

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1095
100TH GENERAL ASSEMBLY

1675H.02C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 56.765, 579.015, 579.020, 579.030, and 579.074, RSMo, and to enact in lieu thereof six new sections relating to criminal offenses, with penalty provisions.

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

Section A. Sections 56.765, 579.015, 579.020, 579.030, and 579.074, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 56.765, 557.014,
3 579.015, 579.020, 579.030, and 579.074, to read as follows:

56.765. 1. A surcharge of [~~one dollar~~] **five dollars** shall be assessed as costs in each
2 court proceeding filed in any court in the state in all criminal cases including violations of any
3 county ordinance or any violation of a criminal or traffic law of the state, including an infraction;
4 except that no such surcharge shall be collected in any proceeding in any court when the
5 proceeding or the defendant has been dismissed by the court or when costs are to be paid by the
6 state, county or municipality.

7 2. One-half of all moneys collected under the provisions of subsection 1 of this section
8 shall be payable to the state of Missouri and remitted to the director of revenue who shall deposit
9 the amount collected pursuant to this section to the credit of the "Missouri Office of Prosecution
10 Services Fund" which is hereby created in the state treasury. The moneys credited to the
11 Missouri office of prosecution services fund from each county shall be used only for the purposes
12 set forth in sections 56.750, 56.755, and 56.760. The state treasurer shall be the custodian of the
13 fund, and shall make disbursements, as allowed by lawful appropriations. All earnings resulting
14 from the investment of money in the fund shall be credited to the Missouri office of prosecution
15 services fund. The Missouri office of prosecution services may collect a registration fee to pay
16 for expenses included in sponsoring training conferences. The revenues and expenditures of the
17 Missouri office of prosecution services shall be subject to an annual audit to be performed by the

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 Missouri state auditor. The Missouri office of prosecution services shall also be subject to any
19 other audit authorized and directed by the state auditor.

20 3. One-half of all moneys collected under the provisions of subsection 1 of this section
21 shall be payable to the county treasurer of each county from which such funds were generated.
22 The county treasurer shall deposit all of such funds into the county treasury in a separate fund
23 to be used solely for the purpose of additional training for circuit and prosecuting attorneys and
24 their staffs. If the funds collected and deposited by the county are not totally expended annually
25 for the purposes set forth in this subsection, then the unexpended moneys shall remain in said
26 fund and the balance shall be kept in said fund to accumulate from year to year, or at the request
27 of the circuit or prosecuting attorney, with the approval of the county commission or the
28 appropriate governing body of the county or the City of St. Louis, and may be used to pay for
29 expert witness fees, travel expenses incurred by victim/witnesses in case preparation and trial,
30 for expenses incurred for changes of venue, for expenses incurred for special prosecutors, and
31 for other lawful expenses incurred by the circuit or prosecuting attorney in operation of that
32 office.

33 4. There is hereby established in the state treasury the "Missouri Office of Prosecution
34 Services Revolving Fund". Any moneys received by or on behalf of the Missouri office of
35 prosecution services from registration fees, federal and state grants or any other source
36 established in section 56.760 in connection with the purposes set forth in sections 56.750,
37 56.755, and 56.760 shall be deposited into the fund.

38 5. The moneys in the Missouri office of prosecution services revolving fund shall be kept
39 separate and apart from all other moneys in the state treasury. The state treasurer shall
40 administer the fund and shall disburse moneys from the fund to the Missouri office of
41 prosecution services pursuant to appropriations for the purposes set forth in sections 56.750,
42 56.755 and 56.760.

43 6. Any unexpended balances remaining in the Missouri office of prosecution services
44 fund and the Missouri office of prosecution services revolving fund at each biennium shall be
45 exempt from the provisions of section 33.080 relating to the transfer of unexpended balances to
46 general revenue.

557.014. 1. As used in this section, the following terms shall mean:

2 **(1) "Accusatory instrument", a warrant of arrest, information, or indictment;**

3 **(2) "Accused", an individual accused of a criminal offense but not yet charged with**
4 **a criminal offense;**

5 **(3) "Defendant", any person charged with a criminal offense;**

6 **(4) "Deferred prosecution", the suspension of a criminal case for a specified period**
7 **upon the request of both the prosecuting attorney and the accused or the defendant;**

8 **(5) "Diversionary screening", the discretionary power of the prosecuting attorney**
9 **to suspend all formal prosecutorial proceedings against a person who has become involved**
10 **in the criminal justice system as an accused or defendant;**

11 **(6) "Prosecuting attorney", includes the prosecuting attorney or circuit attorney**
12 **for each county of the state and the city of St. Louis;**

13 **(7) "Prosecution diversion", the imposition of conditions of behavior and conduct**
14 **by the prosecuting attorney upon an accused or defendant for a specified period of time**
15 **as an alternative to proceeding to adjudication on a complaint, information, or indictment.**

16 **2. Each prosecuting attorney in the state of Missouri shall have the authority to,**
17 **upon agreement with an accused or a defendant, divert a criminal case to a prosecution**
18 **diversion program for a period of six months to two years, thus allowing for any statute**
19 **of limitations to be tolled for that time alone. The period of diversion may be extended by**
20 **the prosecuting attorney as a disciplinary measure or to allow sufficient time for**
21 **completion of any portion of the prosecution diversion including restitution; provided,**
22 **however, that no extension of such diversion shall be for a period of more than two years.**

23 **3. The prosecuting attorney may divert cases, under this program, out of the**
24 **criminal justice system where the prosecuting attorney determines that the advantages of**
25 **utilizing prosecution diversion outweigh the advantages of immediate court activity.**

26 **4. Prior to or upon the issuance of an accusatory instrument, with consent of the**
27 **accused or defendant, other than for an offense enumerated in this section, the prosecuting**
28 **attorney may forego continued prosecution upon the parties' agreement to a prosecution**
29 **diversion plan. The prosecution diversion plan shall be for a specified period and be in**
30 **writing. The prosecuting attorney has the sole authority to develop diversionary program**
31 **requirements, but minimum requirements are as follows:**

32 **(1) The alleged offense is nonviolent, nonsexual, and does not involve a child victim**
33 **or possession of an unlawful weapon;**

34 **(2) The accused or defendant shall submit to all program requirements;**

35 **(3) Any newly discovered criminal behavior while in a prosecution diversion**
36 **program will immediately forfeit his or her right to continued participation in such**
37 **program at the sole discretion of the prosecuting attorney;**

38 **(4) The alleged offense does not also constitute a violation of a current condition of**
39 **probation or parole;**

40 **(5) The alleged offense is not a traffic offense in which the accused or defendant**
41 **was a holder of a commercial driver's license or was operating a commercial motor vehicle**
42 **at the time of the offense; and**

43 **(6) Any other criteria established by the prosecuting attorney.**

44 **5. During any period of prosecution diversion, the prosecuting attorney may impose**
45 **conditions upon the behavior and conduct of the accused or defendant that assures the**
46 **safety and well-being of the community as well as that of the accused or defendant. The**
47 **conditions imposed by the prosecuting attorney shall include, but are not limited to,**
48 **requiring the accused or defendant to remain free of any criminal behavior during the**
49 **entire period of prosecution diversion.**

50 **6. The responsibility and authority to screen or divert specific cases, or to refuse**
51 **to screen or divert specific cases, shall rest within the sole judgment and discretion of the**
52 **prosecuting attorney as part of his or her official duties as prosecuting attorney. The**
53 **decision of the prosecuting attorney regarding diversion shall not be subject to appeal nor**
54 **be raised as a defense in any prosecution of a criminal case involving the accused or**
55 **defendant.**

56 **7. Any person participating in the program:**

57 **(1) Shall have the right to insist on criminal prosecution for the offense for which**
58 **he or she is accused at any time; and**

59 **(2) May have counsel of the person's choosing present during all phases of the**
60 **prosecution diversion proceedings, but counsel is not required and no right to appointment**
61 **of counsel is hereby created.**

62 **8. In conducting the program, the prosecuting attorney may require at any point**
63 **the reinitiation of criminal proceedings if, in his or her judgment, such is warranted.**

64 **9. Any county, city, person, organization, or agency, or employee or agent thereof,**
65 **involved with the supervision of activities, programs, or community service that are a part**
66 **of a prosecution diversion program shall be immune from any suit by the person**
67 **performing the work under the deferred prosecution agreement, or any person deriving**
68 **a cause of action from such person, except for an intentional tort or gross negligence.**
69 **Persons performing work or community service under a deferred prosecution agreement**
70 **as described shall not be deemed to be engaged in employment within the meaning of the**
71 **provisions of chapter 288. A person performing work or community service under a**
72 **deferred prosecution agreement shall not be deemed an employee within the meaning of**
73 **the provisions of chapter 287.**

74 **10. Any person supervising an accused or a defendant under the program shall**
75 **report to the prosecuting attorney any violation of the terms of the prosecution diversion**
76 **program.**

77 **11. After completion of the program and any conditions imposed upon the accused**
78 **or defendant, to the satisfaction of the prosecuting attorney, the individual shall be entitled**
79 **to a dismissal or alternative disposition of charges against him or her. Such disposition**

80 **may, in the discretion of the prosecuting attorney, be without prejudice to the state of**
81 **Missouri for the reinstatement of criminal proceedings, within the statute of limitations,**
82 **upon any subsequent criminal activity on the part of the accused. Any other provision of**
83 **law notwithstanding, such individual shall be required to pay any associated costs prior**
84 **to dismissal of pending charges.**

579.015. 1. A person commits the offense of possession of a controlled substance if he
2 or she knowingly possesses a controlled substance, except as authorized by this chapter or
3 chapter 195.

4 2. The offense of possession of any controlled substance except thirty-five grams or less
5 of marijuana [or], any synthetic cannabinoid, **or an amount equivalent to thirty-five grams**
6 **or less of marijuana concentrate** is a class D felony.

7 3. The offense of possession of [~~more than ten grams but~~] thirty-five grams or less of
8 marijuana [or], any synthetic cannabinoid [~~is a class A misdemeanor.~~

9 ~~4. The offense of possession of not more than ten grams of marijuana or any synthetic~~
10 ~~cannabinoid], or an amount equivalent to thirty-five grams or less of marijuana~~
11 ~~concentrate is a class D misdemeanor. [If the defendant has previously been found guilty of any~~
12 ~~offense of the laws related to controlled substances of this state, or of the United States, or any~~
13 ~~state, territory, or district, the offense is a class A misdemeanor. Prior findings of guilt shall be~~
14 ~~pleaded and proven in the same manner as required by section 558.021.]~~

15 **4. Notwithstanding any provision of law to the contrary, upon agreement with an**
16 **accused or a defendant, a prosecuting attorney may divert an offense involving one**
17 **hundred grams or less of marijuana, any synthetic cannabinoid, or an amount equivalent**
18 **to one hundred grams or less of marijuana concentrate to a prosecution diversion program**
19 **as provided under section 557.014.**

20 5. In any complaint, information, or indictment, and in any action or proceeding brought
21 for the enforcement of any provision of this chapter or chapter 195, it shall not be necessary to
22 include any exception, excuse, proviso, or exemption contained in this chapter or chapter 195,
23 and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the
24 defendant.

579.020. 1. A person commits the offense of delivery of a controlled substance if,
2 except as authorized in this chapter or chapter 195, he or she:

3 (1) Knowingly distributes or delivers a controlled substance;

4 (2) Attempts to distribute or deliver a controlled substance;

5 (3) Knowingly possesses a controlled substance with the intent to distribute or deliver
6 any amount of a controlled substance; or

7 (4) Knowingly permits a minor to purchase or transport illegally obtained controlled
8 substances.

9 2. Except when the controlled substance is thirty-five grams or less of marijuana [Ø] ,
10 synthetic cannabinoid, **or an amount equivalent to thirty-five grams or less of marijuana**
11 **concentrate**, or as otherwise provided under subsection 5 of this section, the offense of delivery
12 of a controlled substance is a class C felony.

13 3. Except as otherwise provided under subsection 4 of this section, the offense of
14 delivery of thirty-five grams or less of marijuana [Ø] , synthetic cannabinoid, **or an amount**
15 **equivalent to thirty-five grams or less of marijuana concentrate** is a class E felony. **Under**
16 **no circumstance shall an alleged offense be construed to be delivery under this subsection**
17 **based solely upon the packaging of the marijuana, synthetic cannabinoid, or marijuana**
18 **concentrate.**

19 4. The offense of delivery of thirty-five grams or less of marijuana [Ø] , synthetic
20 cannabinoid, **or an amount equivalent to thirty-five grams or less of marijuana concentrate**
21 to a person less than seventeen years of age who is at least two years younger than the defendant
22 is a class C felony.

23 5. The offense of delivery of a controlled substance is a class B felony if:

24 (1) The delivery or distribution is any amount of a controlled substance except thirty-five
25 grams or less of marijuana [Ø] , synthetic cannabinoid, **or an amount equivalent to thirty-five**
26 **grams or less of marijuana concentrate**, to a person less than seventeen years of age who is
27 at least two years younger than the defendant; or

28 (2) The person knowingly permits a minor to purchase or transport illegally obtained
29 controlled substances.

579.030. 1. A person commits the offense of distribution of a controlled substance in
2 a protected location if he or she knowingly distributes, sells, or delivers any controlled substance,
3 except thirty-five grams or less of marijuana [Ø] , synthetic cannabinoid, **or an amount**
4 **equivalent to thirty-five grams or less of marijuana concentrate**, to a person with knowledge
5 that that distribution, delivery or sale is:

6 (1) In, on, or within [~~two~~] **one** thousand feet of, the real property comprising a public or
7 private elementary, vocational, or secondary school, or on any school bus **and between the**
8 **hours of 6:00 a.m. and 10:00 p.m.**; or

9 (2) In, on, or within one thousand feet of, the real property comprising a public park,
10 state park, county park, municipal park, or private park designed for public recreational purposes,
11 as park is defined in section 253.010; or

12 (3) In or on the real property comprising public housing or other governmental assisted
13 housing.

14 2. The offense of unlawful distribution of a controlled substance in a protected location
15 is a class A felony.

 579.074. 1. A person commits the offense of unlawful possession of drug paraphernalia
2 if he or she knowingly uses, or possesses with intent to use, drug paraphernalia to plant,
3 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare,
4 test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce
5 into the human body, a controlled substance or an imitation controlled substance in violation of
6 this chapter or chapter 195.

7 2. **Except as provided under subsection 4 of this section,** the offense of unlawful
8 possession of drug paraphernalia is a class D misdemeanor, unless the person has previously
9 been found guilty of any offense of the laws of this state related to controlled substances or of
10 the laws of another jurisdiction related to controlled substances, in which case the violation of
11 this section is a class A misdemeanor. Prior findings of guilt shall be pleaded and proven in the
12 same manner as required by section 558.021.

13 3. **Except as provided under subsection 4 of this section,** the offense of unlawful
14 possession of drug paraphernalia is a class E felony if the person uses, or possesses with intent
15 to use, the paraphernalia in combination with each other to manufacture, compound, produce,
16 prepare, test, or analyze amphetamine or methamphetamine or any of their analogues.

17 4. **The offense of unlawful possession of marijuana-related drug paraphernalia is**
18 **a class D misdemeanor; however, a prosecuting attorney, upon agreement with an accused**
19 **or a defendant, may divert an offense under this subsection to a prosecution diversion**
20 **program under section 557.014.**

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