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BILL ANALYSIS

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House Bills 5556 and 5557 (as passed by the House)
Sponsor: Representative Jennifer Faunce (House Bill 5556)
Representative Mike Kowall (House Bill 5557)
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 9-20-00

CONTENT

House Bill 5556 would amend the Public Health Code to prohibit the manufacture, delivery, or possession of gamma-butyrolactone (GBL) or any material, compound, mixture, or preparation containing GBL; include GBL in the Code's prohibition against delivery of a drug to commit or attempt to commit criminal sexual conduct (CSC); subject the GBL offenses to enhanced penalties under the Code's drug-free school zone and drug-free park zone provisions and for delivery to a minor; and expand the Code's property forfeiture provision for drug violations.

House Bill 5557 would amend the Code of Criminal Procedure to include in the sentencing guidelines the felony GBL offenses proposed by House Bill 5556, as well as the current felonies of delivery of a controlled substance to commit or attempt to commit CSC and delivery or distribution of a controlled substance in a park.

The bills would take effect on January 1, 2001. House Bill 5557 is tie-barred to House Bill 5556.

House Bill 5556

Manufacture, Delivery, or Possession of GBL

The bill would prohibit a person from manufacturing, delivering, or possessing with intent to manufacture or deliver gamma-butyrolactone or any material, compound, mixture, or preparation containing GBL. It also would prohibit knowingly or intentionally possessing GBL or any material, compound, mixture, or preparation containing GBL.

A violation involving manufacture, delivery, or possession with intent to manufacture or deliver, would be a felony, punishable by up to seven years' imprisonment, a maximum fine of \$5,000, or both. A possession violation would be a felony, punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both.

The bill's prohibitions would not apply to manufacturing, delivering, possessing with intent to manufacture or deliver, or possessing GBL or a material, compound, mixture, or preparation containing GBL for use in a "commercial application" and not for human consumption. It would be an affirmative defense to a prosecution under the bill that the person manufactured, delivered, possessed with intent to manufacture or deliver, or possessed GBL in compliance with this exception. ("Commercial application" would mean as an ingredient in a lawful product, for use in the process of manufacturing a lawful product, or for lawful use as a solvent.)

Delivery to Commit CSC

The Code prohibits the delivery of a controlled substance to an individual, without that individual's consent, to commit or attempt to commit first-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC (MCL 750.520b, 750.520c, 750.520d, 750.520e, or 750.520g). A violation is a felony, punishable by up to 20 years' imprisonment. A conviction or sentence for this violation does not prohibit a conviction or

sentence for any other crime arising out of the same transaction, and the violation applies regardless of whether the offender is convicted of a CSC violation. The bill would include the delivery of GBL or any material, compound, mixture, or preparation containing GBL in that provision.

Delivery to Minors & Drug-Free Zones

Delivery to a Minor. The Code provides that an individual 18 years of age or older who delivers or distributes less than 50 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine to a person under 18 who is at least three younger than the distributor, may be punished by the fine otherwise authorized for a delivery offense, a term of imprisonment of not more than twice that otherwise authorized for the offense, or both. The bill would include delivery of GBL in that enhanced penalty provision.

Drug-Free School Zone. The Code mandates that an individual who is 18 or older and possesses certain controlled substances on school property be punished by a term of imprisonment or a fine, or both, of not more than twice that otherwise authorized for the violation. The bill would add possession of GBL to that enhanced penalty provision. (The current violation applies to less than 25 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine; a Schedule 1, 2, 3, or 4 controlled substance or a controlled substance analogue; LSD, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a Schedule 5 controlled substance; and marihuana.)

Drug-Free Park Zone. The Code provides that a person 18 or older who does any of the following may be punished by up to two years' imprisonment:

- Delivers less than 50 grams of mixture containing a Schedule 1 or 2 narcotic or cocaine to a minor who is in a public or private park or within 1,000 feet of a public or private park.
- Possesses with intent to deliver less than 50 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine to a minor who is in a public or private park or within 1,000 feet of a public or private park.
- Possesses certain controlled substances in a public or private park. (This violation applies to less than 25 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine; a Schedule 1, 2, 3, or 4 controlled substance or a controlled substance analogue; LSD, peyote, mescaline, dimethyltryptamine, psilocyn, psilocybin, or a Schedule 5 controlled substance; and marihuana.)

The term of imprisonment for a drug-free park zone violation is in addition to the term of imprisonment otherwise authorized for the controlled substance violation. The bill would add delivery, possession with intent to deliver, and possession of GBL to the enhanced penalty provisions for violations in or near a park.

Forfeiture

The Code provides that prescription forms, controlled substances, imitation controlled substances, controlled substance analogues, androgenic anabolic steroids, or counterfeit androgenic anabolic steroids that are manufactured, distributed, dispensed, used, possessed, or acquired in violation of the Code's drug provisions are subject to forfeiture. The bill would add "or other drug" to the list of substances that are subject to forfeiture.

The Code also provides that a raw material, product, or equipment that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting controlled substances, controlled substance analogues, androgenic anabolic steroids, or counterfeit androgenic anabolic steroids in violation of the Code's drug provisions is subject to forfeiture. The bill would add "or other drug" to the list of substances for which a raw material, product, or equipment is subject to forfeiture.

Other property used in committing controlled substance and steroid offenses, including a container, conveyance, book, record, research product and material, and other thing of value, is subject to forfeiture under the Code. Under the bill, all of those assets would be subject to forfeiture if used in committing violations related to other drugs.

House Bill 5557

The bill would add all of the following to the sentencing guidelines:

- Delivery of a controlled substance or GBL to commit or attempt to commit CSC, which would be categorized as a Class C felony against a person, with a statutory maximum penalty of 20 years' imprisonment.
- Delivery or manufacture of GBL, which would be categorized as Class E controlled substance felony, with a statutory maximum penalty of seven years' imprisonment.
- Possession of GBL, which would be categorized as a Class G controlled substance felony, with a statutory maximum penalty of two years' imprisonment.
- Delivery or distribution of a controlled substance or GBL in a public or private park, which would be categorized as a Class G controlled substance felony, with a statutory maximum penalty of two years' imprisonment.

The bill also would add delivery or distribution of GBL to minors or students to the existing sentencing guidelines provision for delivery or distribution of a controlled substance to minors or students. That violation is categorized as a controlled substance felony with a variable statutory maximum penalty.

MCL 333.7401a et al. (H.B. 5556)
777.13 & 777.18 (H.B. 5557)

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bills 5556 and 5557 would have an indeterminate fiscal impact on State and local government.

There are no data to indicate how many offenders would be convicted of delivering gamma-butyrolactone to commit or attempt to commit criminal sexual conduct. The felony would be a Class C offense for which the sentencing guidelines recommendation ranges from 0-11 months to 62-114 months. Assuming that five offenders a year would be sentenced to and serve the maximum of the sentencing guideline range, given an average annual cost of incarceration of \$22,000, the cost of incarceration to the State would be \$1,045,000 per year. If the offenders were to receive sentences at the lower end of the sentencing guidelines range, local units of government would incur the costs of incarceration, which vary among the counties.

Additionally, there are no data to indicate how many offenders could be convicted of delivering or manufacturing gamma-butyrolactone or of possessing GBL. These felony offenses would be, respectively, a Class E offense which carries a sentencing guidelines recommendation ranging from 0-3 months to 24-38 months, and a Class G offense for which the sentencing guidelines recommendation ranges from 0-3 months to 7-23 months. Assuming that five offenders a year would be convicted of each felony offense and receive and serve the maximum of the sentencing guideline range, given an average annual cost of incarceration of \$22,000, the cost of incarceration to the State would be \$560,000 per year. If the offenders were scored at the lower end of the sentencing guideline range, local units of government would incur the costs of incarceration.

According to the Department of Corrections statistical report, in 1998, there were 13 people convicted of possessing marijuana on school property (MCL 333.7410(4)(d)). This crime has a maximum sentence of two years, which is similar to the proposed penalty for delivering or distributing gamma-butyrolactone in a public or private park. The proposed offense would be a Class G offense with a sentencing guidelines recommendation range of 0-3 months to 7-23 months. Assuming that 13 offenders a year would be found guilty of this offense, given an average annual cost of incarceration of \$22,000, the cost of incarceration to the State would be \$550,000 per year. Since the maximum penalty for this offense is two years and a minimum sentence cannot be more than two-thirds of the maximum sentence, most offenders would receive a nonprison sentence, and then the costs of incarceration would be incurred by local units of government.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.