

House _____ Amendment NO. _____

Offered By

1 AMEND House Committee Bill No. 2, Page 1, Section A, Line 4, by inserting after said section and
2 line the following:

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

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

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

35 4. There is hereby established in the state treasury the "Missouri Office of Prosecution
36 Services Revolving Fund". Any moneys received by or on behalf of the Missouri office of

Action Taken _____ Date _____

prosecution services from registration fees, federal and state grants or any other source established in section 56.760 in connection with the purposes set forth in sections 56.750, 56.755, and 56.760 shall be deposited into the fund.

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

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

Further amend said bill, Page 8, Section 543.270, Line 10, by inserting after said section and line the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Any newly discovered criminal behavior while in a prosecution diversion program will

1 immediately forfeit his or her right to continued participation in such program at the sole discretion
 2 of the prosecuting attorney;

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

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

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

9 5. During any period of prosecution diversion, the prosecuting attorney may impose
 10 conditions upon the behavior and conduct of the accused or defendant that assures the safety and
 11 well-being of the community as well as that of the accused or defendant. The conditions imposed
 12 by the prosecuting attorney shall include, but are not limited to, requiring the accused or defendant
 13 to remain free of any criminal behavior during the entire period of prosecution diversion.

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

19 7. Any person participating in the program:

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

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

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

27 9. Any county, city, person, organization, or agency, or employee or agent thereof, involved
 28 with the supervision of activities, programs, or community service that are a part of a prosecution
 29 diversion program shall be immune from any suit by the person performing the work under the
 30 deferred prosecution agreement, or any person deriving a cause of action from such person, except
 31 for an intentional tort or gross negligence. Persons performing work or community service under a
 32 deferred prosecution agreement as described shall not be deemed to be engaged in employment
 33 within the meaning of the provisions of chapter 288. A person performing work or community
 34 service under a deferred prosecution agreement shall not be deemed an employee within the
 35 meaning of the provisions of chapter 287.

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

38 11. After completion of the program and any conditions imposed upon the accused or
 39 defendant, to the satisfaction of the prosecuting attorney, the individual shall be entitled to a
 40 dismissal or alternative disposition of charges against him or her. Such disposition may, in the
 41 discretion of the prosecuting attorney, be without prejudice to the state of Missouri for the
 42 reinstitution of criminal proceedings, within the statute of limitations, upon any subsequent criminal
 43 activity on the part of the accused. Any other provision of law notwithstanding, such individual
 44 shall be required to pay any associated costs prior to dismissal of pending charges."; and

45
 46 Further amend said bill, Page 13, Section 577.010, Line 90, by inserting after said section and line
 47 the following:

48
 49 "579.015. 1. A person commits the offense of possession of a controlled substance if he or

1 she knowingly possesses a controlled substance, except as authorized by this chapter or chapter 195.

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

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

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

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

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

21 579.020. 1. A person commits the offense of delivery of a controlled substance if, except as
22 authorized in this chapter or chapter 195, he or she:

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

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

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

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

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

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

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

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

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

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

49 579.030. 1. A person commits the offense of distribution of a controlled substance in a

protected location if he or she knowingly distributes, sells, or delivers any controlled substance, except thirty-five grams or less of marijuana ~~[or]~~ , synthetic cannabinoid, or an amount equivalent to thirty-five grams or less of marijuana concentrate, to a person with knowledge that that distribution, delivery or sale is:

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

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

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

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

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

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

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

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

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.