

AN ACT

ENTITLED, An Act to revise certain prohibitions regarding methamphetamines and to create a mandatory penalty for a violation thereof and revise certain sentencing criteria for methamphetamine and opioids.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That the code be amended by adding a NEW SECTION to read:

Except as authorized by this Act or chapter 34-20B, no person may manufacture, distribute, or dispense more than five grams of methamphetamine, a methamphetamine analog or immediate precursor; possess with intent to manufacture, distribute, or dispense methamphetamine, a methamphetamine analog or immediate precursor; create or distribute a counterfeit of methamphetamine, a methamphetamine analog or immediate precursor; or possess with intent to distribute a counterfeit of methamphetamine, a methamphetamine analog or immediate precursor. A violation of this section is a Class 3 felony. However, a violation of this section is a Class 2 felony if the person is in possession of three or more of the following:

- (1) Three hundred dollars or more in cash;
- (2) A firearm, or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);
- (3) Bulk materials used for the packaging of methamphetamine;
- (4) Materials used to manufacture methamphetamine including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or
- (5) Drug transaction records or customer lists.

A first conviction under this section shall be punished by a mandatory sentence in the state penitentiary of at least one year, which sentence may not be suspended. A second or subsequent conviction under this section shall be punished by a mandatory sentence in the state penitentiary of

at least ten years, which sentence may not be suspended.

The manufacture, distribution, or dispensing of methamphetamine, a methamphetamine analog or immediate precursor to a minor is a Class 1 felony. A first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in the state penitentiary of at least five years, which sentence may not be suspended. A second or subsequent conviction for distribution to a minor under this section shall be punished by a mandatory sentence in the state penitentiary of at least fifteen years, which sentence may not be suspended.

Probation, suspended imposition of sentence, or suspended execution of sentence, may not form the basis for reducing the mandatory time of incarceration required by this section.

A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

Section 2. That the code be amended by adding a NEW SECTION to read:

For any offense under section 1 of this Act or § 22-42-2 where the opium derivative or opiate is listed as Schedule I or Schedule II under chapter 34-20B, the court shall impose a sentence without regard to any statutory minimum sentence, only if the court makes written findings that:

- (1) The defendant does not have a prior conviction for a crime of violence as defined under subdivision 22-1-2(9);
- (2) The defendant did not use violence or any credible threat of violence or possess a firearm or other dangerous weapon in connection with the offense;
- (3) The defendant did not induce another participant to use violence or any credible threat of violence or possess a firearm or other dangerous weapon in connection with the offense;
- (4) The defendant was not an organizer, leader, manager, or supervisor of any other

participant in connection with the offense;

- (5) The defendant truthfully provided to the state any information and evidence in connection with any offense that was part of the same course of conduct or of a common scheme or plan. The defendant shall provide any information before the time of sentencing, but if the defendant provides no relevant or useful information or if the state was previously aware of the information, the court may determine that the defendant has complied with the finding under this subdivision; and
- (6) The offense did not result in death or serious bodily injury to any person.

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I certify that the attached Act
originated in the

SENATE as Bill No. 63

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 63
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State