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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. **994**

02/18/2015 Authored by Hertauss; Dehn, R.; Newberger; Considine; Newton and others

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; addressing controlled substance crimes by lowering
1.3 certain threshold amounts, eliminating minimum sentences, expanding the
1.4 nonviolent controlled substance offender conditional release program, making
1.5 the stay of adjudication law for low-level offenders mandatory, and directing that
1.6 savings from these changes be used for treatment and educational programs;
1.7 appropriating money; amending Minnesota Statutes 2014, sections 152.021;
1.8 152.022; 152.023; 152.024, subdivision 3; 152.025; 152.18, subdivision 1;
1.9 244.0513, subdivision 2; repealing Minnesota Statutes 2014, section 152.026.

1.10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.11 Section 1. Minnesota Statutes 2014, section 152.021, is amended to read:

1.12 **152.021 CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.**

1.13 Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in
1.14 the first degree if:

1.15 (1) ~~on one or more occasions within a 90-day period the person unlawfully sells one~~
1.16 ~~or more mixtures of a total weight of ten grams or more containing cocaine, heroin, or~~
1.17 ~~methamphetamine;~~

1.18 (2) on one or more occasions within a 90-day period the person unlawfully sells one
1.19 or more mixtures of a total weight of 50 grams or more containing a narcotic drug ~~other~~
1.20 ~~than cocaine, heroin, or methamphetamine;~~

1.21 (3) ~~(2)~~ on one or more occasions within a 90-day period the person unlawfully sells
1.22 one or more mixtures of a total weight of 50 grams or more containing amphetamine,
1.23 phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units,
1.24 equaling 200 or more dosage units; or

1.25 (4) ~~(3)~~ on one or more occasions within a 90-day period the person unlawfully sells
1.26 one or more mixtures of a total weight of 50 kilograms or more containing marijuana or

Tetrahydrocannabinols, or one or more mixtures of a total weight of 25 kilograms or more containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public housing zone, or a drug treatment facility.

Subd. 2. **Possession crimes.** (a) A person is guilty of a controlled substance crime in the first degree if:

(1) ~~the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing cocaine, heroin, or methamphetamine;~~

(2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug ~~other than cocaine, heroin, or methamphetamine;~~

(3) (2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

(4) (3) the person unlawfully possesses one or more mixtures of a total weight of 100 kilograms or more containing marijuana or Tetrahydrocannabinols.

(b) For the purposes of this subdivision, the weight of fluid used in a water pipe may not be considered in measuring the weight of a mixture except in cases where the mixture contains four or more fluid ounces of fluid.

~~Subd. 2a. **Methamphetamine manufacture crime.** (a) Notwithstanding subdivision 1, sections 152.022, subdivision 1, 152.023, subdivision 1, and 152.024, subdivision 1, a person is guilty of controlled substance crime in the first degree if the person manufactures any amount of methamphetamine.~~

(b) [Renumbered 152.0262, subdivision 1]

Subd. 3. **Penalty.** (a) A person convicted under ~~subdivisions~~ subdivision 1 to 2a, paragraph (a) or 2, may be sentenced to imprisonment for not more than 30 years or to payment of a fine of not more than \$1,000,000, or both.

(b) ~~If the conviction is a subsequent controlled substance conviction, a person convicted under subdivisions 1 to 2a, paragraph (a), shall be committed to the commissioner of corrections for not less than four years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$1,000,000.~~

(c) In a prosecution under subdivision 1 involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

EFFECTIVE DATE. This section is effective August 1, 2015, and applies to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2014, section 152.022, is amended to read:

152.022 CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE.

Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in the second degree if:

(1) ~~on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine;~~

(2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) (2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ten grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 50 or more dosage units;

(4) (3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 25 kilograms or more containing marijuana or Tetrahydrocannabinols;

(5) (4) the person unlawfully sells any amount of a Schedule I or II narcotic drug to a person under the age of 18, or conspires with or employs a person under the age of 18 to unlawfully sell the substance; or

(6) (5) the person unlawfully sells any of the following in a school zone, a park zone, a public housing zone, or a drug treatment facility:

(i) any amount of a Schedule I or II narcotic drug, lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine;

(ii) one or more mixtures containing methamphetamine or amphetamine; or

(iii) one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 2. **Possession crimes.** (a) A person is guilty of controlled substance crime in the second degree if:

(1) ~~the person unlawfully possesses one or more mixtures of a total weight of six grams or more containing cocaine, heroin, or methamphetamine;~~

(2) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

(3) (2) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 100 or more dosage units; or

4.1 ~~(4)~~ (3) the person unlawfully possesses one or more mixtures of a total weight of 50
4.2 kilograms or more containing marijuana or Tetrahydrocannabinols.

4.3 (b) For the purposes of this subdivision, the weight of fluid used in a water pipe may
4.4 not be considered in measuring the weight of a mixture except in cases where the mixture
4.5 contains four or more fluid ounces of fluid.

4.6 Subd. 2a. **Methamphetamine manufacture crime.** Notwithstanding subdivision
4.7 1, sections 152.023, subdivision 1, and 152.024, subdivision 1, a person is guilty of a
4.8 controlled substance crime in the second degree if the person manufactures a total weight
4.9 of less than 50 grams of methamphetamine.

4.10 Subd. 3. **Penalty.** (a) A person convicted under ~~subdivision~~ subdivisions 1 or 2 to
4.11 2a may be sentenced to imprisonment for not more than 25 years or to payment of a
4.12 fine of not more than \$500,000, or both.

4.13 (b) ~~If the conviction is a subsequent controlled substance conviction, a person~~
4.14 ~~convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections~~
4.15 ~~for not less than three years nor more than 40 years and, in addition, may be sentenced to~~
4.16 ~~payment of a fine of not more than \$500,000.~~

4.17 (e) In a prosecution under subdivision 1 involving sales by the same person in two or
4.18 more counties within a 90-day period, the person may be prosecuted for all of the sales in
4.19 any county in which one of the sales occurred.

4.20 **EFFECTIVE DATE.** This section is effective August 1, 2015, and applies to crimes
4.21 committed on or after that date.

4.22 Sec. 3. Minnesota Statutes 2014, section 152.023, is amended to read:

4.23 **152.023 CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE.**

4.24 Subdivision 1. **Sale crimes.** A person is guilty of controlled substance crime in
4.25 the third degree if:

4.26 (1) the person unlawfully sells one or more mixtures containing a narcotic drug;

4.27 (2) on one or more occasions within a 90-day period the person unlawfully sells one
4.28 or more mixtures containing phencyclidine or hallucinogen, it is packaged in dosage
4.29 units, and equals ten or more dosage units;

4.30 (3) the person unlawfully sells one or more mixtures containing a controlled
4.31 substance classified in Schedule I, II, or III, except a Schedule I or II narcotic drug, to a
4.32 person under the age of 18;

(4) the person conspires with or employs a person under the age of 18 to unlawfully sell one or more mixtures containing a controlled substance listed in Schedule I, II, or III, except a Schedule I or II narcotic drug; or

(5) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of five kilograms or more containing marijuana or Tetrahydrocannabinols.

Subd. 2. **Possession crimes.** (a) A person is guilty of controlled substance crime in the third degree if:

~~(1) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of three grams or more containing cocaine, heroin, or methamphetamine;~~

~~(2) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ten grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;~~

~~(3)~~ (2) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals 50 or more dosage units;

~~(4)~~ (3) on one or more occasions within a 90-day period the person unlawfully possesses any amount of a schedule I or II narcotic drug or five or more dosage units of lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine in a school zone, a park zone, a public housing zone, or a drug treatment facility;

~~(5)~~ (4) on one or more occasions within a 90-day period the person unlawfully possesses one or more mixtures of a total weight of ten kilograms or more containing marijuana or Tetrahydrocannabinols; or

~~(6)~~ (5) the person unlawfully possesses one or more mixtures containing methamphetamine or amphetamine in a school zone, a park zone, a public housing zone, or a drug treatment facility.

(b) For the purposes of this subdivision, the weight of fluid used in a water pipe may not be considered in measuring the weight of a mixture except in cases where the mixture contains four or more fluid ounces of fluid.

Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 20 years or to payment of a fine of not more than \$250,000, or both.

~~(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections~~

~~for not less than two years nor more than 30 years and, in addition, may be sentenced to payment of a fine of not more than \$250,000.~~

(e) In a prosecution under subdivision 1 or 2 involving sales or acts of possession by the same person in two or more counties within a 90-day period, the person may be prosecuted in any county in which one of the sales or acts of possession occurred.

EFFECTIVE DATE. This section is effective August 1, 2015, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2014, section 152.024, subdivision 3, is amended to read:

Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$100,000, or both.

~~(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections or to a local correctional authority for not less than one year nor more than 30 years and, in addition, may be sentenced to payment of a fine of not more than \$100,000.~~

EFFECTIVE DATE. This section is effective August 1, 2015, and applies to crimes committed on or after that date.

Sec. 5. Minnesota Statutes 2014, section 152.025, is amended to read:

152.025 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE.

Subdivision 1. **Sale crimes.** (a) A person is guilty of a controlled substance crime in the fifth degree and if convicted may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both if:

(1) the person unlawfully sells one or more mixtures containing marijuana or tetrahydrocannabinols, except a small amount of marijuana for no remuneration; or

(2) the person unlawfully sells one or more mixtures containing a controlled substance classified in Schedule IV.

~~(b) Except as provided in paragraph (c), if a person is guilty of a controlled substance crime in the fifth degree and the conviction is a subsequent controlled substance conviction, the person convicted shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months nor more than ten years and, in addition, may be sentenced to payment of a fine of not more than \$20,000 if:~~

~~(1) the person unlawfully sells one or more mixtures containing marijuana or tetrahydrocannabinols, except a small amount of marijuana for no remuneration; or~~

7.1 ~~(2) the person unlawfully sells one or more mixtures containing a controlled~~
7.2 ~~substance classified in Schedule IV.~~

7.3 ~~(e) Prior to the time of sentencing, the prosecutor may file a motion to have the~~
7.4 ~~person sentenced without regard to the mandatory minimum sentence established by~~
7.5 ~~paragraph (b). The motion must be accompanied by a statement on the record of the~~
7.6 ~~reasons for it. When presented with the motion, or on its own motion, the court may~~
7.7 ~~sentence the person without regard to the mandatory minimum sentence if the court finds,~~
7.8 ~~on the record, substantial and compelling reasons to do so.~~

7.9 Subd. 2. **Possession and other crimes.** (a) A person is guilty of controlled
7.10 substance crime in the fifth degree and if convicted may be sentenced to imprisonment for
7.11 not more than five years or to payment of a fine of not more than \$10,000, or both if:

7.12 (1) the person unlawfully possesses one or more mixtures containing a controlled
7.13 substance classified in Schedule I, II, III, or IV, except a small amount of marijuana; or

7.14 (2) the person procures, attempts to procure, possesses, or has control over a
7.15 controlled substance by any of the following means:

7.16 (i) fraud, deceit, misrepresentation, or subterfuge;

7.17 (ii) using a false name or giving false credit; or

7.18 (iii) falsely assuming the title of, or falsely representing any person to be, a
7.19 manufacturer, wholesaler, pharmacist, physician, doctor of osteopathy licensed to practice
7.20 medicine, dentist, podiatrist, veterinarian, or other authorized person for the purpose of
7.21 obtaining a controlled substance.

7.22 ~~(b) Except as provided in paragraph (c), if a person is guilty of a controlled~~
7.23 ~~substance crime in the fifth degree and the conviction is a subsequent controlled substance~~
7.24 ~~conviction, the person convicted shall be committed to the commissioner of corrections or~~
7.25 ~~to a local correctional authority for not less than six months nor more than ten years and,~~
7.26 ~~in addition, may be sentenced to payment of a fine of not more than \$20,000 if:~~

7.27 ~~(1) the person unlawfully possesses one or more mixtures containing a controlled~~
7.28 ~~substance classified in Schedule I, II, III, or IV, except a small amount of marijuana; or~~

7.29 ~~(2) the person procures, attempts to procure, possesses, or has control over a~~
7.30 ~~controlled substance by any of the following means:~~

7.31 ~~(i) fraud, deceit, misrepresentation, or subterfuge;~~

7.32 ~~(ii) using a false name or giving false credit; or~~

7.33 ~~(iii) falsely assuming the title of, or falsely representing any person to be, a~~
7.34 ~~manufacturer, wholesaler, pharmacist, physician, doctor of osteopathy licensed to practice~~
7.35 ~~medicine, dentist, podiatrist, veterinarian, or other authorized person for the purpose of~~
7.36 ~~obtaining a controlled substance.~~

~~(e) Prior to the time of sentencing, the prosecutor may file a motion to have the person sentenced without regard to the mandatory minimum sentence established by paragraph (b). The motion must be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the person without regard to the mandatory minimum sentence if the court finds, on the record, substantial and compelling reasons to do so.~~

EFFECTIVE DATE. This section is effective August 1, 2015, and applies to crimes committed on or after that date.

Sec. 6. Minnesota Statutes 2014, section 152.18, subdivision 1, is amended to read:

Subdivision 1. **Deferring prosecution for certain first time drug offenders.** If any person who has not previously participated in or completed a diversion program authorized under section 401.065 or who has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section is found guilty of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, 4, or 6, paragraph (d), for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision 16a, the court ~~may~~ shall, without entering a judgment of guilty and with the consent of the person, defer further proceedings and place the person on probation upon such reasonable conditions as it may require and for a period, not to exceed the maximum sentence provided for the violation. The court may give the person the opportunity to attend and participate in an appropriate program of education regarding the nature and effects of alcohol and drug abuse as a stipulation of probation. Upon violation of a condition of the probation, the court may enter an adjudication of guilt and proceed as otherwise provided. The court may, in its discretion, dismiss the proceedings against the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public

record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the bureau which shall make and maintain the not public record of it as provided under this subdivision. The discharge or dismissal shall not be deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime or for any other purpose.

For purposes of this subdivision, "not public" has the meaning given in section 13.02, subdivision 8a.

Sec. 7. Minnesota Statutes 2014, section 244.0513, subdivision 2, is amended to read:

Subd. 2. Conditional release of certain nonviolent controlled substance offenders. An offender who has been committed to the commissioner's custody may petition the commissioner for conditional release from prison before the offender's scheduled supervised release date or target release date if:

(1) the offender is serving a sentence for violating ~~section 152.021, subdivision 2 or 2a; 152.022, subdivision 2; 152.023, subdivision 2; 152.024, subdivision 2; or 152.025, subdivision 2~~ chapter 152;

(2) the offender committed the crime as a result of a controlled substance addiction;

(3) the offender has served at least ~~36~~ 18 months or one-half of the offender's term of imprisonment, whichever is less;

(4) the offender successfully completed a chemical dependency treatment program of the type described in this section while in prison;

(5) the offender has not previously been conditionally released under this section; and

(6) the offender has not within the past ~~ten~~ five years been convicted or adjudicated delinquent for a violent crime as defined in section 609.1095 other than the current conviction for the controlled substance offense.

Sec. 8. **APPROPRIATION.**

(a) \$..... for the fiscal year ending June 30, 2016, and \$..... for the fiscal year ending June 30, 2017, are appropriated from the general fund to the commissioner of corrections. The commissioner shall use this money either directly or through grants for substance abuse and mental health treatment programs, offender educational programs, and crime victim services. The commissioner may transfer all or a portion of the money to other state agencies to be used for the specified purposes.

(b) By January 15, 2018, the commissioner shall report to the chairs and ranking minority members of the senate and house of representatives committees and divisions

10.1 having jurisdiction over criminal justice funding on how the appropriated money was
10.2 distributed.

10.3 (c) By January 15, 2017, and January 15 of each subsequent odd-numbered year, the
10.4 commissioner of management and budget shall determine the savings to the state realized
10.5 in the preceding fiscal biennium due to this bill and add that amount to the base budget of
10.6 the Department of Corrections in the governor's proposed budget for the next biennium. If
10.7 the legislature appropriates this amount for the next biennium, the money must be used by
10.8 the commissioner for the purposes described in paragraph (a).

10.9 Sec. 9. **REPEALER.**

10.10 Minnesota Statutes 2014, section 152.026, is repealed.

10.11 **EFFECTIVE DATE.** This section is effective August 1, 2015, and applies to crimes
10.12 committed on or after that date.

APPENDIX
Repealed Minnesota Statutes: 15-1932

152.026 MANDATORY SENTENCES.

A defendant convicted and sentenced to a mandatory sentence under sections 152.021 to 152.025 and 152.0262 is not eligible for probation, parole, discharge, or supervised release until that person has served the full term of imprisonment as provided by law, notwithstanding sections 242.19, 243.05, 609.12, and 609.135. "Term of imprisonment" has the meaning given in section 244.01, subdivision 8.