprisoned not more than fifteen years and may be fined not more than fifty thousand dollars, or be both fined and imprisoned, (B) for a second offense, shall be imprisoned not more than thirty years and may be fined not more than one hundred thousand dollars, or be both fined and imprisoned, and (C) for any subsequent offense, shall be imprisoned not more than thirty years and may be fined not more than two hundred fifty thousand dollars, or be both fined and imprisoned.

(b) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter, any controlled substance except (A) a narcotic substance, or (B) a hallucinogenic substance.

(2) Any person who violates subdivision (1) of this subsection (A) for a first offense, may be fined not more than twenty-five thousand dollars or imprisoned not more than seven years, or be both fined and imprisoned, and (B) for any subsequent offense, may be fined not more than one hundred thousand dollars or imprisoned not more than fifteen years, or be both fined and imprisoned.

(c) No person [shall] may knowingly possess drug paraphernalia in a drug factory situation as defined by subdivision (20) of section 21a-240 for the unlawful mixing, compounding or otherwise preparing any controlled substance for purposes of violation of this chapter.

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

Sec. 2. Section 21a-278 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

[(a) Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with the intent to sell or dispense, possesses with the intent to sell or dispense, offers, gives or administers to another person one or more preparations, compounds, mixtures or substances containing an aggregate weight of one ounce or more of heroin or methadone or an aggregate weight of one-half ounce or more of cocaine or one-half ounce or more of cocaine in a free-base form, or a substance containing five milligrams or more of lysergic acid diethylamide, except as authorized in this chapter, and who is not, at the time of such action, a drug-dependent person, shall be imprisoned for a minimum term of not less than five years or more than twenty years; and, a maximum term of life imprisonment. The execution of the mandatory minimum sentence imposed by the provisions of this subsection shall not be suspended, except the court may suspend the execution of such mandatory minimum sentence if at the time of the commission of the offense (1) such person was under the age of eighteen years, or (2) such person's mental capacity was significantly impaired, but not so impaired as to constitute a defense to prosecution.

(b) Any person who manufactures, distributes, sells, prescribes, dispenses, compounds, transports with the intent to sell or dispense, possesses with the intent to sell or dispense, offers, gives or administers to another person any narcotic substance, hallucinogenic substance other than marijuana, amphetamine-type substance, or one kilogram or more of a cannabis-type substance, except as authorized in this chapter, and who is not, at the time of such action, a drug-dependent person, for a first offense shall be imprisoned not less than five years or more than twenty years; and for each subsequent offense shall be imprisoned not less than ten years or more than twenty-five years. The execution of the mandatory minimum sentence imposed by the provisions of this subsection shall not be suspended, except the court may suspend the execution of such mandatory minimum sentence if at the time of the commission of the offense (1) such person was under the age of eighteen years, or (2) such person's mental capacity was significantly impaired, but not so impaired as to constitute a defense to prosecution.]

(a) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter, (A) one or more preparations, compounds, mixtures or substances containing an aggregate weight of (i) one ounce or more of heroin or methadone, or (ii) one-half ounce or more of cocaine or cocaine in a free-base form, or (B) a substance containing five milligrams or more of lysergic acid diethylamide. The provisions of this subdivision shall not apply to

a person who is, at the time of the commission of the offense, a drug-dependent person.

(2) Any person who violates subdivision (1) of this subsection shall be imprisoned not less than five years or more than life. The execution of the mandatory minimum sentence imposed by the provisions of this subdivision shall not be suspended, except that the court may suspend the execution of such mandatory minimum sentence if, at the time of the commission of the offense, such person was under the age of eighteen years or such person's mental capacity was significantly impaired, but not so impaired as to constitute a defense to prosecution.

(b) (1) No person may manufacture, distribute, sell, prescribe, dispense, compound, transport with the intent to sell or dispense, possess with the intent to sell or dispense, offer, give or administer to another person, except as authorized in this chapter, (A) a narcotic substance, (B) a hallucinogenic substance, (C) an amphetamine-type substance, or (D) one kilogram or more of a cannabis-type substance. The provisions of this subdivision shall not apply to a person who is, at the time of the commission of the offense, a drug-dependent person.

(2) Any person who violates subdivision (1) of this subsection (A) for a first offense, shall be imprisoned not less than five years or more than twenty years, and (B) for any subsequent offense, shall be imprisoned not less than ten years or more than twenty-five years. The execution of the mandatory minimum sentence imposed by the provisions of this subdivision shall not be suspended, except that the court may suspend the execution of such mandatory minimum sentence if, at the time of the commission of the offense, such person was under the age of eighteen years or such person's mental capacity was significantly impaired, but not so impaired as to constitute a defense to prosecution.

Sec. 3. Section 21a-255 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

[(a) Any person who, either as principal or agent, refuses or fails to make, furnish or keep any record, notification, order form, statement, invoice or information required by sections 21a-243 to 21a-282, inclusive, or regulations adopted pursuant to section 21a-244, for the first offense may be fined not more than five hundred dollars and for each subsequent offense may be fined not more than one thousand dollars or imprisoned not more than thirty days or be both fined and imprisoned.

(b) Any person who fails to keep any record required by said sections 21a-243 to 21a-

282, inclusive, or said regulations, with an intent to defeat the purpose of this chapter or any person who violates any other provision of said sections, except as to such violations for which penalties are specifically provided in sections 21a-277 and 21a-279, may, for the first offense, be fined not more than three thousand five hundred dollars or be imprisoned for not more than two years or be both fined and imprisoned; and for the second and each subsequent offense shall be guilty of a class C felony.]

(a) Any person who, either as principal or agent, refuses or fails to make, furnish or keep any record, notification, order form, statement, invoice or information required by sections 21a-243 to 21a-282, inclusive, as amended by this act, or regulations adopted pursuant to section 21a-244, (1) for a first offense, may be fined not more than five hundred dollars, and (2) for any subsequent offense, may be fined not more than one thousand dollars or imprisoned not more than thirty days, or be both fined and imprisoned.

(b) Any person who, with intent to defeat the purpose of this chapter, fails to keep any record required by sections 21a-243 to 21a-282, inclusive, as amended by this act, or regulations adopted pursuant to section 21a-244, (1) for a first offense, may be fined not more than three thousand five hundred dollars or imprisoned not more than two years, or be both fined and imprisoned, and (2) for any subsequent offense, shall be guilty of a class C felony.

(c) Any person who violates any provision of sections 21a-243 to 21a-282, inclusive, as amended by this act, for which no penalty is expressly provided, (1) for a first offense, may be fined not more than three thousand five hundred dollars or imprisoned not more than two years, or be both fined and imprisoned, and (2) for any subsequent offense, shall be guilty of a class C felony.

Sec. 4. Subdivision (23) of section 21a-240 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(23) "Hallucinogenic substances" are psychodysleptic substances, other than cannabis-type substances, which assert a confusional or disorganizing effect upon mental processes or behavior and mimic acute psychotic disturbances. Exemplary of such drugs are mescaline, peyote, psilocyn and d-lysergic acid diethylamide, which are controlled substances under this chapter unless modified.

Statement of Purpose:

To improve the organization and comprehensibility of statutes concerning the illegal sale of controlled substances.

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Report

The proposed changes were drafted by retired Legislative Commissioner's Office Attorney Richard Taff. Atty. Taff offered a draft of his technical revisions to the statutes concerning the illegal sale of controlled substances to members of the Sentencing Commission for their consideration.

The proposed changes date back to 2007 when the Offense Classification Subcommittee of the Sentencing Task Force (the Sentencing Commission's predecessor) discussed the possibility of classifying the unclassified offenses found in the drug statutes, namely sections 21a-277, 21a-278 and 21a-279, concerning the illegal sale and possession of controlled substances.

At the time, there was also discussion about the difficulty in understanding which controlled substances were included or excluded from each offense and the penalties therefor due to the wording and structure of the statutes

Some members of the subcommittee suggested that inserting subdivision and subparagraph indicators to segregate the different types and quantities of drugs involved in each offense and the penalties for first, second and subsequent offenses would assist the police and prosecutors in charging the specific offense committed and allow the Judicial Branch to maintain better statistics on the number of convictions rendered and the penalties imposed for these offenses.

Atty. Taff was the legislative attorney from the Legislative Commissioners' Office for the Judiciary Committee at the time, and, in anticipation of a subcommittee discussion on the topic, prepared a draft of a bill to classify the offenses and make these other technical changes.

The subcommittee, however, chose to put off the difficult and possibly controversial task of classifying the drug offenses and thus the draft was never put forward for discussion.

Despite the shelving of the classification proposal, in the following years Atty. Taff became more and more convinced that the drug statutes were crying out for at least a technical revision and reorganization.

The state courts have also been perplexed at times by the wording and structure of these statutes. A Superior Court decision in 1974 lamented that the "provisions of our laws now dealing with dependency-producing drugs are not as simple and as easily understood as perhaps they should be." State v. Anonymous, 31 Conn. Supp. 130 (1974). An Appellate Court decision in 1986 commented that the placement of a comma was "troublesome", but refused to let a "misplaced or superfluous comma... thwart and frustrate the public policy expressed in the statute." State v. Aspinall, 6 Conn. App. 546 (1986).

Judge Devlin, Atty. Sullivan on behalf of Atty Storey, and Atty Austin on behalf of Atty Kane worked with Atty. Taff on the proposal. After discussion and some amendments, the group agreed to submit the proposal to the Steering Committee for consideration.

The Steering Committee reviewed and adopted the proposal on November 22nd and moved that it be submitted to the Commission for consideration at the December 8th commission meeting. The motion was adopted unanimously and this resolution was drafted.

This resolution recognizes the need to improve the organization and comprehensibility of statutes concerning the illegal sale of controlled substances and recommends that the Connecticut General Assembly amend the General Statutes as proposed.

First, what the proposed changes do not do

The proposed changes do *not*:

- Classify the drug sale offenses, as the subcommittee of the Sentencing Task Force briefly considered in 2007
- Change the existing penalties in any way
- Change the statutory placements or designations for the offenses. As a long-time drafter of statutes, I appreciate the importance of retaining statutory section numbers whenever possible for tracking and historical purposes. Hence, for example, what had been an illegal sale of a narcotic substance by a non-drug-dependent person in violation of section 21a-278(b) would still be a violation of section 21a-278(b), although now, more precisely, it would be a violation of section 21a-278(b)(1)(A).

What the proposed changes do

The proposed changes:

- Insert subdivision and subparagraph indicators to separate the different types of controlled substances and clarify what is included and excluded from each subsection, and to separate the different penalties prescribed for first, second and subsequent offenses.
- Segregate into separate subsections the prohibitory provisions and the penalty provisions.
- Place “a narcotic substance” and “a hallucinogenic substance other than a cannabis-type substance” in the same order in subsections (a) and (b) of section 21a-277 for clarity
- Replace “marijuana” with “cannabis-type substance” for consistency with usage in the possession statutes, i.e. sections 21a-279 and 21a-279a. The definitions for the two terms are identical but for a few technical differences.
- Delete the indeterminate minimum sentence in Section 21a-278(a) of “not less than five years or more than twenty years” and replaces it with “not less than five years.” The Supreme Court in State v. Delossantos, 211 Conn. 258 (1989) held that such an indeterminate sentence was implicitly repealed with the enactment of section 53a-35a and definite sentencing in 1981.
- Restructure section 21a-255. Subsection (b) of this section provides the penalty for failing to keep records with an intent to defeat the purpose of chapter 420b. But it also provides the penalty for a violation of any provision of sections 21a-243 to 21a-282, inclusive, for which the penalty is not already provided in subsection (a) or (b), or in

sections 21a-277 and 21a-279. This general penalty provision is sometimes overlooked with the result that subsection (b) is misread as being applicable only to record-keeping violations. For example, an advance copy of an Appellate Court opinion in 2007 stated in a footnote that “Section 21a-255(b) is not relevant to persons engaged in the illegal possession and manufacturing of dependency producing drugs.” I wrote a letter to the Reporter of Judicial Decisions pointing out that subsection (b) was indeed relevant since it provided the penalty for the offense at issue in that case, namely a violation of section 21a-277(c). The footnote was deleted in the published version of the case. Also, since the enactment of section 21a-255 in 1967, other provisions have been added to sections 21a-243 to 21a-282, inclusive, that have their own penalty provisions (e.g. sections 21a-267 and 21a-278), and thus there are more sections than just “sections 21a-277 and 21a-279” that expressly provide penalties for their violation.

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