

HCS HB 1095 -- MARIJUANA-RELATED OFFENSES

SPONSOR: Dogan

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Special Committee on Criminal Justice by a vote of 7 to 0.

This bill increases the surcharge assessed as costs for any criminal case filed in any court in the state from \$1 to \$5.

This bill authorizes each prosecuting attorney 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, allowing for any statute of limitations to be tolled for that time. The prosecuting attorney may divert a case out of the criminal justice system that is nonviolent, nonsexual, and does not involve a child victim or the possession of an unlawful weapon and does not constitute a violation of a current condition of probation or parole. The prosecuting attorney is also allowed to divert a case if he or she determines that the advantages of utilizing prosecution diversion outweighs the advantages of immediate court activity. The accused or defendant must submit to all program requirements, and any newly discovered criminal behavior while in the program will immediately forfeit his or her right to continued participation.

The prosecuting attorney is authorized to establish any other criteria for the program and to impose conditions, such as remaining free of criminal behavior. The prosecuting attorney or circuit attorney must collect an additional \$5, currently \$1, per case for deposit into the Missouri Office of Prosecution Services Fund. Any person participating in the prosecution diversion program has the right to insist on criminal prosecution for the offense for which he or she is accused at any time and the right to counsel during all phases of the diversion proceedings unless the right is knowingly and voluntarily waived by the accused or defendant. After successful completion of the program and any conditions imposed to the satisfaction of the prosecuting attorney, the person is entitled to a dismissal or alternative disposition of the charges against him or her.

Currently, the offense of possession of a controlled substance except 35 grams or less of marijuana is a class D felony. This bill adds an exception for marijuana concentrate. The bill also specifies that possession of an amount equivalent to 35 grams or less of marijuana concentrate is a class D misdemeanor. Additionally, the bill allows for a prosecuting attorney, upon agreement with the accused or defendant, to divert an offense involving 100 grams or less of marijuana, synthetic cannabinoid, or

an amount equivalent to 100 grams or less of marijuana concentrate to a prosecution diversion program, as provided in this bill.

Currently, the offense of delivery of a controlled substance except 35 grams or less of marijuana is a class C felony. This bill removes the amount requirement for marijuana and excepts marijuana concentrate. The offense of delivery of 35 grams or less of marijuana is a class E felony. This bill specifies that the offense of delivery of more than 100 grams but less than 30,000 grams of marijuana or an amount equivalent to more than 100 grams but less than 30,000 grams of marijuana concentrate is a class A misdemeanor.

The offense of delivery of 100 grams or less of marijuana or synthetic cannabinoid or an amount equivalent to 100 grams or less of marijuana concentrate is an infraction.

Currently, the offense of delivery of 35 grams or less of marijuana to a person under 17 who is at least two years younger than the defendant is a class C felony. This bill changes it to 100 grams or less of marijuana or an amount equivalent to 100 grams or less of marijuana concentrate and it changes the penalty to a D felony.

The offense of delivery of a controlled substance is a class C felony if the delivery or distribution is more than 100 grams but less than 30,000 grams of marijuana or synthetic cannabinoid or an amount equivalent to more than 100 grams but less than 30,000 grams of marijuana concentrate to a person under 17 who is at least two years younger than the defendant.

Currently, 35 grams or less of marijuana is excepted from the offense of distribution of a controlled substance in a protected location. This bill increases the amount excepted to 100 grams or less and excepts an amount equivalent to 100 grams or less of marijuana concentrate. The offense is committed if the distribution, delivery, or sale is committed within 2,000 feet of certain places, and this bill reduces the distance to 1,000 feet. Additionally, the distribution, delivery, or sale must take place between the hours of 6 AM and 10 PM.

PROPONENTS: Supporters say that this relates to marijuana decriminalization. The war on drugs is predominantly a war on marijuana, even though opioids are killing more people than car crashes. We see people dying from opioid abuse all the time but we spend a disproportionate amount of time on marijuana, even though that is the least dangerous drug. Additionally, it is on marijuana possession rather than on marijuana distribution. Black people are arrested more often than white people for marijuana possession even though studies show that people possess them equally. We should

focus on people who traffic drugs, not those who just possess, especially not marijuana. States with legal marijuana have seen a 25% reduction in deaths from overdoses. Prosecutors have the ability to charge any amount of marijuana possession since it is still on the controlled substance list. The net effect would reduce the number of people we put in prison and treat as felons. Those people do not need to be in prison since they have not committed violent crimes. A solid majority of citizens in Missouri favor legalization, and this bill is hopefully a step toward that. With the emergence of the hemp industry, there has been a rise in the availability of hemp products on the market. People can buy the hemp flower, but that is identical to marijuana. Law enforcement field testing used to determine whether something is marijuana is not sufficient and this will eliminate and clarify sources of confusion for law enforcement. This legislation would also greatly help college students, who sometimes go to jail for possessing a single joint.

Testifying for the bill were Representative Dogan; American Civil Liberties Union of Missouri; Nicole Lynch, Empower Missouri; Natarajan Kumar, Students for Sensible Drug Policy; Dan Viets, Missouri Association of Criminal Defense Lawyers; Pharm Labs, Hemp Haven, and Crossing Paths.

OPPONENTS: There was no opposition voiced to the committee.

OTHERS: Others testifying on the bill say 115 prosecutors are elected for a reason. What is good for one county is not necessarily good for every county. The best approach is what is the public health policy behind this. Marijuana is still a dangerous drug; even people who sponsor medical marijuana legislation recognize that it is still a dangerous drug. The new criminal code has been in effect for two years but the primary purpose of the step toward decriminalization was to take pressure off the prison system. Not a lot of people are in prison for simple marijuana possession. The Department of Corrections should be asked how many people are in there for marijuana possession alone. Marijuana laws need to be enforced, though officers should not be arresting for simple possession of small amounts of marijuana. This does not decriminalize delivery of small amounts but it's a good step and would allow law enforcement to better use resources. There could be some improvements to the legislation to maintain prosecutorial discretion.

Testifying on the bill were Missouri Association of Prosecuting Attorneys/Missouri Office of Prosecution Services; and Michael Warrick, St Louis City Circuit Attorney's Office.