

FIRST REGULAR SESSION

SENATE BILL NO. 279

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR STAPLES.

Read 1st time January 11, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

0851S.031

AN ACT

To amend chapter 589, RSMo, by adding thereto seventeen new sections relating to substance abuse and crime prevention, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 589, RSMo, is amended by adding thereto seventeen new sections, to be known as sections 589.600, 589.603, 589.606, 589.607, 589.608, 589.609, 589.610, 589.612, 589.615, 589.618, 589.621, 589.624, 589.627, 589.630, 589.633, 589.636 and 589.639, to read as follows:

589.600. Sections 589.600 to 589.639 shall be known and may be cited as the "Substance Abuse and Crime Prevention Act of 2001".

589.603. As used in sections 589.600 to 589.639, the following terms shall mean:

- (1) "Department", the department of corrections;**
- (2) "Drug treatment program" or "drug treatment", a licensed or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility;**
- (3) "Misdemeanor not related to the use of drugs", a misdemeanor that does not involve the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or any similar activity;**
- (4) "Nonviolent drug possession offense", the unlawful possession, use, or transportation for personal use of any controlled substance identified in section 195.017,**

RSMo. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance;

(5) "Successful completion of treatment", that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

589.606. 1. Notwithstanding any other provision of law, and except as provided in subsection 2 of this section, any person convicted of a nonviolent drug possession offense shall receive probation. As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose. In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

2. Subsection 1 of this section does not apply to either of the following:

(1) Any defendant who previously has been convicted of one or more serious or violent felonies in violation of chapters 565, 566 or 571, RSMo, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in:

(a) A felony conviction other than a nonviolent drug possession offense; or

(b) A misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more nonviolent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony;

(3) Any defendant who:

(a) While using a firearm, unlawfully possesses any amount of:

a. A substance containing either cocaine base, cocaine, heroin, methamphetamine; or

b. A liquid, non-liquid, plant substance, or hand-rolled cigarette, containing phencyclidine;

(b) While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine;

- (4) Any defendant who refuses drug treatment as a condition of probation;**
- (5) Any defendant who:**
 - (a) Has two separate convictions for nonviolent drug possession offenses;**
 - (b) Has participated in two separate courses of drug treatment pursuant to subsection 1 of this section; and**
 - (c) Is found by the court, by clear and convincing evidence, to be unamenable to any and all forms of available drug treatment.**

Notwithstanding any other provision of law, the trial court shall sentence such defendants to thirty days in jail.

3. Within seven days of an order imposing probation under subsection 1 of this section, the division of probation and parole shall notify the drug treatment provider designated to provide drug treatment. Within thirty days of receiving notice, the treatment provider shall prepare a treatment plan and forward it to the division of probation and parole. On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report to the division of probation and parole.

4. If at any point during the course of drug treatment the treatment provider notifies the division of probation and parole that the defendant is unamenable to the drug treatment being provided, but may be amenable to other drug treatments or related programs, the division of probation and parole may move the court to modify the terms of probation to ensure that the defendant receives the alternative drug treatment or program.

5. If at any point during the course of drug treatment the treatment provider notifies the division of probation and parole that the defendant is unamenable to the drug treatment provided and all other forms of drug treatment, the division of probation and parole may move to revoke probation. At the revocation hearing, unless the defendant proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable, the court may revoke probation.

6. Drug treatment services provided by subsection 1 of this section as a required condition of probation may not exceed twelve months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

7. Dismissal of charges upon successful completion of drug treatment:

(1) At any time after completion of drug treatment, a defendant may petition the sentencing court for dismissal of the charges. If the court finds that the defendant successfully completed drug treatment, and substantially complied with the conditions of probation, the conviction on which the probation was based shall be set aside and the

court shall dismiss the indictment or information against the defendant. In addition, the arrest on which the conviction was based shall be deemed never to have occurred. Except as provided in subdivision (2) or (3) of this subsection, the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted;

(2) Dismissal of an indictment or information pursuant to subdivision (1) of this subsection does not permit a person to own, possess, or have in his or her custody or control any firearm capable of being concealed upon the person or prevent his or her conviction pursuant to section 571.030, RSMo;

(3) Except as provided below, after an indictment or information is dismissed pursuant to subdivision (1) of this subsection, the defendant may indicate in response to any question concerning his or her prior criminal record that he or she was not arrested or convicted for the offense. Except as provided in subdivision (4) of this subsection, a record pertaining to an arrest or conviction resulting in successful completion of a drug treatment program under this section may not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license, or certificate;

(4) Regardless of his or her successful completion of drug treatment, the arrest and conviction on which the probation was based may be recorded by the department and disclosed in response to any peace officer application request or any law enforcement inquiry. Dismissal of an information or indictment under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as a peace officer as defined in section 542.261, RSMo, for licensure by any state or local agency, for contracting with the Missouri state lottery, or for purposes of serving on a jury.

8. If probation is revoked pursuant to the provisions of this subsection, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

589.607. 1. If a defendant receives probation pursuant to section 589.606, and violates such probation either by being arrested for an offense that is not a nonviolent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

2. If a defendant receives probation pursuant to section 589.606, and violates that probation either by being arrested for a nonviolent drug possession offense or by

violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment plan.

3. If a defendant receives probation pursuant to section 589.606, and for the second time violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. In determining whether a defendant is unamenable to drug treatment, the court may consider, to the extent relevant, whether the defendant:

- (1) Has committed a serious violation of rules at the drug treatment program;
- (2) Has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program; or
- (3) Has continually refused to participate in the program or asked to be removed from the program.

If the court does not revoke probation, it may intensify or alter the drug treatment plan;

4. If a defendant receives probation pursuant to section 589.600, and for the third time violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subsection 1 of this section;

589.608. 1. If a defendant on probation at the effective date of sections 589.600 to 589.639 for a nonviolent drug possession offense violates that probation either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

2. If a defendant on probation at the effective date of sections 589.600 to 589.639

for a nonviolent drug possession offense violates that probation a second time either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The trial court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of the evidence either that the defendant poses a danger to the safety of others or that the defendant is unamenable to drug treatment. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a drug treatment program.

3. If a defendant on probation at the effective date of sections 589.600 to 589.639 for a nonviolent drug offense violates that probation a third time either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation pursuant to section 589.606;

589.609. 1. Notwithstanding any other provision of law, and except as provided in subsection 2 of this section, parole may not be suspended or revoked for commission of a nonviolent drug possession offense or for violating any drug-related condition of parole. As an additional condition of parole for all such offenses or violations, the division of probation and parole shall require participation in and completion of an appropriate drug treatment program. Vocational training, family counseling and literacy training may be imposed as additional parole conditions. The division of probation and parole may require any person on parole who commits a nonviolent drug possession offense or violates any drug-related condition of parole, and who is reasonably able to do so, to contribute to the cost of his or her own placement in a drug treatment program.

2. Subsection 1 of this section shall not apply to:

(1) Any parolee who has been convicted of one or more serious or violent felonies in violation of chapters 565, 566 or 571;

(2) Any parolee who, while on parole, commits one or more nonviolent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony;

(3) Any parolee who refuses drug treatment as a condition of parole.

3. Within seven days of a finding that the parolee has either committed a nonviolent drug possession offense or violated any drug-related condition of parole, the division of probation and parole shall notify the treatment provider designated to

provide drug treatment pursuant to subsection 1 of this section. Within thirty days thereafter the treatment provider shall prepare a drug treatment plan and forward it to the division of probation and parole and to the parole officer responsible for supervising the parolee. On a quarterly basis after the parolee begins drug treatment, the treatment provider shall prepare and forward a progress report to such entities and individuals.

4. If at any point during the course of drug treatment the treatment provider notifies the division of probation and parole that the parolee is unamenable to the drug treatment provided, but amenable to other drug treatments or related programs, the division may act to modify the terms of parole to ensure that the parolee receives the alternative drug treatment or program.

5. If at any point during the course of drug treatment the treatment provider notifies the division of probation and parole that the parolee is unamenable to the drug treatment provided and all other forms of drug treatment, the division may act to revoke parole. At the revocation hearing, parole may be revoked unless the parolee proves by a preponderance of the evidence that there is a drug treatment program to which he or she is amenable.

6. Drug treatment services provided by subsection 1 of this section as a required condition of parole may not exceed twelve months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

7. If parole is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated pursuant to otherwise applicable law without regard to the provisions of this section.

589.610. 1. If a parolee receives drug treatment pursuant to section 589.609, and during the course of drug treatment violates parole either by being arrested for an offense other than a nonviolent drug possession offense, or by violating a non-drug-related condition of parole, and the division of probation and parole acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole may be modified or revoked if the parole violation is proved.

2. If a parolee receives drug treatment pursuant to subsection 1 of section 589.609, and during the course of drug treatment violates parole either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the division of probation and parole acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be intensified to achieve the goals of drug treatment.

3. If a parolee receives drug treatment pursuant to subsection 1 of section 589.609, and during the course of drug treatment for the second time violates that parole either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the division of probation and parole acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

4. If a parolee already on parole at the effective date of sections 589.600 to 589.639 violates that parole either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the division of probation and parole acts to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. Parole shall be revoked if the parole violation is proved and a preponderance of the evidence establishes that the parolee poses a danger to the safety of others. If parole is not revoked, the conditions of parole may be modified to include participation in a drug treatment program as provided in subsection 1 of section 589.609. This subsection does not apply to any parolee who at the effective date of sections 589.600 to 589.639 has been convicted of one or more serious or violent felonies in violation of chapter 565, 566 or 571, RSMo.

5. If a parolee already on parole at the effective date of sections 589.600 to 589.639 violates that parole for the second time either by being arrested for a nonviolent drug possession offense, or by violating a drug-related condition of parole, and the division of probation and parole acts for a second time to revoke parole, a hearing shall be conducted to determine whether parole shall be revoked. If the alleged parole violation is proved, the parolee is not eligible for continued parole under any provision of this section and may be reincarcerated.

589.612. A special fund to be known as the "Substance Abuse Treatment Trust Fund" is created within the state treasury and is continuously appropriated for carrying out the purposes of this division. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the fund shall not revert to the credit of the general revenue fund at the end of the biennium.

589.615. In order to implement sections 589.600 to 589.639, the general assembly shall appropriate sixty million dollars from the general revenue fund to the substance abuse treatment trust fund, to be transferred to the substance abuse treatment trust fund July 1, 2001. The provisions of section 33.080, RSMo, notwithstanding, any unexpended balance remaining in the substance abuse treatment trust fund shall not revert to the general revenue fund. Nothing in this section precludes additional appropriations by the legislature to the substance abuse treatment trust fund.

589.618. Moneys deposited in the substance abuse treatment trust fund shall be distributed annually by the department to counties to cover the costs of placing persons in and providing:

(1) Drug treatment programs under this act; and

(2) Vocational training, family counseling and literacy training under this act.

Additional costs that may be reimbursed from the substance abuse treatment trust fund include division of probation and parole costs, court monitoring costs and any miscellaneous costs made necessary by the provisions of sections 589.600 to 589.639 other than drug testing services of any kind. Such moneys shall be allocated to counties through a fair and equitable distribution formula that includes, but is not limited to, per capita arrests for controlled substance possession violations and substance abuse treatment caseload, as determined by the department as necessary to carry out the purposes of sections 589.600 to 589.639. The department may reserve a portion of the fund to pay for direct contracts with drug treatment service providers in counties or areas in which the director of the department has determined that demand for drug treatment services is not adequately met by existing programs. Nothing in this section shall be interpreted or construed to allow any entity to use funds from the substance abuse treatment trust fund to supplant funds from any existing fund source or mechanism currently used to provide substance abuse treatment.

589.621. Notwithstanding any other provision of law, no community drug treatment program may receive any funds from the substance abuse treatment trust fund unless the program agrees to make its facilities subject to valid local government zoning ordinances and development agreements.

589.624. Any funds remaining in the substance abuse treatment trust fund at the end of a fiscal year may be utilized to pay for drug treatment programs to be carried out in the subsequent fiscal year.

589.627. The department shall annually conduct a study to evaluate the effectiveness and financial impact of the programs that are funded pursuant to the requirements of sections 589.600 to 589.639. The study shall include, but not be limited to, a study of the implementation process, a review of lower incarceration costs, reductions in crime, reduced prison and jail construction, reduced welfare costs, the adequacy of funds appropriated, and any other impacts or issues the department can identify.

589.630. The department shall allocate up to 0.5 percent of the fund's total moneys each year for a long-term study to be conducted by a public university in Missouri aimed at evaluating the effectiveness and financial impact of the programs that are funded pursuant to the requirements of sections 589.600 to 589.639.

589.633. Counties shall submit a report annually to the department detailing the numbers and characteristics of clients-participants served as a result of funding provided by this act. The department shall promulgate a form which shall be used by the counties for the reporting of this information, as well as any other information that may be required by the department. The department shall establish a deadline by which the counties shall submit their reports.

589.636. The department shall annually audit the expenditures made by any county that is funded, in whole or in part, with funds provided by this act. Counties shall repay to the department any funds that are not spent in accordance with the requirements of sections 589.600 to 589.639.

589.639. At the end of each fiscal year, a county may retain unspent funds received from the substance abuse treatment trust fund and may spend those funds, if approved by the department, on drug programs that further the purposes of sections 589.600 to 589.639.

Section B. Except as otherwise provided, the enactment of sections 589.600 to 589.639 of this act shall become effective July 1, 2001.

T

Bill

Copy