

SJ 31: CRIMINAL DISTRIBUTION OF DANGEROUS DRUGS ANALYSIS

BACKGROUND

A person is in violation of criminal distribution of dangerous drugs on school property if the person violates 45-9-101, MCA, within 1,000 feet of a school.

45-9-109. Criminal distribution of dangerous drugs on or near school property – penalty – affirmative defense. (1) A person commits the offense of criminal distribution of dangerous drugs on or near school property if the person violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

However, 45-9-101, MCA, was amended to say: "*[e]xcept as provided in Title 16, chapter 12, a person commits the offense of criminal distribution of dangerous drugs.*" (emphasis added)

45-9-101. Criminal distribution of dangerous drugs. (1) Except as provided in Title 16, chapter 12, a person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchange, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V set forth in Title 50, chapter 32, part 2.

50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(4) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following is a hallucinogenic substance, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(x) marijuana;

Section 16-12-207, MCA, allows dispensaries to sell marijuana within 500 feet of schools, unless local provisions require a further distance.

16-12-207. Licensing as privilege – criteria.

(3) (a) The department shall deny a cultivator license, manufacturer license, adult-use dispensary license, or medical marijuana license if the applicant's proposed licensed premises:

(iii) is within 500 feet of and on the same street as a building used exclusively as a . . . school or postsecondary school other than a commercially operated school, unless the locality requires a greater distance.

Therefore, as long as dispensaries are 500 feet or more from schools, it appears they are not in violation of 45-9-101, MCA; however, 45-9-109, MCA, was not amended to clarify.

ANALYSIS

The existing statutory scheme already provides an exception for licensed marijuana sales under Title 16, chapter 12. The issue is that it takes a bit of statutory investigation to find the exception in section 45-9-101, MCA. While not entirely a model of clarity, the exception exists and amending other statutes is not absolutely necessary.

RECOMMENDATION

No action is required on this issue.

COMMITTEE OPTIONS

Option A: Amend 45-9-101, MCA.

Option B: Leave as is.