

CHAPTER 125

Substitute for HOUSE BILL No. 2777

AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 65-4161, 65-4163, 74-7302 and 74-7336 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 65-4161 is hereby amended to read as follows: 65-4161. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with intent to sell, deliver or distribute; prescribe; administer; deliver; distribute; *or* dispense ~~or compound~~ any opiates, opium or narcotic drugs, or any stimulant designated in subsection (d)(1), (d)(3) or (f)(1) of K.S.A. 65-4107 and amendments thereto. Except as provided in subsections (b), (c) and (d), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) If any person who violates this section has one prior conviction under this section or a conviction for a substantially similar offense from another jurisdiction, then that person shall be guilty of a drug severity level 2 felony.

(c) If any person who violates this section has two or more prior convictions under this section or substantially similar offenses under the laws of another jurisdiction, then such person shall be guilty of a drug severity level 1 felony.

(d) Notwithstanding any other provision of law, upon conviction of any person for a first offense pursuant to subsection (a), such person shall be guilty of a drug severity level 2 felony if such person is 18 or more years of age and the substances involved were possessed with intent to sell, deliver or distribute; sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(e) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(f) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(g) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

Sec. 2. K.S.A. 65-4163 is hereby amended to read as follows: 65-4163. (a) Except as authorized by the uniform controlled substances act, it shall be unlawful for any person to sell, offer for sale or have in such person's possession with the intent to sell, deliver or distribute; cultivate; prescribe; administer; deliver; distribute; *or* dispense ~~or compound~~.

(1) Any depressant designated in subsection (e) of K.S.A. 65-4105, subsection (e) of K.S.A. 65-4107, subsection (b) or (c) of K.S.A. 65-4109 or subsection (b) of K.S.A. 65-4111, and amendments thereto;

(2) any stimulant designated in subsection (f) of K.S.A. 65-4105, subsection (d)(2), (d)(4) or (f)(2) of K.S.A. 65-4107 or subsection (e) of K.S.A. 65-4109, and amendments thereto;

(3) any hallucinogenic drug designated in subsection (d) of K.S.A. 65-4105, and amendments thereto or designated in subsection (g) of K.S.A. 65-4107 and amendments thereto or designated in subsection (g) of K.S.A. 65-4109 and amendments thereto;

(4) any substance designated in subsection (g) of K.S.A. 65-4105, and amendments thereto, and designated in subsection (c), (d), (e), (f) or (g) of K.S.A. 65-4111, and amendments thereto; or

(5) any anabolic steroids as defined in subsection (f) of K.S.A. 65-

4109, and amendments thereto.

Except as provided in subsection (b), any person who violates this subsection shall be guilty of a drug severity level 3 felony.

(b) Notwithstanding any other provision of law, upon conviction of any person pursuant to subsection (a) for an offense in which the substances involved were possessed with intent to sell, sold or offered for sale in or on, or within 1,000 feet of any school property upon which is located a structure used by a unified school district or an accredited non-public school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12 and such person is 18 or more years of age, such person shall be guilty of a drug severity level 2 felony.

Nothing in this subsection shall be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the description above, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

(c) It shall not be a defense to charges arising under this section that the defendant was acting in an agency relationship on behalf of any other party in a transaction involving a controlled substance.

(d) For purposes of the uniform controlled substances act, the prohibitions contained in this section shall apply to controlled substance analogs as defined in subsection (bb) of K.S.A. 65-4101 and amendments thereto.

(e) The provisions of this section shall be part of and supplemental to the uniform controlled substances act.

New Sec. 3. On or before the effective date of this act, any person violating the provisions of K.S.A. 65-4159, and amendments thereto, upon conviction, is guilty of a drug severity level 1 felony. Such sentence shall not be reduced to violating the provisions of K.S.A. 65-4161 or 65-4163, and amendments thereto, because prior to this act, such statutes prohibited the identical conduct.

New Sec. 4. On and after July 1, 2004: (a) Aggravated endangering a child is:

(1) Intentionally and recklessly causing or permitting a child under the age of 18 years to be placed in a situation in which the child's life, body or health is injured or endangered;

(2) permitting such child to be in an environment where a person is selling, offering for sale or having in such person's possession with intent to sell, deliver, distribute, prescribe, administer, dispense, manufacture or attempt to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto; or

(3) permitting such child to be in an environment where drug paraphernalia or volatile, toxic or flammable chemicals are stored for the purpose of manufacturing or attempting to manufacture any methamphetamine as defined by subsection (d)(3) or (f)(1) of K.S.A. 65-4107, and amendments thereto.

(b) Aggravated endangering a child is a severity level 9, person felony.

(c) As used in this section:

(1) "Manufacture" shall have the meaning ascribed to that term in K.S.A. 65-4101, and amendments thereto; and

(2) "drug paraphernalia" shall have the meaning ascribed to that term in K.S.A. 65-4150, and amendments thereto.

(d) This section shall be part of and supplemental to the Kansas criminal code.

Sec. 5. On and after July 1, 2004, K.S.A. 74-7302 is hereby amended to read as follows: 74-7302. (a) Within the limits of appropriations therefor, the board shall award compensation for economic loss arising from criminally injurious conduct if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(b) *The board may adjust compensation so that the total amount of compensation granted in each fiscal year does not exceed the amount of money anticipated to be credited to the crime victim compensation fund during such year. An adjustment may include prorating or prioritizing such compensation based upon the anticipated funds.*

Sec. 6. On and after July 1, 2004, K.S.A. 74-7336 is hereby amended to read as follows: 74-7336. (a) Of the remittances of fines, penalties and

forfeitures received from clerks of the district court, at least monthly, the state treasurer shall credit ~~7.99%~~ 11.99% to the crime victims compensation fund, ~~1.45%~~ 2.45% to the crime victims assistance fund, 2.01% to the community alcoholism and intoxication programs fund, 2.01% to the department of corrections alcohol and drug abuse treatment fund. The remainder of the remittances shall be credited to the state general fund.

(b) The county treasurer shall deposit grant moneys as provided in subsection (a), from the crime victims assistance fund, to the credit of a special fund created for use by the county or district attorney in establishing and maintaining programs to aid witnesses and victims of crime.

New Sec. 7. If any provisions of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

Sec. 8. K.S.A. 65-4161 and 65-4163 are hereby repealed.

Sec. 9. On and after July 1, 2004, K.S.A. 74-7302 and 74-7336 are hereby repealed.

Sec. 10. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 11, 2004.

Published in the *Kansas Register* May 20, 2004.
