

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 39

92ND GENERAL ASSEMBLY

2003

0072S.08T

AN ACT

To repeal sections 195.211, 195.214, 195.218, 195.417, and 650.105, RSMo, and to enact in lieu thereof nine new sections relating to methamphetamine, with penalty provisions.

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

Section A. Sections 195.211, 195.214, 195.218, 195.417, and 650.105, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 195.211, 195.214, 195.218, 195.417, 488.029, 577.075, 650.105, 650.350, and 1, to read as follows:

195.211. 1. Except as authorized by sections 195.005 to 195.425 and except as provided in section 195.222, it is unlawful for any person to distribute, deliver, manufacture, produce or attempt to distribute, deliver, manufacture or produce a controlled substance or to possess with intent to distribute, deliver, manufacture, or produce a controlled substance.

2. Any person who violates or attempts to violate this section with respect to manufacturing or production of a controlled substance of any amount except for five grams or less of marijuana in a residence where a child resides or within two thousand feet of the real property comprising a public or private elementary or public or private elementary or secondary school, public vocational school or a public or private junior college, college or university, or any school bus is guilty of a class A felony.

[2.] **3.** Any person who violates or attempts to violate this section with respect to any controlled substance except five grams or less of marijuana is guilty of a class B felony.

[3.] **4.** Any person who violates this section with respect to distributing or delivering not more than five grams of marijuana is guilty of a class C felony.

195.214. 1. A person commits the offense of distribution of a controlled substance near

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

schools if such person violates section 195.211 by unlawfully distributing or delivering any controlled substance to a person in or on, or within two thousand feet of, the real property comprising a public or private elementary or secondary school, public vocational school, or a public or private junior college, college or university or on any school bus.

2. Distribution of a controlled substance near schools is a class A felony **which term shall be served without probation or parole if the court finds the defendant is a persistent drug offender.**

195.218. 1. A person commits the offense of distribution of a controlled substance near public housing or other governmental assisted housing if he violates section 195.211 by unlawfully distributing or delivering any controlled substance to a person in or on, or within one thousand feet of the real property comprising public housing or other governmental assisted housing.

2. Distribution of a controlled substance near public housing or other governmental assisted housing is a class A felony **which term shall be served without probation or parole if the court finds the defendant is a persistent drug offender.**

195.417. 1. No person shall deliver in any single over-the-counter sale more than [three]:

(1) **Two packages or any number of packages that contain a combined total of no more than six grams,** of any [methamphetamine precursor drug or any combination of methamphetamine precursor drugs.

2.] **drug containing a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers;**
or

(2) **Three packages of any combination drug containing, as one of its active ingredients, ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, or any number of packages of said combination drug that contain a combined total of no more than nine grams of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers.**

2. All packages of any drug having a sole active ingredient of ephedrine, pseudoephedrine, phenylpropanolamine, or any of their salts, optical isomers, or salts of optical isomers, shall be displayed and offered for sale only behind a checkout counter where the public is not permitted, or within ten feet and an unobstructed view of an attended checkout counter. This subsection shall not apply to any retailer utilizing an electronic anti-theft system that utilizes a product tag and detection alarm which specifically prevents the theft of such drugs from the place of business where such drugs are sold.

3. **This section shall supersede any municipal ordinances or regulations passed on or after December 23, 2002, to the extent that such ordinances or regulations are more restrictive than the provisions of this section.** This section shall not apply to any

product labeled pursuant to federal regulation for use only in children under twelve years of age, or to any products that the state department of health and senior services, upon application of a manufacturer, exempts by rule from this section because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors **or to the sale of any animal feed products containing ephedrine or any naturally occurring or herbal ephedra or extract of ephedra.**

[3.] 4. Any person who is considered the general owner or operator of the outlet where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale who violates subsection 1 of this section shall not be penalized pursuant to this section if such person documents that an employee training program was in place to provide the employee with information on the state and federal regulations regarding ephedrine, pseudoephedrine, or phenylpropanolamine.

[4.] 5. Any person who knowingly or recklessly violates this section is guilty of a class A misdemeanor.

488.029. There shall be assessed and collected a surcharge of one hundred fifty dollars in all criminal cases for any violation of chapter 195, RSMo, in which a crime laboratory makes analysis of a controlled substance, but no such surcharge shall be assessed when the costs are waived or are to be paid by the state or when a criminal proceeding or the defendant has been dismissed by the court. The moneys collected by clerks of the courts pursuant to the provisions of this section shall be collected and disbursed as provided by section 448.010 to 488.020. All such moneys shall be payable to the director of revenue, who shall deposit all amounts collected pursuant to this section to the credit of the state forensic laboratory account to be administered by the department of public safety pursuant to section 650.105, RSMo.

577.075. 1. It shall be unlawful for any person not the owner or not in lawful control of an approved container of anhydrous ammonia to release or allow the escape of anhydrous ammonia into the atmosphere.

2. Unlawful release of anhydrous ammonia is a class B felony, unless such release causes death of a human being or causes serious physical injury to any person in which case it is a class A felony.

650.105. 1. There is hereby created the "Missouri Crime Laboratory Assistance Program" within the department of public safety. The purpose of this program is to provide state financial assistance to defray part of the operational costs incurred by crime laboratories.

2. Funds that are appropriated **and collected pursuant to section 488.029, RSMo,** for this program shall be appropriated to the department.

3. Distribution of these state funds shall be by contractual arrangement between the department and each respective laboratory providing the service. Terms of the contract shall be negotiable each year. The state auditor shall audit from time to time all crime laboratories

receiving state funds.

4. Nothing in sections 650.100 and 650.105 shall prohibit any crime laboratory from receiving federal or local funds should such funds become available.

5. All law enforcement agencies, municipal, county and state, shall have access to crime laboratories funded hereunder.

6. No state funds shall be expended unless appropriated by the general assembly for this purpose.

7. No new crime laboratories shall be started with state funds until authorized by the general assembly.

650.350. 1. There is hereby created within the department of public safety the "Missouri Sheriff Methamphetamine Relief Taskforce" (MoSMART). MoSMART shall be composed of five sitting sheriffs. Every two years, the Missouri sheriffs' association board of directors will submit twenty names of sitting sheriffs to the governor. The governor shall appoint five members from the list of twenty names, having no more than three from any one political party, to serve a term of two years on MoSMART. The members shall elect a chair from among their membership. Members shall receive no compensation for the performance of their duties pursuant to this section, but each member shall be reimbursed from the MoSMART fund for actual and necessary expenses incurred in carrying out duties pursuant to this section.

2. MoSMART shall meet no less than twice each calendar year with additional meetings called by the chair upon the request of at least two members. A majority of the appointed members shall constitute a quorum.

3. A special fund is hereby created in the state treasury to be know as the "MoSMART Fund". The state treasurer shall invest the moneys in such fund in the manner authorized by law. All moneys received for MoSMART from interest, state, and federal moneys shall be deposited to the credit of the fund. The director of the department of public safety shall distribute at least fifty percent but not more than one hundred percent of the fund annually in the form of grants approved by MoSMART.

4. All moneys appropriated to or received by MoSMART shall be deposited and credited to the MoSMART fund. The department of public safety shall only be reimbursed for actual and necessary expenses for the administration of MoSMART, which shall be no less than one percent and which shall not exceed two percent of all moneys appropriated to the fund. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the MoSMART fund shall not lapse to general revenue at the end of the biennium.

5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536,

RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2003, shall be invalid and void.

6. Any county law enforcement entity or established task force with a memorandum of understanding and protocol may apply for grants from the MoSMART fund on an application to be developed by the department of public safety with the approval of MoSMART. All applications shall be evaluated by MoSMART and approved or denied based upon the level of funding designated for methamphetamine enforcement before 1997 and upon current need and circumstances. No applicant shall receive a MoSMART grant in excess of one hundred thousand dollars per year. The department of public safety shall monitor all MoSMART grants.

7. MoSMART's anti-methamphetamine funding priorities are as follows:

(1) Sheriffs who are participating in coordinated multi-jurisdictional task forces and have their task forces apply for funding;

(2) Sheriffs whose county has been designated HIDTA counties, yet have received no HIDTA or narcotics assistance program funding; and

(3) Sheriffs without HIDTA designations or task forces, whose application justifies the need for MoSMART funds to eliminate methamphetamine labs.

Section 1. In any case where there is a violation of chapter 195, RSMo, a judge may, upon a finding of guilty, order a defendant to pay for costs for testing of the substances at a private laboratory.

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