

SECOND REGULAR SESSION

HOUSE BILL NO. 1376

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WARD (Sponsor), HARRIS (23), BARNITZ, HAMPTON,
CARNAHAN, WILDBERGER, YAEGER AND KUESSNER (Co-sponsors).

Read 1st time February 4, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4433L.011

AN ACT

To repeal sections 195.226, 195.246, 217.785, 558.016, and 559.115, RSMo, and to enact in lieu thereof six new sections relating to controlled substances, with penalty provisions.

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

Section A. Sections 195.226, 195.246, 217.785, 558.016, and 559.115, RSMo, are
2 repealed and six new sections enacted in lieu thereof, to be known as sections 195.226, 195.246,
3 217.785, 540.400, 558.016, and 559.115, to read as follows:

195.226. 1. No person shall provide any reagents, solvents or precursor materials used
2 in the production of a controlled substance as defined in section 195.010 to any other person
3 knowing that the person to whom such materials are provided intends to use such materials for
4 the illegal production of a controlled substance.

5 2. Any person who violates the provisions of subsection 1 of this section is guilty of a
6 [class D] felony **and the authorized term of imprisonment is a term of years not to exceed**
7 **five years.**

195.246. 1. It is unlawful for any person to possess any methamphetamine precursor
2 drug with the intent to manufacture amphetamine, methamphetamine or any of their analogs.

3 2. Possession of more than twenty-four grams of any methamphetamine precursor drug
4 or combination of methamphetamine precursor drugs shall be prima facie evidence of intent to
5 violate this section. This subsection shall not apply to any practitioner or to any product
6 possessed in the course of a legitimate business.

7 3. A person who violates this section is guilty of a [class D] felony **and the authorized**
8 **term of imprisonment is a term of years not to exceed five years.**

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

217.785. 1. As used in this section, the term "Missouri postconviction drug treatment program" means a program of noninstitutional and institutional correctional programs for the monitoring, control and treatment of certain drug abuse offenders.

2. The department of corrections shall establish by regulation the "Missouri Postconviction Drug Treatment Program". The program shall include noninstitutional and institutional placement. The institutional phase of the program may include any offender under the supervision and control of the department of corrections. The department shall establish rules determining how, when and where an offender shall be admitted into or removed from the program.

3. Any first-time offender who has pled guilty or been found guilty of violating the provisions of chapter 195, RSMo, or whose controlled substance abuse was a precipitating or contributing factor in the commission of his offense, and who is placed on probation may be required to participate in the noninstitutional phase of the program, which may include education, treatment and rehabilitation programs. Persons required to attend a program pursuant to this section may be charged a reasonable fee to cover the costs of the program. Failure of an offender to complete successfully the noninstitutional phase of the program shall be sufficient cause for the offender to be remanded to the sentencing court for assignment to the institutional phase of the program or any other authorized disposition.

4. A probationer shall be eligible for assignment to the institutional phase of the postconviction drug treatment program if he **or she** has failed to complete successfully the noninstitutional phase of the program. If space is available, the sentencing court may assign the offender to the institutional phase of the program as a special condition of probation, without the necessity of formal revocation of probation.

5. The availability of space in the institutional program shall be determined by the department of corrections. If the sentencing court is advised that there is no space available, then the court shall consider other authorized dispositions.

6. Any time after ninety days and prior to one hundred twenty days after assignment of the offender to the institutional phase of the program, the department shall submit to the court a report outlining the performance of the offender in the program. If the department determines that the offender will not participate or has failed to complete the program, the department shall advise the sentencing court, who shall cause the offender to be brought before the court for consideration of revocation of the probation or other authorized disposition. If the offender successfully completes the program, the department shall release the individual to the appropriate probation and parole district office and so advise the court.

7. Time spent in the institutional phase of the program shall count as time served on the sentence.

37 **8. Any offender who has pled guilty or been found guilty of violating any**
38 **methamphetamine-related offense shall complete this program in institutional placement**
39 **and the department may designate a specific facility where these offenders will complete**
40 **the program.**

540.400. 1. When any multijurisdictional enforcement group established pursuant
2 **to sections 195.501 to 195.511, RSMo, or law enforcement agencies from multiple counties**
3 **have reason to believe that any criminal activity related to methamphetamine is occurring**
4 **or has occurred within its boundaries and that such activity is occurring or has occurred**
5 **in more than one county, the multijurisdictional enforcement group may petition the**
6 **attorney general to summon a grand jury for the purpose of investigating and prosecuting**
7 **any methamphetamine or methamphetamine-related offenses. The petition shall**
8 **enumerate the alleged offense or offenses as well as the counties where the alleged activity**
9 **is occurring or has occurred.**

10 **2. Upon receiving a petition from a multijurisdictional enforcement group, the**
11 **attorney general may apply to any presiding judge within a county represented by the**
12 **multijurisdictional enforcement group or one of the law enforcement agencies to convene**
13 **a statewide grand jury to investigate any methamphetamine or methamphetamine-related**
14 **offense. The application shall include the petition from the multijurisdictional enforcement**
15 **group. If the presiding judge, or his or her designee, determines that a statewide grand**
16 **jury should be convened, the presiding judge shall issue an order convening a statewide**
17 **grand jury. Based on the judge's review of the application, the names of the grand jurors**
18 **shall be randomly selected from the special grand jury list from one of the counties where**
19 **the alleged activity is occurring or has occurred.**

20 **3. Any indictment by a state grand jury shall be returned to the presiding judge**
21 **who is supervising the statewide grand jury without designation of venue. Thereupon the**
22 **presiding judge shall, by order, designate any county in the state as the county of venue for**
23 **the purpose of trial. Once venue is designated by the presiding judge, a change of venue**
24 **may be granted only as provided by law or court rule. The presiding judge may, by order,**
25 **direct the consolidation of an indictment returned by a county grand jury with an**
26 **indictment returned by a state grand jury and fix venue for trial.**

27 **4. The court, upon motion of the attorney general, shall order the indictment to be**
28 **sealed and no person may disclose the existence of the indictment until the defendant is in**
29 **custody or has been admitted to bail except when necessary for the issuance or execution**
30 **of a warrant or summons.**

558.016. 1. The court may sentence a person who has pleaded guilty to or has been
2 **found guilty of an offense to a term of imprisonment as authorized by section 558.011 or to a**

3 term of imprisonment authorized by a statute governing the offense if it finds the defendant is
4 a prior offender or a persistent misdemeanor offender, or to an extended term of imprisonment
5 if it finds the defendant is a persistent offender or a dangerous offender.

6 2. A "prior offender" is one who has pleaded guilty to or has been found guilty of one
7 felony.

8 3. A "persistent offender" is one who has pleaded guilty to or has been found guilty of
9 two or more felonies committed at different times.

10 4. A "dangerous offender" is one who:

11 (1) Is being sentenced for a felony during the commission of which he knowingly
12 murdered or endangered or threatened the life of another person or knowingly inflicted or
13 attempted or threatened to inflict serious physical injury on another person; and

14 (2) Has pleaded guilty to or has been found guilty of a class A or B felony or a dangerous
15 felony.

16 5. A "persistent misdemeanor offender" is one who has pleaded guilty to or has been
17 found guilty of two or more class A or B misdemeanors, committed at different times, which are
18 defined as offenses under chapters 195, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575,
19 and 576, RSMo.

20 6. The pleas or findings of guilty shall be prior to the date of commission of the present
21 offense.

22 7. The total authorized maximum terms of imprisonment for a persistent offender or a
23 dangerous offender are:

24 (1) For a class A felony, any sentence authorized for a class A felony;

25 (2) For a class B felony, any sentence authorized for a class A felony;

26 (3) For a class C felony, any sentence authorized for a class B felony;

27 (4) For a class D felony **or any felony carrying an authorized term of imprisonment**
28 **of up to five years**, any sentence authorized for a class C felony.

29 8. An offender convicted of a nonviolent class C or class D felony with no prior prison
30 commitments, after serving one hundred twenty days of his or her sentence, may, in writing,
31 petition the court to serve the remainder of his or her sentence on probation, parole, or other
32 court-approved alternative sentence. **This section shall not apply to an offender who has pled**
33 **guilty to or been found guilty of violating section 195.226 or 195.246, RSMo.** No hearing
34 shall be conducted unless the court deems it necessary. Upon the offender petitioning the court,
35 the department of corrections shall submit a report to the sentencing court which evaluates the
36 conduct of the offender while in custody, alternative custodial methods available to the offender,
37 and shall recommend whether the offender be released or remain in custody. If the report issued
38 by the department is favorable and recommends probation, parole, or other alternative sentence,

39 the court shall follow the recommendations of the department if the court deems it appropriate.
40 Any placement of an offender pursuant to section 559.115, RSMo, shall be excluded from the
41 provisions of this subsection.

559.115. 1. Neither probation nor parole shall be granted by the circuit court between
2 the time the transcript on appeal from the offender's conviction has been filed in appellate court
3 and the disposition of the appeal by such court.

4 2. Unless otherwise prohibited by subsection 5 of this section, a circuit court only upon
5 its own motion and not that of the state or the offender shall have the power to grant probation
6 to an offender anytime up to one hundred twenty days after such offender has been delivered to
7 the department of corrections but not thereafter. The court may request information and a
8 recommendation from the department concerning the offender and such offender's behavior
9 during the period of incarceration. Except as provided in this section, the court may place the
10 offender on probation in a program created pursuant to section 217.777, RSMo, or may place the
11 offender on probation with any other conditions authorized by law.

12 3. The court may recommend placement of an offender in a department of corrections
13 one hundred twenty-day program. Upon the recommendation of the court, the department of
14 corrections shall determine the offender's eligibility for the program, the nature, intensity, and
15 duration of any offender's participation in a program and the availability of space for an offender
16 in any program. When the court recommends and receives placement of an offender in a
17 department of corrections one hundred twenty-day program, the offender shall be released on
18 probation if the department of corrections determines that the offender has successfully
19 completed the program except as follows. Upon successful completion of a treatment program,
20 the board of probation and parole shall advise the sentencing court of an offender's probationary
21 release date thirty days prior to release. The court shall release the offender unless such release
22 constitutes an abuse of discretion. If the court determined that there is an abuse of discretion,
23 the court may order the execution of the offender's sentence only after conducting a hearing on
24 the matter within ninety to one hundred twenty days of the offender's sentence. If the court does
25 not respond when an offender successfully completes the program, the offender shall be released
26 on probation. Upon successful completion of a shock incarceration program, the board of
27 probation and parole shall advise the sentencing court of an offender's probationary release date
28 thirty days prior to release. The court shall follow the recommendation of the department unless
29 the court determines that probation is not appropriate. If the court determines that probation is
30 not appropriate, the court may order the execution of the offender's sentence only after
31 conducting a hearing on the matter within ninety to one hundred twenty days of the offender's
32 sentence. If the department determines that an offender is not successful in a program, then after
33 one hundred days of incarceration the circuit court shall receive from the department of

34 corrections a report on the offender's participation in the program and department
35 recommendations for terms and conditions of an offender's probation. The court shall then
36 release the offender on probation or order the offender to remain in the department to serve the
37 sentence imposed.

38 4. If the department of corrections one hundred twenty-day program is full, the court may
39 place the offender in a private program approved by the department of corrections or the court,
40 the expenses of such program to be paid by the offender, or in an available program offered by
41 another organization. If the offender is convicted of a class C or class D nonviolent felony, the
42 court may order probation while awaiting appointment to treatment.

43 5. Except when the offender has been found to be a predatory sexual offender pursuant
44 to section 558.018, RSMo, the court shall request that the offender be placed in the sexual
45 offender assessment unit of the department of corrections if the defendant has pleaded guilty to
46 or has been found guilty of sexual abuse when classified as a class B felony.

47 6. Unless the offender is being granted probation pursuant to successful completion of
48 a one hundred twenty-day program the circuit court shall notify the state in writing when the
49 court intends to grant probation to the offender pursuant to the provisions of this section. The
50 state may, in writing, request a hearing within ten days of receipt of the court's notification that
51 the court intends to grant probation. Upon the state's request for a hearing, the court shall grant
52 a hearing as soon as reasonably possible. If the state does not respond to the court's notice in
53 writing within ten days, the court may proceed upon its own motion to grant probation.

54 7. An offender's first incarceration for one hundred twenty days for participation in a
55 department of corrections program prior to release on probation shall not be considered a
56 previous prison commitment for the purpose of determining a minimum prison term under the
57 provisions of section 558.019, RSMo.

58 8. Notwithstanding any other provision of law, probation may not be granted pursuant
59 to this section to offenders who have been convicted of murder in the second degree pursuant
60 to section 565.021, RSMo; forcible rape pursuant to section 566.030, RSMo; forcible sodomy
61 pursuant to section 566.060, RSMo; statutory rape in the first degree pursuant to section 566.032,
62 RSMo; statutory sodomy in the first degree pursuant to section 566.062, RSMo; child
63 molestation in the first degree pursuant to section 566.067, RSMo, when classified as a class B
64 felony; abuse of a child pursuant to section 568.060, RSMo, when classified as a class A felony;
65 an offender who has been found to be a predatory sexual offender pursuant to section 558.018,
66 RSMo; **violation of section 195.226 or 195.246, RSMo**, or any offense in which there exists a
67 statutory prohibition against either probation or parole.