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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1355

02/22/2021 Authored by Gomez; Xiong, J.; Lee; Jordan; West and others
The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; modifying definition of small amount of marijuana;
1.3 modifying possession of small amounts of marijuana law; prohibiting weight of
1.4 fluids used in water pipes from being used to determine weight of marijuana
1.5 mixtures; authorizing expungement of records in certain instances; ending driver's
1.6 license revocations for persons who commit low-level marijuana offenses;
1.7 amending Minnesota Statutes 2020, sections 152.01, subdivisions 9a, 16, 18, by
1.8 adding subdivisions; 152.021, subdivision 2; 152.022, subdivision 2; 152.023,
1.9 subdivision 2; 152.025, subdivision 4; 152.027, subdivision 4; 152.0271; 152.096,
1.10 subdivision 1; 152.18, subdivision 3; 260B.198, subdivision 1; 609.165,
1.11 subdivisions 1a, 1b.

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

1.13 Section 1. Minnesota Statutes 2020, section 152.01, subdivision 9a, is amended to read:

1.14 Subd. 9a. Mixture. "Mixture" means a preparation, compound, mixture, or substance
1.15 containing a controlled substance, regardless of purity except as provided in subdivision
1.16 16; sections 152.021, subdivision 2, paragraph (b); 152.022, subdivision 2, paragraph (b);
1.17 and 152.023, subdivision 2, paragraph (b).

1.18 EFFECTIVE DATE. This section is effective August 1, 2021, and applies to crimes
1.19 committed on or after that date.

1.20 Sec. 2. Minnesota Statutes 2020, section 152.01, is amended by adding a subdivision to
1.21 read:

1.22 Subd. 9b. Marijuana flower. "Marijuana flower" means the flower, leaves, stems, seeds,
1.23 or plant form of marijuana.

2.1 Sec. 3. Minnesota Statutes 2020, section 152.01, is amended by adding a subdivision to
2.2 read:

2.3 Subd. 9c. **Nonflower marijuana.** "Nonflower marijuana" means the resinous form of
2.4 marijuana.

2.5 Sec. 4. Minnesota Statutes 2020, section 152.01, subdivision 16, is amended to read:

2.6 Subd. 16. **Small amount.** "Small amount" as applied to marijuana means: (1) 42.5 grams
2.7 or less. This provision shall not apply to the resinous form of marijuana of marijuana flowers;
2.8 or (2) eight grams or less of any nonflower marijuana mixture. Nonflower marijuana mixtures
2.9 weighing eight grams or less may not be considered in determining the 42.5 gram limit in
2.10 clause (1). The weight of fluid used in a water pipe may not be considered in determining
2.11 a small amount ~~except in cases where the marijuana is mixed with four or more fluid ounces~~
2.12 ~~of fluid.~~

2.13 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to crimes
2.14 committed on or after that date.

2.15 Sec. 5. Minnesota Statutes 2020, section 152.01, subdivision 18, is amended to read:

2.16 Subd. 18. **Drug paraphernalia.** (a) Except as otherwise provided in paragraph (b), "drug
2.17 paraphernalia" means all equipment, products, and materials of any kind, except those items
2.18 used in conjunction with permitted uses of controlled substances, including but not limited
2.19 to the permitted uses of marijuana, under this chapter or the Uniform Controlled Substances
2.20 Act, which are knowingly or intentionally used primarily in (1) manufacturing a controlled
2.21 substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body
2.22 a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled
2.23 substance, or (4) enhancing the effect of a controlled substance.

2.24 (b) "Drug paraphernalia" does not include the possession, manufacture, delivery, or sale
2.25 of hypodermic needles or syringes in accordance with section 151.40, subdivision 2.

2.26 Sec. 6. Minnesota Statutes 2020, section 152.021, subdivision 2, is amended to read:

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

2.29 (1) the person unlawfully possesses one or more mixtures of a total weight of 50 grams
2.30 or more containing cocaine or methamphetamine;

3.1 (2) the person unlawfully possesses one or more mixtures of a total weight of 25 grams
3.2 or more containing cocaine or methamphetamine and:

3.3 (i) the person or an accomplice possesses on their person or within immediate reach, or
3.4 uses, whether by brandishing, displaying, threatening with, or otherwise employing, a
3.5 firearm; or

3.6 (ii) the offense involves two aggravating factors;

3.7 (3) the person unlawfully possesses one or more mixtures of a total weight of 25 grams
3.8 or more containing heroin;

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

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

3.14 (6) the person unlawfully possesses one or more mixtures of a total weight of 50
3.15 kilograms or more containing marijuana or Tetrahydrocannabinols, or possesses 500 or
3.16 more marijuana plants.

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

3.21 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to crimes
3.22 committed on or after that date.

3.23 Sec. 7. Minnesota Statutes 2020, section 152.022, subdivision 2, is amended to read:

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

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

3.28 (2) the person unlawfully possesses one or more mixtures of a total weight of ten grams
3.29 or more containing cocaine or methamphetamine and:

4.1 (i) the person or an accomplice possesses on their person or within immediate reach, or
4.2 uses, whether by brandishing, displaying, threatening with, or otherwise employing, a
4.3 firearm; or

4.4 (ii) the offense involves three aggravating factors;

4.5 (3) the person unlawfully possesses one or more mixtures of a total weight of six grams
4.6 or more containing heroin;

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

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

4.12 (6) the person unlawfully possesses one or more mixtures of a total weight of 25
4.13 kilograms or more containing marijuana or Tetrahydrocannabinols, or possesses 100 or
4.14 more marijuana plants.

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

4.19 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to crimes
4.20 committed on or after that date.

4.21 Sec. 8. Minnesota Statutes 2020, section 152.023, subdivision 2, is amended to read:

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

4.24 (1) on one or more occasions within a 90-day period the person unlawfully possesses
4.25 one or more mixtures of a total weight of ten grams or more containing a narcotic drug other
4.26 than heroin;

4.27 (2) on one or more occasions within a 90-day period the person unlawfully possesses
4.28 one or more mixtures of a total weight of three grams or more containing heroin;

4.29 (3) on one or more occasions within a 90-day period the person unlawfully possesses
4.30 one or more mixtures containing a narcotic drug, it is packaged in dosage units, and equals
4.31 50 or more dosage units;

5.1 (4) on one or more occasions within a 90-day period the person unlawfully possesses
 5.2 any amount of a schedule I or II narcotic drug or five or more dosage units of lysergic acid
 5.3 diethylamide (LSD), 3,4-methylenedioxy amphetamine, or
 5.4 3,4-methylenedioxymethamphetamine in a school zone, a park zone, a public housing zone,
 5.5 or a drug treatment facility;

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

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

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

5.16 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to crimes
 5.17 committed on or after that date.

5.18 Sec. 9. Minnesota Statutes 2020, section 152.025, subdivision 4, is amended to read:

5.19 Subd. 4. **Penalty.** (a) A person convicted under the provisions of subdivision 2, clause
 5.20 (1), who has not been previously convicted of a violation of this chapter or a similar offense
 5.21 in another jurisdiction, is guilty of a gross misdemeanor if:

5.22 (1) the amount of the controlled substance possessed, other than heroin or a small amount
 5.23 of marijuana, is less than 0.25 grams or one dosage unit or less if the controlled substance
 5.24 was possessed in dosage units; ~~or~~

5.25 (2) the controlled substance possessed is heroin and the amount possessed is less than
 5.26 0.05 grams; or

5.27 (3) the controlled substance possessed is marijuana and the amount possessed is:

5.28 (i) between 42.5 and 85 grams of marijuana flowers; or

5.29 (ii) between eight and 16 grams of any nonflower marijuana mixture.

5.30 (b) A person convicted under the provisions of subdivision 1; subdivision 2, clause (1),
 5.31 unless the conduct is described in paragraph (a); or subdivision 2, clause (2), may be

6.1 sentenced to imprisonment for not more than five years or to payment of a fine of not more
6.2 than \$10,000, or both.

6.3 Sec. 10. Minnesota Statutes 2020, section 152.027, subdivision 4, is amended to read:

6.4 Subd. 4. **Possession or sale of small amounts of marijuana.** ~~(a) A person who~~
6.5 ~~unlawfully sells a small amount of marijuana for no remuneration, or who unlawfully~~
6.6 ~~possesses a small amount of marijuana is guilty of a petty misdemeanor and shall be required~~
6.7 ~~to participate in a drug education program unless the court enters a written finding that a~~
6.8 ~~drug education program is inappropriate. The program must be approved by an area mental~~
6.9 ~~health board with a curriculum approved by the state alcohol and drug abuse authority.~~

6.10 ~~(b) A person convicted of an unlawful sale under paragraph (a) who is subsequently~~
6.11 ~~convicted of an unlawful sale under paragraph (a) within two years is guilty of a misdemeanor~~
6.12 ~~and shall be required to participate in a chemical dependency evaluation and treatment if~~
6.13 ~~so indicated by the evaluation.~~

6.14 ~~(c) A person who is convicted of a petty misdemeanor under paragraph (a) who willfully~~
6.15 ~~and intentionally fails to comply with the sentence imposed, is guilty of a misdemeanor.~~
6.16 ~~Compliance with the terms of the sentence imposed before conviction under this paragraph~~
6.17 ~~is an absolute defense.~~

6.18 **EFFECTIVE DATE.** This section is effective August 1, 2021, and applies to acts
6.19 committed on or after that date.

6.20 Sec. 11. Minnesota Statutes 2020, section 152.0271, is amended to read:

6.21 **152.0271 NOTICE OF DRUG CONVICTIONS; DRIVER'S LICENSE**
6.22 **REVOCAION.**

6.23 When a person is convicted of violating a provision of sections 152.021 to 152.0262,
6.24 or 152.027 and 152.0262, subdivision 1, 2, 3, 5, 6, or 7, the sentencing court shall determine
6.25 whether the person unlawfully sold or possessed the controlled substance while driving a
6.26 motor vehicle. If so, the court shall notify the commissioner of public safety of its
6.27 determination and order the commissioner to revoke the person's driver's license for 30
6.28 days. If the person does not have a driver's license or if the person's driver's license is
6.29 suspended or revoked at the time of the conviction, the commissioner shall delay the issuance
6.30 or reinstatement of the person's driver's license for 30 days after the person applies for the
6.31 issuance or reinstatement of the license. Upon receipt of the court's order, the commissioner
6.32 is authorized to take the licensing action without a hearing.

7.1 Sec. 12. Minnesota Statutes 2020, section 152.096, subdivision 1, is amended to read:

7.2 Subdivision 1. **Prohibited acts; penalties.** Any person who conspires to commit any
7.3 felony act prohibited by this chapter, except possession or distribution for no remuneration
7.4 of a small amount of marijuana as defined in section 152.01, subdivision 16, is guilty of a
7.5 felony and upon conviction may be imprisoned, fined, or both, up to the maximum amount
7.6 authorized by law for the act the person conspired to commit.

7.7 Sec. 13. Minnesota Statutes 2020, section 152.18, subdivision 3, is amended to read:

7.8 Subd. 3. **Expungement of certain marijuana offenses.** Any person who has been found
7.9 guilty of: (1) a violation of section 152.09 with respect to a small amount of marijuana
7.10 which violation occurred prior to April 11, 1976, and whose conviction would have been
7.11 a petty misdemeanor under the provisions of section 152.15, subdivision 2, clause (5) in
7.12 effect on April 11, 1978, but whose conviction was for an offense more serious than a petty
7.13 misdemeanor under laws in effect prior to April 11, 1976; or (2) a violation of section
7.14 152.025 that occurred before August 1, 2021, where the violation would have been a petty
7.15 misdemeanor under section 152.027, subdivision 4, in effect on August 1, 2021, may petition
7.16 the court in which the person was convicted to expunge from all official records, other than
7.17 the nonpublic record retained by the Department of Public Safety pursuant to section 152.15,
7.18 subdivision 2, clause (5), all recordation relating to the person's arrest, indictment or
7.19 information, trial and conviction of an offense more serious than a petty misdemeanor. The
7.20 court, upon being satisfied that a small amount was involved in the conviction, shall order
7.21 all the recordation expunged and shall restore the person's ability to possess, receive, ship,
7.22 or transport firearms and handle firearms and ammunition. No person as to whom an order
7.23 has been entered pursuant to this subdivision shall be held thereafter under any provision
7.24 of any law to be guilty of perjury or otherwise giving a false statement by reason of the
7.25 person's failure to recite or acknowledge conviction of an offense greater than a petty
7.26 misdemeanor, unless possession of marijuana is material to a proceeding.

7.27 Sec. 14. Minnesota Statutes 2020, section 260B.198, subdivision 1, is amended to read:

7.28 Subdivision 1. **Court order, findings, remedies, treatment.** (a) If the court finds that
7.29 the child is delinquent, it shall enter an order making any of the following dispositions of
7.30 the case which are deemed necessary to the rehabilitation of the child:

7.31 (1) counsel the child or the parents, guardian, or custodian;

7.32 (2) place the child under the supervision of a probation officer or other suitable person
7.33 in the child's own home under conditions prescribed by the court including reasonable rules

8.1 for the child's conduct and the conduct of the child's parents, guardian, or custodian, designed
8.2 for the physical, mental, and moral well-being and behavior of the child, or with the consent
8.3 of the commissioner of corrections, in a group foster care facility which is under the
8.4 management and supervision of said commissioner;

8.5 (3) if the court determines that the child is a danger to self or others, subject to the
8.6 supervision of the court, transfer legal custody of the child to one of the following:

8.7 (i) a child-placing agency;

8.8 (ii) the local social services agency;

8.9 (iii) a reputable individual of good moral character. No person may receive custody of
8.10 two or more unrelated children unless licensed as a residential facility pursuant to sections
8.11 245A.01 to 245A.16;

8.12 (iv) a county home school, if the county maintains a home school or enters into an
8.13 agreement with a county home school; or

8.14 (v) a county probation officer for placement in a group foster home established under
8.15 the direction of the juvenile court and licensed pursuant to section 241.021;

8.16 (4) transfer legal custody by commitment to the commissioner of corrections;

8.17 (5) if the child is found to have violated a state or local law or ordinance which has
8.18 resulted in damage to the person or property of another, the court may order the child to
8.19 make reasonable restitution for such damage;

8.20 (6) require the child to pay a fine of up to \$1,000. The court shall order payment of the
8.21 fine in accordance with a time payment schedule which shall not impose an undue financial
8.22 hardship on the child;

8.23 (7) if the child is in need of special treatment and care for reasons of physical or mental
8.24 health, the court may order the child's parent, guardian, or custodian to provide it. If the
8.25 parent, guardian, or custodian fails to provide this treatment or care, the court may order it
8.26 provided;

8.27 (8) if the court believes that it is in the best interests of the child and of public safety
8.28 that the driver's license of the child be canceled until the child's 18th birthday, the court
8.29 may recommend to the commissioner of public safety the cancellation of the child's license
8.30 for any period up to the child's 18th birthday, and the commissioner is hereby authorized
8.31 to cancel such license without a hearing. At any time before the termination of the period
8.32 of cancellation, the court may, for good cause, recommend to the commissioner of public

9.1 safety that the child be authorized to apply for a new license, and the commissioner may so
9.2 authorize;

9.3 (9) if the court believes that it is in the best interest of the child and of public safety that
9.4 the child is enrolled in school, the court may require the child to remain enrolled in a public
9.5 school until the child reaches the age of 18 or completes all requirements needed to graduate
9.6 from high school. Any child enrolled in a public school under this clause is subject to the
9.7 provisions of the Pupil Fair Dismissal Act in chapter 127;

9.8 (10) if the child is petitioned and found by the court to have committed a controlled
9.9 substance offense under sections 152.021 to 152.0262, or 152.027, subdivision 1, 2, 3, 5,
9.10 6, or 7, the court shall determine whether the child unlawfully possessed or sold the controlled
9.11 substance while driving a motor vehicle. If so, the court shall notify the commissioner of
9.12 public safety of its determination and order the commissioner to revoke the child's driver's
9.13 license for the applicable time period specified in section 152.0271. If the child does not
9.14 have a driver's license or if the child's driver's license is suspended or revoked at the time
9.15 of the delinquency finding, the commissioner shall, upon the child's application for driver's
9.16 license issuance or reinstatement, delay the issuance or reinstatement of the child's driver's
9.17 license for the applicable time period specified in section 152.0271. Upon receipt of the
9.18 court's order, the commissioner is authorized to take the licensing action without a hearing;

9.19 (11) if the child is petitioned and found by the court to have committed or attempted to
9.20 commit an act in violation of section 609.342; 609.343; 609.344; 609.345; 609.3451;
9.21 609.746, subdivision 1; 609.79; or 617.23, or another offense arising out of a delinquency
9.22 petition based on one or more of those sections, the court shall order an independent
9.23 professional assessment of the child's need for sex offender treatment. An assessor providing
9.24 an assessment for the court must be experienced in the evaluation and treatment of juvenile
9.25 sex offenders. If the assessment indicates that the child is in need of and amenable to sex
9.26 offender treatment, the court shall include in its disposition order a requirement that the
9.27 child undergo treatment. Notwithstanding section 13.384, 13.85, 144.291 to 144.298, or
9.28 260B.171, or chapter 260E, the assessor has access to the following private or confidential
9.29 data on the child if access is relevant and necessary for the assessment:

9.30 (i) medical data under section 13.384;

9.31 (ii) corrections and detention data under section 13.85;

9.32 (iii) health records under sections 144.291 to 144.298;

9.33 (iv) juvenile court records under section 260B.171; and

10.1 (v) local welfare agency records under chapter 260E.

10.2 Data disclosed under this clause may be used only for purposes of the assessment and
10.3 may not be further disclosed to any other person, except as authorized by law; or

10.4 (12) if the child is found delinquent due to the commission of an offense that would be
10.5 a felony if committed by an adult, the court shall make a specific finding on the record
10.6 regarding the juvenile's mental health and chemical dependency treatment needs.

10.7 (b) Any order for a disposition authorized under this section shall contain written findings
10.8 of fact to support the disposition ordered and shall also set forth in writing the following
10.9 information:

10.10 (1) why the best interests of the child are served by the disposition ordered; and

10.11 (2) what alternative dispositions were considered by the court and why such dispositions
10.12 were not appropriate in the instant case. Clause (1) does not apply to a disposition under
10.13 subdivision 1a.

10.14 Sec. 15. Minnesota Statutes 2020, section 609.165, subdivision 1a, is amended to read:

10.15 Subd. 1a. **Certain convicted felons ineligible to possess firearms or ammunition.** The
10.16 order of discharge must provide that a person who has been convicted of a crime of violence,
10.17 as defined in section 624.712, subdivision 5, is not entitled to ship, transport, possess, or
10.18 receive a firearm or ammunition for the remainder of the person's lifetime. Any person who
10.19 has received such a discharge and who thereafter has received a relief of disability under
10.20 United States Code, title 18, section 925, or whose ability to possess firearms and ammunition
10.21 has been restored under subdivision 1d, or section 152.18, subdivision 3, shall not be subject
10.22 to the restrictions of this subdivision.

10.23 Sec. 16. Minnesota Statutes 2020, section 609.165, subdivision 1b, is amended to read:

10.24 Subd. 1b. **Violation and penalty.** (a) Any person who has been convicted of a crime of
10.25 violence, as defined in section 624.712, subdivision 5, and who ships, transports, possesses,
10.26 or receives a firearm or ammunition, commits a felony and may be sentenced to imprisonment
10.27 for not more than 15 years or to payment of a fine of not more than \$30,000, or both.

10.28 (b) A conviction and sentencing under this section shall be construed to bar a conviction
10.29 and sentencing for a violation of section 624.713, subdivision 2.

10.30 (c) The criminal penalty in paragraph (a) does not apply to any person who has received
10.31 a relief of disability under United States Code, title 18, section 925, or whose ability to

- 11.1 possess firearms and ammunition has been restored under subdivision 1d or section 152.18,
- 11.2 subdivision 3.