

House Amendment 1569

Amendment Text

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1 1 Amend [Senate File 503](#), as amended, passed, and
1 2 reprinted by the Senate, as follows:
1 3 #1. By striking everything after the enacting
1 4 clause and inserting the following:
1 5 "Section 1. NEW SECTION. 124.401C MANUFACTURING
1 6 METHAMPHETAMINE IN PRESENCE OF MINORS.
1 7 1. In addition to any other penalties provided in
1 8 this chapter, a person who is eighteen years of age or
1 9 older and who either directly or by extraction from
1 10 natural substances, or independently by means of
1 11 chemical processes, or both, unlawfully manufactures
1 12 methamphetamine, its salts, isomers, and salts of its
1 13 isomers in the presence of a minor shall be sentenced
1 14 up to an additional term of confinement of five years.
1 15 2. For purposes of this section, the term "in the
1 16 presence of a minor" shall mean any of the following:
1 17 a. When a minor is physically present during the
1 18 activity.
1 19 b. When the activity is conducted in the residence
1 20 of a minor.
1 21 c. When the activity is conducted in a residence
1 22 where minors can reasonably be expected to be present.
1 23 d. When the activity is conducted in a room
1 24 offered to the public for overnight accommodation.
1 25 Sec. 2. Section [728.1](#), Code 1997, is amended by
1 26 adding the following new subsection:
1 27 NEW SUBSECTION. 5A. "Place of business" means the
1 28 premises of a business required to obtain a sales tax
1 29 permit pursuant to chapter 422, the premises of a
1 30 nonprofit or not-for-profit organization, and the
1 31 premises of an establishment which is open to the
1 32 public at large or where entrance is limited by a
1 33 cover charge or membership requirement.
1 34 Sec. 3. Section [728.5](#), Code 1997, is amended to
1 35 read as follows:
1 36 728.5 PUBLIC INDECENT EXPOSURE IN CERTAIN
1 37 ESTABLISHMENTS.
1 38

~~A holder of a liquor license or beer permit or any~~

1 39 An owner, manager, or person who exercises direct
1 40 control over

~~any licensed premises defined in section~~

1 41

~~123.3, subsection 20~~

~~a place of business required to~~

1 42 obtain a sales tax permit shall be guilty of a serious
1 43 misdemeanor under any of the following circumstances:
1 44 1. If such person

~~allow~~

~~allows~~ or

~~— permit~~
- permits
1 45 the actual or simulated public performance of any sex
1 46 act upon or in such
.
~~— licensed premises~~
- place of
1 47 business.
1 48 2. If such person
.
~~— allow~~
- allows or
.
~~— permit~~
- permits
1 49 the exposure of the genitals or buttocks or female
1 50 breast of any person who acts as a waiter or waitress.
2 1 3. If such person
.
~~— allow~~
- allows or
.
~~— permit~~
- permits
2 2 the exposure of the genitals or female breast nipple
2 3 of any person who acts as an entertainer, whether or
2 4 not the owner of the
.
~~— licensed premises~~
- place of
2 5 business in which the activity is performed employs or
2 6 pays any compensation to such person to perform such
2 7 activity.
2 8 4. If such person
.
~~— allow~~
- allows or
.
~~— permit~~
- permits
2 9 any person to remain in or upon the
.
~~— licensed premises~~
-
2 10 place of business who exposes to public view the
2 11 person's genitals, pubic hair, or anus.
2 12
.
~~— 5. If such person allow or permit the displaying~~
-
2 13
.
~~— of moving pictures, films, or pictures depicting any~~
-
2 14
.
~~— sex act or the display of the pubic hair, anus, or~~
-
2 15
.
~~— genitals upon or in such licensed premises.~~
-
2 16
.
~~— 6~~
- 5. If such person advertises that any activity
2 17 prohibited by this section is allowed or permitted in

2 18 such

- ~~licensed premises~~
- place of business.

2 19

~~7~~

- 6. If such person allows or permits a minor to
 - 2 20 engage in or otherwise perform in a live act intended
 - 2 21 to arouse or satisfy the sexual desires or appeal to
 - 2 22 the prurient interests of patrons. However, if such
 - 2 23 person allows or permits a minor to participate in any
 - 2 24 act included in subsections 1 through 4, the person
 - 2 25 shall be guilty of an aggravated misdemeanor.
 - 2 26

~~Provided that the~~

- The provisions of this section
 - 2 27 shall not apply to a theater, concert hall, art
 - 2 28 center, museum, or similar establishment which is
 - 2 29 primarily devoted to the arts or theatrical
 - 2 30 performances and in which any of the circumstances
 - 2 31 contained in this section were permitted or allowed as
 - 2 32 part of such art exhibits or performances.
 - 2 33 Sec. 4. Section 728.8, Code 1997, is amended to
 - 2 34 read as follows:
 - 2 35 728.8 SUSPENSION OF LICENSES OR PERMITS.
 - 2 36 Any person who knowingly permits a violation of
 - 2 37 section 728.2, 728.3, or 728.5, subsection

~~7~~

- 6, to
 - 2 38 occur on premises under the person's control shall
 - 2 39 have all permits and licenses issued to the person
 - 2 40 under state or local law as a prerequisite for doing
 - 2 41 business on such premises revoked for a period of six
 - 2 42 months. The county attorney shall notify all agencies
 - 2 43 responsible for issuing licenses and permits of any
 - 2 44 conviction under section 728.2, 728.3, or 728.5,
 - 2 45 subsection

~~7~~

- 6.
 - 2 46 Sec. 5. Section 907.2, unnumbered paragraph 2,
 - 2 47 Code 1997, is amended to read as follows:
 - 2 48 Probation officers employed by the judicial
 - 2 49 district department of correctional services, while
 - 2 50 performing the duties prescribed by that department,
 - 3 1 are peace officers. Probation officers shall
 - 3 2 investigate all persons referred to them for
 - 3 3 investigation by the director of the judicial district
 - 3 4 department of correctional services which employs
 - 3 5 them. They shall furnish to each person released
 - 3 6 under their supervision or committed to a community
 - 3 7 corrections residential facility operated by the
 - 3 8 judicial district department of correctional services,
 - 3 9 a written statement of the conditions of probation or
 - 3 10 commitment. They shall keep informed of each person's
 - 3 11 conduct and condition and shall use all suitable
 - 3 12 methods prescribed by the judicial district department
 - 3 13 of correctional services to aid and encourage the
 - 3 14 person to bring about improvements in the person's
 - 3 15 conduct and condition. Probation officers shall keep
 - 3 16 records of their work and, unless section 907.8A
 - 3 17 applies, shall make reports to the court when alleged
 - 3 18 violations occur and within no less than thirty days
 - 3 19 before the period of probation will expire. If

3 20 section 907.8A applies, the probation officers shall
3 21 make the reports of alleged violations to the
3 22 administrative parole and probation judge within no
3 23 less than thirty days before the period of probation
3 24 will expire. Probation officers shall coordinate
3 25 their work with other social welfare agencies which
3 26 offer services of a corrective nature operating in the
3 27 area to which they are assigned.

3 28 Sec. 6. Section 907.7, unnumbered paragraphs 1 and
3 29 2, Code 1997, are amended to read as follows:

3 30 The length of the probation shall be for such term
3 31 as the court

~~may~~

- shall fix but not to exceed five

3 32 years if the offense is a felony or not to exceed two
3 33 years if the offense is a misdemeanor.

3 34 The length of the probation shall not be less than
3 35 one year if the offense is a misdemeanor and shall not
3 36 be less than two years if the offense is a felony.

3 37 However, the court or the administrative parole and
3 38 probation judge, if section 907.8A applies, may
3 39 subsequently reduce the length of the probation if the
3 40 court or the administrative parole and probation judge
3 41 determines that the purposes of probation have been
3 42 fulfilled. The purposes of probation are to provide
3 43 maximum opportunity for the rehabilitation of the
3 44 defendant and to protect the community from further
3 45 offenses by the defendant and others.

3 46 Sec. 7. Section 907.8, unnumbered paragraph 3,
3 47 Code 1997, is amended to read as follows:

3 48

~~Jurisdiction of~~

- Except as otherwise provided in

3 49 section 907.8A, the court shall retain jurisdiction
3 50 over these persons

~~shall remain with the sentencing~~

4 1

~~court~~

- Jurisdiction may be transferred to a court in

4 2 another jurisdiction, or to the administrative parole
4 3 and probation judge under section 907.8A, if a
4 4 person's probation supervision is transferred to a
4 5 judicial district department of correctional services
4 6 in a district other than the district in which the
4 7 person was sentenced.

4 8 Sec. 8. NEW SECTION. 907.8A SIXTH JUDICIAL
4 9 DISTRICT DETERMINATION OF ISSUES DURING
4 10 PROBATIONARY PERIOD.

4 11 1. Except for those persons who are granted a
4 12 deferred judgment or deferred sentence, for each
4 13 adult, and each juvenile who has been prosecuted,
4 14 convicted, and sentenced as an adult, who is released
4 15 on probation by the court in the sixth judicial
4 16 district, the jurisdiction of the sentencing court
4 17 shall cease upon approval by the sentencing court of
4 18 the conditions established by the judicial district
4 19 department of correctional services. If a person is
4 20 granted a deferred judgment or deferred sentence,
4 21 jurisdiction shall be retained by the court.

4 22 2. All issues relating to whether the probationer
4 23 has violated or fulfilled the terms and conditions of
4 24 probation, including but not limited to express

4 25 violations of a specific term of probation, new
4 26 violations of the law, and changes of the term of
4 27 probation as provided in sections 907.7, 908.11, and
4 28 910.4, which would otherwise be determined by the
4 29 court, shall be determined instead by an
4 30 administrative parole and probation judge. The
4 31 administrative parole and probation judge, who shall
4 32 be an attorney, shall be appointed by the board of
4 33 parole, notwithstanding chapter 17A. The costs of
4 34 employing the administrative parole and probation
4 35 judge shall be borne by the board of parole.

4 36 A probation hearing conducted by an administrative
4 37 parole and probation judge shall be conducted in the
4 38 same manner as hearings regarding revocations or
4 39 modifications of or discharge from parole. The
4 40 hearing may be conducted electronically. The
4 41 probation officer shall notify the county attorney at
4 42 least five days prior to any probation hearing. The
4 43 interests of the state shall be represented by the
4 44 probation officer at the probation hearing, unless the
4 45 county attorney or the county attorney's designee
4 46 elects to assist the probation officer. The board of
4 47 parole, the department of corrections, and the clerk
4 48 of the district court in the sixth judicial district
4 49 shall devise and implement a system for the filing of
4 50 documents and records of probation hearings conducted
5 1 under this section. The system shall allow for the
5 2 electronic filing of records and documents where
5 3 electronic filing is practicable.

5 4 3. Appeals from orders of the administrative
5 5 parole and probation judge which pertain to the
5 6 revocations or modifications of or discharge from
5 7 probation shall be conducted in the manner provided in
5 8 rules adopted by the board of parole.

5 9 Sec. 9. Section [907.9](#), Code 1997, is amended to
5 10 read as follows:

5 11 907.9 DISCHARGE FROM PROBATION.

5 12 1.

~~At~~

~~Except as otherwise provided in section~~

5 13 907.8A, at any time that the court determines that the
5 14 purposes of probation have been fulfilled, the court
5 15 may order the discharge of a person from probation.

5 16 2. At any time that a probation officer determines
5 17 that the purposes of probation have been fulfilled,
5 18 the officer may order the discharge of a person from
5 19 probation after approval of the district director

~~and~~

5 20 notification of the sentencing court, the
5 21 administrative parole and probation judge if section
5 22 907.8A applies, and the county attorney who prosecuted
5 23 the case.

5 24 3. The sentencing judge

~~, unless the judge is no~~

~~5 25~~

~~longer serving or is otherwise unable to,~~

~~or, if~~

5 26 section 907.8A applies, the administrative parole and
5 27 probation judge, may order a hearing on its own
5 28 motion, or shall order a hearing upon the request of
5 29 the county attorney, for review of such discharge. If

5 30 the sentencing judge is no longer serving or unable to
5 31 order such hearing, the chief judge of the district or
5 32 the chief judge's designee shall order any hearing
5 33 pursuant to this section, if section 907.8A does not
5 34 apply. Following the hearing, the court or the
5 35 administrative parole and probation judge shall
5 36 approve or rescind such discharge. If a hearing is
5 37 not ordered within thirty days after notification by
5 38 the probation officer, the person shall be discharged
5 39 and the probation officer shall notify the state court
5 40 administrator of such discharge.
5 41 4. At the expiration of the period of probation,
5 42

~~in cases where the court fixes the term of probation,~~

5 43 the court or, if section 907.8A applies, the
5 44 administrative parole and probation judge, shall order
5 45 the discharge of the person from probation, and the
5 46 court or administrative parole and probation judge
5 47 shall forward to the governor a recommendation for or
5 48 against restoration of citizenship rights to that
5 49 person. A person who has been discharged from
5 50 probation shall no longer be held to answer for the
6 1 person's offense. Upon discharge from probation, if
6 2 judgment has been deferred under section 907.3, the
6 3 court's criminal record with reference to the deferred
6 4 judgment shall be expunged. The record maintained by
6 5 the state court administrator as required by section
6 6 907.4 shall not be expunged. The court's record shall
6 7 not be expunged in any other circumstances.

6 8 5. A probation officer or the director of the
6 9 judicial district department of correctional services
6 10 who acts in compliance with this section is acting in
6 11 the course of the person's official duty and is not
6 12 personally liable, either civilly or criminally, for
6 13 the acts of a person discharged from probation by the
6 14 officer after such discharge, unless the discharge
6 15 constitutes willful disregard of the person's duty.

6 16 Sec. 10. Section 908.11, Code 1997, is amended to
6 17 read as follows:

6 18 908.11 VIOLATION OF PROBATION.

6 19 1. A probation officer or the judicial district
6 20 department of correctional services having probable
6 21 cause to believe that any person released on probation
6 22 has violated the conditions of probation shall proceed
6 23 by arrest or summons as in the case of a parole
6 24 violation.

6 25 2.

~~The~~

~~Except as otherwise provided in sections~~

6 26 907.8 and 907.8A, the functions of the liaison officer
6 27 and the board of parole shall be performed by the
6 28 judge or magistrate who placed the alleged violator on
6 29 probation if that judge or magistrate is available,
6 30 otherwise by another judge or magistrate who would
6 31 have had jurisdiction to try the original offense.

6 32 3. If the probation officer proceeds by arrest and
6 33 section 907.8A does not apply, any magistrate may
6 34 receive the complaint, issue an arrest warrant, or
6 35 conduct the initial appearance and probable cause
6 36 hearing if it is not convenient for the judge who
6 37 placed the alleged violator on probation to do so.
6 38 The initial appearance, probable cause hearing, and
6 39 probation revocation hearing, or any of them, may at
6 40 the discretion of the court be merged into a single

6 41 hearing when it appears that the alleged violator will
6 42 not be prejudiced

~~thereby~~

- by the merger.

6 43 4. If the person who is believed to have violated
6 44 the conditions of probation was sentenced and placed
6 45 on probation in the sixth judicial district under
6 46 section 907.8A, or jurisdiction over the person was
6 47 transferred to the sixth judicial district as a result
6 48 of transfer of the person's probation supervision, the
6 49 functions of the liaison officer and the board of
6 50 parole shall be performed by the administrative parole
7 1 and probation judge as provided in section 907.8A.

7 2 5. If the probation officer proceeds by arrest and
7 3 section 907.8A applies, the administrative parole and
7 4 probation judge may receive the complaint, issue an
7 5 arrest warrant, or conduct the initial appearance and
7 6 probable cause hearing. The initial appearance,
7 7 probable cause hearing, and probation revocation
7 8 hearing, or any of them, may, at the discretion of the
7 9 administrative parole and probation judge, be merged
7 10 into a single hearing when it appears that the alleged
7 11 violator will not be prejudiced by the merger.

7 12 6. If the violation is established, the court or
7 13 the administrative parole and probation judge may
7 14 continue the probation with or without an alteration
7 15 of the conditions of probation. If the defendant is
7 16 an adult the court may hold the defendant in contempt
7 17 of court and sentence the defendant to a jail term
7 18 while continuing the probation, order the defendant to
7 19 be placed in a violator facility established pursuant
7 20 to section 904.207 while continuing the probation, or
7 21 revoke the probation and require the defendant to
7 22 serve the sentence imposed or any lesser sentence,
7 23 and, if imposition of sentence was deferred, may
7 24 impose any sentence which might originally have been
7 25 imposed. The administrative parole and probation
7 26 judge may revoke the probation and require the
7 27 defendant to serve the sentence which was originally
7 28 imposed. The administrative parole and probation
7 29 judge may grant credit against the sentence, for any
7 30 time served while the defendant was on probation. The
7 31 order of the administrative parole and probation judge
7 32 shall become a final decision, unless the defendant
7 33 appeals the decision to the board of parole within the
7 34 time provided in rules adopted by the board. The
7 35 appeal shall be conducted pursuant to rules adopted by
7 36 the board and the record on appeal shall be the record
7 37 made at the hearing conducted by the administrative
7 38 parole and probation judge.

7 39 Sec. 11. NEW SECTION. 910.3B RESTITUTION FOR
7 40 DEATH OF VICTIM.

7 41 1. In all criminal cases in which the offender is
7 42 convicted of a felony in which the act or acts
7 43 committed by the offender caused the death of another
7 44 person, in addition to the amount determined to be
7 45 payable and ordered to be paid to a victim for
7 46 pecuniary damages, as defined under section 910.1, and
7 47 determined under section 910.3, the court shall also
7 48 order the offender to pay one million dollars in
7 49 restitution to the victim's estate. The obligation to
7 50 pay the additional amount shall not be dischargeable
8 1 in any proceeding under the federal Bankruptcy Act.
8 2 Payment of the additional amount shall have the same
8 3 priority as payment of a victim's pecuniary damages
8 4 under section 910.2, in the offender's plan for

8 5 restitution.

8 6 2. An award under this section does not preclude
8 7 or supersede the right of a victim's estate to bring a
8 8 civil action against the offender for damages arising
8 9 out of the same facts or event.

8 10 3. An offender who is ordered to pay a victim's
8 11 estate under this section is precluded from denying
8 12 the elements of the felony offense which resulted in
8 13 the order for payment in any subsequent civil action
8 14 for damages arising out of the same facts or event.

8 15 Sec. 12. Sections 906.16, 908.4, 908.5, 908.6,
8 16 908.7, 908.10, and 908.10A, Code 1997, are amended by
8 17 striking from the sections the words "administrative
8 18 parole judge" and inserting in lieu thereof the words
8 19 "administrative parole and probation judge".

8 20 Sec. 13. EFFECTIVE DATE. Sections 2 through 4 of
8 21 this Act, being deemed of immediate importance, take
8 22 effect upon enactment."

8 23 #2. Title page 1, by striking lines 5 through 15
8 24 and inserting the following: "establishments,
8 25 authorizing probation supervision and".

8 26 #3. Title page 1, by striking lines 17 and 18 and
8 27 inserting the following: "the sixth judicial
8 28 district, providing".

8 29

8 30

8 31

8 32 COMMITTEE ON JUDICIARY

8 33 LAMBERTI of Polk, Chairperson

8 34 SF 503.513 77

8 35 lh/jw/28