

BILL TEXT:

STATE OF NEW YORK

5920

2005-2006 Regular Sessions

IN SENATE

June 23, 2005

Introduced by Sens. NOZZOLIO, WINNER, ALESİ, BALBONI, BONACIC, BRUNO, DeFRANCISCO, FARLEY, FLANAGAN, FUSCHILLO, GOLDEN, HANNON, JOHNSON, LARKIN, LAVALLE, LEIBELL, LIBOUS, LITTLE, MALTESE, MARCELLINO, MARCHI, MAZIARZ, MEIER, MORAHAN, PADAVAN, RATH, ROBACH, SALAND, SEWARD, SKELOS, SPANO, TRUNZO, VOLKER, WRIGHT, YOUNG -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the penal law, in relation to grand larceny in the fourth degree, criminal possession of stolen property in the fourth degree, criminal possession of methamphetamine manufacturing material, criminal possession of precursors of methamphetamine, unlawful manufacture of methamphetamine and unlawful disposal of methamphetamine laboratory material; to amend the criminal procedure law, in relation to methamphetamine offenses; to amend the social services law, the executive law, the general municipal law, the mental hygiene law and the public health law, in relation to the provision of information on unlawful methamphetamine laboratories; and to amend the civil practice law and rules, in relation to joint liability

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 155.30 of the penal law is amended by adding a new
2 subdivision 11 to read as follows:

3 11. The property consists of anhydrous ammonia or liquified ammonia
4 gas and the actor intends to use, or knows another person intends to
5 use, such anhydrous ammonia or liquified ammonia gas to manufacture
6 methamphetamine.

7 § 2. Section 165.45 of the penal law is amended by adding a new subdi-
8 vision 7 to read as follows:

9 7. The property consists of anhydrous ammonia or liquified ammonia gas
10 and the actor intends to use, or knows another person intends to use,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 such anhydrous ammonia or liquified ammonia gas to manufacture meth-
2 amphetamine.

3 § 3. Section 220.00 of the penal law is amended by adding a new subdi-
4 vision 16 to read as follows:

5 16. For the purposes of sections 220.70, 220.71, 220.72, 220.73,
6 220.74, 220.75 and 220.76 of this article:

7 (a) "Precursor" means ephedrine, pseudoephedrine, or any salt, isomer
8 or salt of an isomer of such substances.

9 (b) "Chemical reagent" means a chemical reagent that can be used in
10 the manufacture, production or preparation of methamphetamine.

11 (c) "Solvent" means a solvent that can be used in the manufacture,
12 production or preparation of methamphetamine.

13 (d) "Laboratory equipment" means any items, components or materials
14 that can be used in the manufacture, preparation or production of meth-
15 amphetamine.

16 (e) "Hazardous or dangerous material" means any substance, or combina-
17 tion of substances, that results from or is used in the manufacture,
18 preparation or production of methamphetamine which, because of its quan-
19 tity, concentration, or physical or chemical characteristics, poses a
20 substantial risk to human health or safety, or a substantial danger to
21 the environment.

22 § 4. The penal law is amended by adding seven new sections 220.70,
23 220.71, 220.72, 220.73, 220.74, 220.75 and 220.76 to read as follows:

24 § 220.70 Criminal possession of methamphetamine manufacturing material
25 in the second degree.

26 A person is guilty of criminal possession of methamphetamine manufac-
27 turing material in the second degree when he or she possesses a precu-
28 rsor, a chemical reagent or a solvent with the intent to use or knowing
29 another intends to use such precursor, chemical reagent, or solvent to
30 unlawfully produce, prepare or manufacture methamphetamine.

31 Criminal possession of methamphetamine manufacturing material in the
32 second degree is a class A misdemeanor.

33 § 220.71 Criminal possession of methamphetamine manufacturing material
34 in the first degree.

35 A person is guilty of criminal possession of methamphetamine manufac-
36 turing material in the first degree when he or she commits the offense
37 of criminal possession of methamphetamine manufacturing material in the
38 second degree, as defined in section 220.70 of this article, and has
39 previously been convicted within the preceding five years of criminal
40 possession of methamphetamine manufacturing material in the second
41 degree, as defined in section 220.70 of this article, or a violation of
42 this section.

43 Criminal possession of methamphetamine manufacturing material in the
44 first degree is a class E felony.

45 § 220.72 Criminal possession of precursors of methamphetamine.

46 A person is guilty of criminal possession of precursors of methamphe-
47 tamine when he or she possesses at the same time a precursor and a
48 solvent or chemical reagent, with intent to use or knowing that another
49 intends to use each such precursor, solvent or chemical reagent to
50 unlawfully manufacture methamphetamine.

51 Criminal possession of precursors of methamphetamine is a class E
52 felony.

53 § 220.73 Unlawful manufacture of methamphetamine in the third degree.

54 A person is guilty of unlawful manufacture of methamphetamine in the
55 third degree when he or she possesses at the same time and location,

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1 with intent to use, or knowing that another intends to use each such
2 product to unlawfully manufacture, prepare or produce methamphetamine:

3 1. Two or more items of laboratory equipment and two or more precu-
4 sors, chemical reagents or solvents in any combination; or

5 2. One item of laboratory equipment and three or more precursors,
6 chemical reagents or solvents in any combination; or

7 3. A precursor:

8 (a) mixed together with a chemical reagent or solvent; or

9 (b) with two or more chemical reagents and/or solvents mixed together.

10 Unlawful manufacture of methamphetamine in the third degree is a class
11 D felony.

12 § 220.74 Unlawful manufacture of methamphetamine in the third degree.

13 A person is guilty of unlawful manufacture of methamphetamine in the
14 second degree when he or she:

15 1. Commits the offense of unlawful manufacture of methamphetamine in
16 the third degree as defined in section 220.73 of this article in the
17 presence of another person under the age of sixteen, provided, however,
18 that the actor is at least five years older than such other person under
19 the age of sixteen; or

20 2. Commits the crime of unlawful manufacture of methamphetamine in the
21 third degree as defined in section 220.73 of this article and has previ-
22 ously been convicted within the preceding five years of the offense of
23 criminal possession of precursors of methamphetamine as defined in
24 section 220.72 of this article, criminal possession of methamphetamine
25 manufacturing material in the first degree as defined in section 220.71
26 of this article, unlawful disposal of methamphetamine laboratory materi-
27 al as defined in section 220.76 of this article, unlawful manufacture of
28 methamphetamine in the third degree as defined in section 220.73 of this
29 article, unlawful manufacture of methamphetamine in the second degree as
30 defined in this section, or unlawful manufacture of methamphetamine in
31 the first degree as defined in section 220.75 of this article.

32 Unlawful manufacture of methamphetamine in the second degree is a
33 class C felony.

34 § 220.75 Unlawful manufacture of methamphetamine in the first degree.

35 A person is guilty of unlawful manufacture of methamphetamine in the
36 first degree when such person commits the crime of unlawful manufacture
37 of methamphetamine in the second degree, as defined in subdivision one
38 of section 220.74 of this article, after having previously been
39 convicted within the preceding five years of unlawful manufacture of
40 methamphetamine in the third degree, as defined in section 220.73,
41 unlawful manufacture of methamphetamine in the second degree, as defined
42 in section 220.74 of this article, or unlawful manufacture of methamphe-
43 tamine in the first degree, as defined in this section.

44 Unlawful manufacturer of methamphetamine in the first degree is a
45 class B felony.

46 § 220.76 Unlawful disposal of methamphetamine laboratory material.

47 A person is guilty of unlawful disposal of methamphetamine laboratory
48 material when, knowing that such actions are in furtherance of a meth-
49 amphetamine operation, he or she knowingly disposes of, or possesses
50 with intent to dispose of, hazardous or dangerous material under circum-
51 stances that create a substantial risk to human health or safety or a
52 substantial danger to the environment.

53 Unlawful disposal of methamphetamine laboratory material is a class E
54 felony.

55 § 5. Section 70.25 of the penal law is amended by adding a new subdi-
56 vision 2-g to read as follows:

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1 2-g. Whenever a person is convicted of unlawful manufacture of meth-
2 amphetamine in the third degree as defined in section 220.73 of this
3 chapter, unlawful manufacture of methamphetamine in the second degree as
4 defined in section 220.74 of this chapter, or unlawful manufacture of
5 methamphetamine in the first degree as defined in section 220.75 of this
6 chapter, or any attempt to commit any of such offenses, and such person
7 is also convicted, with respect to such unlawful methamphetamine labora-
8 tory, of unlawful disposal of methamphetamine laboratory material as
9 defined in section 220.76 of this chapter, the sentences must run
10 concurrently.

11 § 6. Paragraph (c) of subdivision 8 of section 700.05 of the criminal
12 procedure law, as amended by chapter 154 of the laws of 1990, is amended
13 to read as follows:

14 (c) Criminal possession of a controlled substance in the seventh
15 degree as defined in section 220.03 of the penal law, [~~criminal~~
16 ~~possession of a controlled substance in the sixth degree as defined in~~
17 ~~section 220.05 of the penal law,~~] criminal possession of a controlled
18 substance in the fifth degree as defined in section 220.06 of the penal
19 law, criminal possession of a controlled substance in the fourth degree
20 as defined in section 220.09 of the penal law, criminal possession of a
21 controlled substance in the third degree as defined in section 220.16 of
22 the penal law, criminal possession of a controlled substance in the
23 second degree as defined in section 220.18 of the penal law, criminal
24 possession of a controlled substance in the first degree as defined in
25 section 220.21 of the penal law, criminal sale of a controlled substance
26 in the fifth degree as defined in section 220.31 of the penal law, crim-
27 inal sale of a controlled substance in the fourth degree as defined in
28 section 220.34 of the penal law, criminal sale of a controlled substance
29 in the third degree as defined in section 220.39 of the penal law, crim-
30 inal sale of a controlled substance in the second degree as defined in
31 section 220.41 of the penal law, criminal sale of a controlled substance
32 in the first degree as defined in section 220.43 of the penal law,
33 criminally possessing a hypodermic instrument as defined in section
34 220.45 of the penal law, criminal possession of methamphetamine manufac-
35 turing material in the second degree as defined in section 220.70 of the
36 penal law, criminal possession of methamphetamine manufacturing material
37 in the first degree as defined in section 220.71 of the penal law, crim-
38 inal possession of precursors of methamphetamine as defined in section
39 220.72 of the penal law, unlawful manufacture of methamphetamine in the
40 third degree as defined in section 220.73 of the penal law, unlawful
41 manufacture of methamphetamine in the second degree as defined in
42 section 220.74 of the penal law, unlawful manufacture of methamphetamine
43 in the first degree as defined in section 220.75 of the penal law,
44 unlawful disposal of methamphetamine laboratory material as defined in
45 section 220.76 of the penal law, criminal possession of marihuana in the
46 first degree as defined in section 221.30 of the penal law, criminal
47 sale of marihuana in the first degree as defined in section 221.55 of
48 the penal law, promoting gambling in the second degree as defined in
49 section 225.05 of the penal law, promoting gambling in the first degree
50 as defined in section 225.10 of the penal law, possession of gambling
51 records in the second degree as defined in section 225.15 of the penal
52 law, possession of gambling records in the first degree as defined in
53 section 225.20 of the penal law, and possession of a gambling device as
54 defined in section 225.30 of the penal law;

55 § 7. Section 413 of the social services law is amended by adding a new
56 subdivision 4 to read as follows:

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1 4. Any person, institution, school, facility, agency, organization,
2 partnership or corporation, which employs persons who are mandated to
3 report suspected incidents of child abuse or maltreatment pursuant to
4 subdivision one of this section and whose employees, in the normal
5 course of their employment, travel to locations where children reside,
6 shall provide, consistent with section four hundred twenty-one of this
7 title, all such current and new employees with information on recognizing
8 the signs of an unlawful methamphetamine laboratory. Pursuant to
9 section 19.27 of the mental hygiene law, the office of alcoholism and
10 substance abuse services shall make available to such employers informa-
11 tion on recognizing the signs of unlawful methamphetamine laboratories.

12 § 8. The executive law is amended by adding two new sections 221-c and
13 221-d to read as follows:

14 § 221-c. Statewide repository of data relating to unlawful methamphe-
15 tamine laboratories. The division of state police shall maintain a
16 statewide repository of data relating to unlawful methamphetamine labo-
17 ratories, and develop and implement a program to provide for the
18 collection of data and the reporting thereof by law enforcement agen-
19 cies. Data acquired by law enforcement agencies relating to unlawful
20 methamphetamine laboratories shall be sent to the repository as soon as
21 reasonably practicable. Data in the repository shall be made available
22 to law enforcement agencies for the purpose of assisting them in combat-
23 ing the unlawful manufacture, preparation or production of methampheta-
24 mine.

25 § 221-d. Discovery of an unlawful methamphetamine laboratory. 1.
26 Whenever a law enforcement agency discovers or recognizes the presence
27 of an unlawful methamphetamine laboratory, such agency shall, as soon as
28 reasonably practicable, notify, or cause to be notified, the division of
29 state police regarding the location of such laboratory.

30 2. Whenever the division of state police receives a report of an
31 unlawful methamphetamine laboratory, or discovers or recognizes the
32 presence of an unlawful methamphetamine laboratory, such division, as
33 soon as reasonably practicable shall notify, or cause to be notified,
34 the department of environmental conservation of such information.

35 § 9. The general municipal law is amended by adding a new section
36 209-dd to read as follows:

37 § 209-dd. Discovery of unlawful drug laboratory. All emergency
38 services personnel, as defined in section two hundred nine-cc of this
39 article, shall be provided with information on recognizing the signs of
40 an unlawful methamphetamine laboratory. Pursuant to section 19.27 of
41 the mental hygiene law, the office of alcoholism and substance abuse
42 services shall make such information on recognizing the signs of unlaw-
43 ful methamphetamine laboratories available to such personnel. Emergency
44 services personnel shall notify or cause to be notified the division of
45 state police regarding the location of any such unlawful methamphetamine
46 laboratory.

47 § 10. The mental hygiene law is amended by adding a new section 19.27
48 to read as follows:

49 § 19.27 Methamphetamine awareness and education program.

50 The office shall serve as the principle source for the statewide
51 dissemination of information on methamphetamines. The office shall
52 establish a methamphetamine awareness and education program that shall
53 include but not be limited to providing information about the dangers of
54 methamphetamine production and use and how to report suspected meth-
55 amphetamine laboratories. Such information shall be made available to
56 the following individuals and groups: chemical dependence prevention

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1 programs; child protective services; social services; schools; communi-
 2 ty-based organizations; chemical dependence treatment programs; health
 3 care providers; emergency services personnel (including police, fire
 4 fighters and ambulance personnel); and other entities or individuals
 5 deemed appropriate by the office.

6 § 11. The public health law is amended by adding a new section 3384 to
 7 read as follows:

8 § 3384. Information program for retailers. The department shall devel-
 9 op and maintain a program to inform retailers about the methamphetamine
 10 problem in New York state.

11 § 12. Section 1602 of the civil practice law and rules is amended by
 12 adding a new subdivision 13 to read as follows:

13 13. not apply to any person responsible for the disposal or presence
 14 of hazardous or dangerous materials that is the result of the unlawful
 15 manufacture of methamphetamine, when such person has been convicted of
 16 section 220.73, 220.74, 220.75 or 220.76 of the penal law.

17 § 13. This act shall take effect on the sixtieth day after it shall
 18 have become a law; provided that sections seven, ten and eleven of this
 19 act shall take effect on the first of November next succeeding the date
 20 on which it shall have become a law.

SPONSORS MEMO:

**NEW YORK STATE SENATE
 INTRODUCER'S MEMORANDUM IN SUPPORT
 submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S5920

SPONSOR: NOZZOLIO

TITLE OF BILL: An act to amend the penal law, in relation to grand larceny in the fourth degree, criminal possession of stolen property in the fourth degree, criminal possession of methamphetamine manufacturing material, criminal possession of precursors of methamphetamine, unlawful manufacture of methamphetamine and unlawful disposal of methamphetamine laboratory material; to amend the criminal procedure law, in relation to methamphetamine offenses; to amend the social services law, the executive law, the general municipal law, the mental hygiene law and the public health law, in relation to the provision of information on unlawful methamphetamine laboratories; and to amend the civil practice law and rules, in relation to joint liability

PURPOSE:

This bill would impose significant criminal penalties upon persons who operate or assist in the operation of clandestine methamphetamine laboratories and to increase criminal penalties for the theft of, or possession of, stolen anhydrous ammonia.

SUMMARY OF PROVISIONS:

Section 1 of the bill would amend Section 155.30 of the Penal Law to add a new subdivision 11 which punishes the theft of anhydrous ammonia.

Section 2 would amend Section 165.45 of the Penal Law to add a new subdivision 7 which punishes the criminal possession of stolen anhydrous

ammonia.

Section 3 would amend Section 220.00 of the Penal Law to add a new subdivision 16 which would contain definitions relevant to the new crimes regarding the manufacture of methamphetamine created by the bill.

Section 4 would create new Sections 220.70, 220.71, 220.72, 220.73, 220.74, 220.75 and 220.76 of the Penal Law, respectively, the crimes of Criminal Possession of Methamphetamine Manufacturing Material in the Second Degree, Criminal Possession of Methamphetamine Manufacturing Material in the First Degree, Criminal Possession of Precursors of Methamphetamine, Unlawful Manufacture of Methamphetamine in the Third Degree, Unlawful Manufacture of Methamphetamine in the Second Degree, Unlawful Manufacture of Methamphetamine in the First Degree, and Unlawful Disposal of Methamphetamine Laboratory Material.

Section 5 would amend Section 70.25 of the Penal Law to add a new subdivision 2-g which would provide for concurrent sentencing of a defendant convicted of both Unlawful Manufacture of Methamphetamine (of the attempt thereof) and Unlawful Disposal of Methamphetamine Laboratory Material where such conviction was with respect to such unlawful methamphetamine laboratory.

Section 6 would amend Section 700.05 of the Criminal Procedure Law to add the newly created Methamphetamine Laboratory crimes created by this bill to the eavesdropping statute.

Section 7 would amend Section 413 of the Social Services Law to add a new subdivision 4 which would require that certain mandated reporters be provided with information to help them recognize the presence of methamphetamine laboratories.

Section 8 would create new Sections 221-c and 221-d of the Executive Law which would require that the State Police maintain a statewide repository of data relating to methamphetamine laboratories and that law enforcement agencies report such information to the repository. Section 8 would also require that the State Police be notified whenever a law enforcement agency discovers a methamphetamine laboratory, and the State Police notify the Department of Environmental Conservation upon being so notified.

Section 9 would create a new Section 209-dd of the General Municipal Law which would require that all Emergency Services Personnel be provided with information to help them recognize the presence of methamphetamine laboratories, and mandating that such personnel notify the State Police regarding the location of any unlawful methamphetamine laboratory.

Section 10 would create a new Section 19.27 of the Mental Hygiene Law which would require the Office of Alcoholism and Substance Abuse to establish a methamphetamine education program and disseminate information to agencies throughout the state that serve children and other vulnerable persons on the risks associated with methamphetamine.

Section 11 would create a new Section 3384 of the Public Health Law which would require the Department of Health to develop and maintain a program to inform retailers about the methamphetamine problem.

Section 12 amends Section 1602 of the Civil Practice Law and Rules by adding a new subdivision 13 which would provide that joint and several liability would not be applicable in the case of a person convicted of the methamphetamine manufacturing crimes.

Section 13 of the bill provides the effective date.

EXISTING LAW:

While section 155.30 of the Penal Law establishes the class E felony of Grand Larceny in the Fourth Degree and section 165.45 of the Penal Law establishes the class E felony of Criminal Possession of Stolen Property in the Fourth Degree, these sections do not contain a specific provision regarding anhydrous ammonia.

Article 220 of the Penal Law does not specifically prohibit clandestine laboratory operations. Penal Law .60 currently prohibits possession of certain precursor chemicals, many of which were once used in the manufacture of methamphetamine. However, persons who currently operate clandestine laboratories now use different chemicals and different techniques to manufacture methamphetamine.

STATEMENT IN SUPPORT:

In the past 5 years, police agencies have seen evidence of a dramatic rise in the number of clandestine laboratories operating in New York State. These illegal methamphetamines are often produced using controlled substance precursors which are not currently illegal to possess. Under current law, police officers in New York State who investigate these operations often must be able to seize the finished product - the controlled substance manufactured at the clandestine laboratory - in order to have lawful basis for a felony-level arrest.

This proposal will specifically target clandestine laboratories which produce illegal drugs. The proposal also makes the possession of the ingredients used to illegally manufacture controlled substances with the intent to manufacture such substances a crime. It will impose significant penalties upon the individuals who operate these laboratories. Anhydrous ammonia is used as an agricultural fertilizer and industrial refrigerant. The substance is stored and used at agricultural retailers and facilities with ammonia refrigeration systems. When properly stored, it is as a liquid under pressure, but it becomes a toxic gas when released to the environment - which may travel along the ground in a cloud instead of immediately rising into the air and dispersing. Anhydrous ammonia can be harmful to individuals who come into contact with it or inhale airborne concentrations of the gas.

Anhydrous ammonia is also a key ingredient in the illegal production of methamphetamines. Illegal drug makers often steal anhydrous ammonia from farmers and from other areas where it is stored and used. When stolen, the toxic gas can be unintentionally released, causing injuries to emergency responders, law enforcement personnel, the public and the criminals themselves.

Under current law, which largely bases the criminal severity of a larceny or possession of stolen property upon monetary value, a serious theft of, or possession of a dangerous amount of, anhydrous ammonia may not be classified as a felony because of the dollar value of the substance. As discussed above, the danger to the community presented by methamphetamine manufacture and distribution and by the environmental dangers posed by a deliberate or accidental release of anhydrous ammonia warrants increased penalties for illegal theft or possession of the substance.

BUDGET IMPLICATIONS: Unknown at this time.