PA 21-102—sHB 6594
Judiciary Committee
Appropriations Committee

AN ACT CONCERNING THE CRIMINAL JUSTICE PROCESS

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EFFECTIVE DATE: October 1, 2021, except the sentence modification provisions (§ 25) are effective upon passage.

§ 1 — DEPOSITIONS FOR THOSE INFIRM AND AGE 75 AND OLDER

Allows the state to depose people who are infirm and age 75 and older in certain trials

Existing law allows defendants to ask a Superior Court judge or the court to depose a witness if it appears the witness's testimony will be required at trial and he or she will be unable to testify. The act additionally allows this for witnesses who are infirm and age 75 or older in any case involving an offense where the punishment may be imprisonment of more than one year.

Prior law allowed witness depositions to be taken before a commissioner or magistrate that the court or judge designated. The act also allows these depositions to be before a judge.

§§ 2 & 3 — SOLICITING SEXUAL ACTS

Changes "patronizing a prostitute" to "soliciting sexual acts"

The act changes the crime of "patronizing a prostitute" to "soliciting sexual acts."

§§ 4 & 5 — INVESTIGATIONS TO REMOVE TOWN CLERKS AND TREASURERS

Requires that the attorney general, rather than the state's attorneys, investigate a town clerk or treasurer for removal

The act transfers from the state's attorneys to the attorney general the responsibility for investigating a town clerk or treasurer for removal. As under prior law for state's attorneys, the act requires the attorney general to, among other things, investigate charges of misconduct, willful and material neglect of duty, or incompetent conduct. Additionally, the attorney general has the power to, among other things, summon witnesses, require the production of necessary documents, and represent the state in removal hearings.

§ 6 — PENSION REVOCATION NOTICE

Requires (1) prosecutors to notify the attorney general of certain proceedings involving pension revocation for public employees and eliminates a similar notice requirement for federal court proceedings and (2) the attorney general to pursue pension revocation remedies for state court proceedings

Prior law required the attorney general to notify the prosecutor of the existence of the pension revocation law when the defendant in a state or federal court criminal proceeding was a public official or state or municipal employee charged with a crime related to his or her office. The act instead requires the prosecutor to notify the attorney general of the proceeding and eliminates the notice requirement for federal court proceedings. For state court proceedings, the act also requires the attorney general to pursue the remedies under the pension revocation law (e.g., fines, restitution, or other monetary orders paid from the official's or employee's pension).

§ 7 — VENDOR FRAUD

Expands the definition of vendor fraud to include instances where the person has intent to defraud the state or the beneficiary and has knowledge of an event that would result in lower benefit payments

Under existing law, a person commits vendor fraud when the person, acting on his or her own or on an entity's behalf, provides goods or services to public assistance beneficiaries (including Medicaid) under certain circumstances with the intent to defraud either the state or the beneficiary. The act expands the circumstances that constitute vendor fraud to include instances where the person has knowledge of the occurrence of any event affecting (1) his or her initial or continued right to the benefit or payment, or (2) the initial or continued right to the benefit or payment of any beneficiary he or she applied for or is receiving the benefit or payment for, and the person conceals or does not disclose the event intending to fraudulently secure the benefit or payment either in a greater amount or quantity than is due or when no benefit or payment is allowed.

By law, there are six degrees of vendor fraud, with penalties ranging from a class C misdemeanor to a class B felony (see Table on Penalties), depending on the amount of goods or services involved.

§ 8 — ELECTRONIC STALKING

Increases the penalty for electronic stalking and broadens the definition of the crime

Under prior law, a person was guilty of electronic stalking when he or she recklessly caused another person to reasonably fear for his or her physical safety by willfully and repeatedly using a global positioning system or similar electronic monitoring system to remotely determine or track the person's position or movement. The act generally broadens the crime's definition to intending to kill, injure, harass, or intimidate another person by using an interactive computer service or electronic communication service, electronic communication system, or electronic monitoring system to place the other person under surveillance or engage in other conduct that (1) places the other person or their immediate family member or intimate partner in a reasonable fear of death or serious bodily injury or (2) causes, attempts to cause, or is reasonably expected to cause substantial emotional distress to these individuals.

Under the act, an "immediate family member" means (1) a person's spouse, parent, brother, sister, or child, or the person to whom the person stands in loco parentis (i.e., in place of a parent) or (2) any person living in the household and related to the person by blood or marriage. "Intimate partner" means a (1) former spouse; (2) person who has a child in common with the person regardless of whether he or she is or has been married or are living or have lived together at any time; or (3) person in, or who has recently been in, a dating relationship with the person.

The act increases the penalty from a class B misdemeanor to a class D felony.

§ 9 — INTIMATE IMAGES

Specifies what is considered "harm" for distributing intimate images; prohibits dissemination when the other person is not identifiable, but other identifying information is included; and increases the penalty when dissemination is to more than one person over certain electronic platforms

"Harm"

By law, a person is guilty of unlawful dissemination of an intimate image when the person intentionally disseminates an intimate image without the other person's consent, knowing that the other person believed the image would not be disseminated, and the other person suffers harm because of the dissemination.

The act specifies that "harm" includes subjecting the other person to hatred, contempt, ridicule, physical or financial injury, psychological harm, or serious emotional distress.

Identifiable Information

Under prior law, there were certain circumstances where disseminating these images was not a crime, including, among others, when the other person is not clearly identifiable. But under the act, the exemption does not apply if there is

personally identifying information associated with or accompanying the image.

Increased Penalty

The act increases the penalty, from a class A misdemeanor to a class D felony, if the unlawful dissemination is to more than one person by means of an interactive computer service, an information service, or a telecommunications service.

Under the act, "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet, and the systems libraries or educational institutions operate or offer services for (47 U.S.C. § 230).

"Information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but excludes any use of any such capability for managing, controlling, or operating a telecommunications system or managing a telecommunications service (47 U.S.C. § 153).

"Telecommunications service" means any transmission in one or more geographic areas (1) between or among points the user specifies; (2) of information of the user's choosing; (3) without change in the information's form or content as sent and received; (4) by electromagnetic transmission means, including fiber optics, microwave, and satellite; (5) with or without benefit of any closed transmission medium; and (6) including all instrumentalities, facilities, apparatus, and services, except customer premises equipment, which are used for collecting, storing, forwarding, switching, and delivering such information and are essential to the transmission (CGS § 16-247a).

§ 10 — SENTENCING PERSISTENT OFFENDERS

Limits the look-back period for controlled substance possession and certain felonies to 10 years for persistent offenders and extends the exemption for these felony offenders to include class E felonies

By law, to be considered a persistent offender a person must (1) stand convicted of certain crimes and (2) have a prior conviction of certain crimes. The act limits the look-back period for qualifying felonies for prior convictions to 10 years for controlled substance possession violations and certain other felonies and extends the exemption to include class E felonies.

Under prior law, a persistent offender for possession of a controlled substance was someone convicted of a controlled substance possession violation who had two prior controlled substance possession convictions. The act limits the look-back to 10 years.

Under prior law, a persistent felony offender was someone convicted of a felony, other than a class D felony, who has been convicted twice before of these felonies. The act (1) extends the exemption to also include class E felonies and (2)

limits the look-back period to 10 years.

§§ 11-18 — FEE WAIVERS FOR DIVERSIONARY PROGRAMS OR TREATMENTS

Waives, for certain indigent individuals represented by a public defender, the fee for certain diversionary programs and treatments and prohibits courts from requiring community service instead of any fees for indigent individuals

Fee Waivers

For individuals, including students' parents or guardians, as applicable, who are indigent and eligible for a public defender, the act waives the fees for certain diversionary programs. In some programs, it also eliminates the requirement that good cause be shown or that the fee would cause economic hardship. The act waives the fees for the following programs:

1. community service labor (CGS § 53a-39c),
2. accelerated pretrial rehabilitation (CGS § 54-56e),
3. pretrial alcohol education for certain motor vehicle violations (CGS § 54-56g),
4. pretrial drug education and community service for certain dependency-producing drug offenses (CGS § 54-56i),
5. pretrial school violence prevention (CGS § 54-56j), and
6. pretrial family violence education (CGS § 46b-38c).

Under existing law, indigent individuals are exempt from these program fees upon the filing of indigent status, its confirmation, and entering of the finding.

The act prohibits anyone from being denied a Department of Mental Health and Addiction Services clinical examination to determine alcohol or drug dependency due to inability to pay the associated fees or costs of the exam or program. It waives the fees through the processes described above.

Under prior law, a person granted suspended prosecution for drug or alcohol dependence treatment could be deemed indigent if the court determined the person had an estate insufficient to provide for the person's support or there was no other person legally liable or able to support them. The act also allows individuals to be deemed indigent if they have been determined indigent and eligible for a public defender to be appointed on their behalf.

The act makes minor, technical, and conforming changes.

Community Service Prohibition

Additionally, the act prohibits the court from requiring community service instead of paying the fee if waived for any of the programs described above.

§§ 14 & 19 — NARCOTIC DRUG STORAGE

Adds a penalty for failure to keep a narcotic in the original container and allows violators to take the pretrial drug education and community service program

Penalty

By law, a person who legally has any narcotic drug may only possess it in the container in which it was delivered. The act makes anyone who fails to do this guilty of a class D misdemeanor. Under prior law, a person who violated a dependency-producing drug provision without a specified penalty was subject to, for (1) a first offense, a fine of up to $3,500, imprisonment of up to two years, or both; and (2) any subsequent offense, a class C felony.

The act's penalties do not apply to anyone who in good faith places the narcotic in either a (1) pill box, case, or organizer stored within his or her residence, or (2) secured or locked pill box, case, or organizer, if these objects are accompanied by proof of the person's prescription.

Pretrial Drug Education and Community Service Program

The act allows certain individuals charged with improper storage to take the pretrial drug education and community service program. As under existing law, individuals are generally ineligible to participate if they have already previously participated twice in this program, or its predecessor or community service programs. The program has a $100 application fee, $150 evaluation fee, and $600 program fee, unless waived (see above). (PA 21-1, June Special Session (JSS), §§ 166 & 169, sunsets this pretrial program but establishes a similar program for people charged with drug possession, paraphernalia, and narcotic storage crimes.)

Among other things, the program consists of 15 sessions of drug education, at least 15 sessions of substance abuse treatment, and community service. As under existing law, if a person successfully completes the program, the court dismisses the charges, but those who do not complete the program must return to court to face the original charges.

§ 20 — FINE FOR FAILING TO PAY OR ACT FOR CERTAIN INFRACTIONS OR VIOLATIONS

Reduces certain penalties when a person fails to pay or respond to infractions or violations

Under prior law, a person charged with an infraction who failed to pay the fine and additional fee, failed to send in a plea of not guilty by the answer date, or willfully failed to appear at a required scheduled court appearance date was guilty of a class C misdemeanor. But for certain infractions or violations, failing to pay the fine and fees, failing to send in a timely plea, or willfully failing to appear in court was a class A misdemeanor. The act reduces these penalties to an unclassified misdemeanor for which violators may be subject to up to 10 days' imprisonment.

§ 21 — PRE-SENTENCE CONFINEMENT CREDIT

Allows for pre-sentence confinement credit on concurrent sentences and provides that consecutive sentences are only counted once

Under existing law, anyone who was confined in a community correctional center or a correctional institution for an offense, under a mittimus (an order to arrest and bring a person before the court) or because the person is unable to obtain bail or is denied bail, must, if subsequently imprisoned, have their sentence reduced by the number of days they spent in pre-sentence confinement.

In calculating these credits under the act for offenses committed on or after October 1, 2021, each day of pre-sentence confinement is counted (1) equally in reducing any concurrent sentence imposed for any offense pending at the time the sentence was imposed, but (2) only once in reducing any imposed consecutive sentence. Prior law allowed the credit to be counted only once for reducing all sentences.

These provisions apply only to people whose inability to obtain bail or bail denial is the sole reason for their presentence confinement. However, if a person is imprisoned at the same time he or she is in presentence confinement on another charge and the conviction for the imprisonment is reversed on appeal, the person is entitled, in any subsequent sentencing, to a reduction based on the presentence confinement.

Under the act, in the case of a fine, each day spent confined before sentencing is credited against the sentence at a per day rate equal to the average daily cost of incarceration as the correction commissioner determines.

§§ 22-24 — SALE OR POSSESSION OF DRUGS IN DRUG-FREE ZONES

Reduces the (1) scope of laws enhancing the penalties for illegal drug activities in drug-free zones and (2) size of these zones from 1,500 to 200 feet

The act reduces the scope of laws enhancing the penalties for illegal drug activities near schools, licensed childcare centers, and public housing projects (i.e., drug-free zones). It reduces the size of these zones from 1,500 to 200 feet and specifies that they are measured from the perimeter of the property.

The act also provides that for the enhanced penalty to apply for these crimes, the offender must commit the crime with the intent to do so in a specific location which the trier of fact (i.e., the jury or judge) determines is within the zone. To the extent this provision applies to illegal drug sales and related crimes, it codifies case law (e.g., *State v. Denby*, 235 Conn. 477 (1995)).

Drug-free zones, which the act reduces from 1,500 to 200 feet, generally require a mandatory sentence, in addition and consecutive to any prison term imposed for the underlying crime, as follows:

1. one year for various drug paraphernalia crimes near a public or private elementary or secondary school when the defendant is not enrolled there as a student;
2. class A misdemeanor with a required prison and probation sentence for possessing illegal drugs near a public or private elementary or secondary school when the defendant is not enrolled there as a student, or near a licensed child care center identified by a conspicuous sign; or
3. three years for selling illegal drugs, transporting or possessing them with

intent to sell, or related crimes near a (a) public or private elementary or secondary school, (b) licensed childcare center identified by a conspicuous sign, or (c) public housing project.

Exceptions to Enhanced Penalties; Departing From a Mandatory Minimum

Under PA 21-1, JSS, §§ 2 & 4, the enhanced penalties do not apply to (1) drug paraphernalia-related actions involving cannabis or (2) possessing cannabis.

By law, judges can impose less than the law's mandatory minimum sentence under the laws described above 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 threaten to use or suggest that he or she had a firearm, other deadly weapon, 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).

§ 25 — SENTENCE MODIFICATIONS

Expands eligibility for sentence modification by allowing the court, without an agreement between the defendant and the state, to modify sentences, including those under plea agreements with seven years or less of actual incarceration

The act expands eligibility for sentence modification (i.e., sentence reduction, defendant discharge, or placement of the defendant on probation or conditional discharge). Prior law required both the defendant and prosecutors to agree for the court to hold a modification hearing when the defendant's entire sentence exceeded three years.

The act allows the court, without an agreement between the defendant and the state, to modify plea agreements, including those with an agreed upon sentence range, which include seven years or less of actual incarceration. The act requires such an agreement if the plea is over seven years. As under existing law, there must be a hearing and good cause shown. In addition, the act allows defendants whose sentence is a result of a trial to move for sentence modification without an agreement, regardless of sentence length.

The act prohibits the defendant from filing a subsequent motion for relief under these provisions until five years after the date of the most recent decision denying him or her relief by a sentence reduction or discharge.