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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 3983

05/02/2016 Authored by Cornish and Zerwas

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 criminal justice; modifying the thresholds for certain controlled
1.3 substance crimes; creating new offenses specific to the possession of marijuana
1.4 plants; creating a new offense for possessing trace amounts of certain controlled
1.5 substances; eliminating mandatory minimum sentences for lower level controlled
1.6 substance crimes; appropriating money; amending Minnesota Statutes 2014,
1.7 sections 152.01, subdivision 16a; 152.021; 152.022; 152.023; 152.024; 152.025;
1.8 152.026; 152.092; 152.18, subdivision 1; 388.051; proposing coding for new
1.9 law in Minnesota Statutes, chapter 241.

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

1.11 Section 1. Minnesota Statutes 2014, section 152.01, subdivision 16a, is amended to read:

1.12 Subd. 16a. **Subsequent controlled substance conviction.** ~~Notwithstanding section~~
1.13 ~~152.18, subdivision 1,~~ A "subsequent controlled substance conviction" means that before
1.14 commission of the offense for which the person is convicted under this chapter, the person
1.15 received a disposition for a felony-level offense under ~~section 152.18, subdivision 1,~~ was
1.16 ~~convicted in Minnesota of a felony violation of this chapter or a felony-level attempt or~~
1.17 ~~conspiracy to violate this chapter~~ sections 152.021 and 152.022, including an attempt or
1.18 conspiracy, or was convicted elsewhere for conduct that would have been a felony under
1.19 ~~this chapter if committed in Minnesota. An earlier disposition for a felony-level offense~~
1.20 ~~under section 152.18, subdivision 1, or an earlier conviction is not relevant if~~ of a similar
1.21 offense by the United States or another state, provided that ten years have not elapsed
1.22 since discharge from sentence ~~or stay of adjudication.~~

1.23 Sec. 2. Minnesota Statutes 2014, section 152.021, is amended to read:

1.24 **152.021 CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.**

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

2.3 (1) on one or more occasions within a 90-day period the person unlawfully sells one
2.4 or more mixtures of a total weight of ~~ten~~ 25 grams or more containing ~~ecocaine, a narcotic~~
2.5 drug other than heroin, or methamphetamine;

2.6 (2) on one or more occasions within a 90-day period the person unlawfully sells one
2.7 or more mixtures of a total weight of ~~50~~ ten grams or more containing ~~a narcotic drug~~
2.8 other than ecocaine, heroin, or methamphetamine;

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

2.13 (4) on one or more occasions within a 90-day period the person unlawfully sells one
2.14 or more mixtures of a total weight of ~~50~~ 25 kilograms or more containing marijuana or
2.15 Tetrahydrocannabinols, ~~or one or more mixtures of a total weight of 25 kilograms or more~~
2.16 ~~containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a public~~
2.17 ~~housing zone, or a drug treatment facility.~~

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

2.20 (1) the person unlawfully possesses one or more mixtures of a total weight of ~~25~~ 50
2.21 grams or more containing ecocaine, a narcotic drug other than heroin, or methamphetamine;

2.22 (2) the person unlawfully possesses one or more mixtures of a total weight of ~~500~~ 25
2.23 grams or more containing a narcotic drug other than ecocaine, heroin, or methamphetamine;

2.24 (3) the person unlawfully possesses one or more mixtures of a total weight of
2.25 500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the
2.26 controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

2.27 (4) the person unlawfully possesses one or more mixtures of a total weight of ~~100~~ 50
2.28 kilograms or more, or 500 or more plants, containing marijuana or Tetrahydrocannabinols.

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

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

2.36 (b) [Renumbered 152.0262, subdivision 1]

3.1 Subd. 2b. **Aggravated controlled substance crime in the first degree.** A person is
3.2 guilty of aggravated controlled substance crime in the first degree if the person violated
3.3 subdivision 1, clauses (1) to (3), or 2, paragraph (a), clauses (1) to (3), and the person or
3.4 an accomplice sold or possessed 100 grams or 500 dosage units of a mixture containing a
3.5 controlled substance and:

3.6 (1) the person or an accomplice possessed a firearm or other dangerous weapon
3.7 during the commission of the offense; or

3.8 (2) the offense involved two or more aggravating factors listed below:

3.9 (i) the defendant, within the previous ten years, has been convicted of a crime
3.10 of violence as defined in section 609.1095, subdivision 1, paragraph (d), other than a
3.11 violation of a provision under chapter 152, including an attempt or conspiracy, or was
3.12 convicted of a similar offense in the United States or another state;

3.13 (ii) the offense was committed for the benefit of a gang as defined in section 609.229;

3.14 (iii) the offense involved separate acts of sale or possession of a controlled substance
3.15 in three or more counties;

3.16 (iv) the offense involved the transfer of controlled substances across a state or
3.17 international border and into Minnesota;

3.18 (v) the offense involved at least three separate transactions in which controlled
3.19 substances were sold, transferred, or possessed with intent to sell or transfer;

3.20 (vi) the circumstances of the offense reveal the offender to have occupied a high
3.21 position in the drug distribution hierarchy;

3.22 (vii) the defendant used a position or status to facilitate the commission of the
3.23 offense, including positions of trust, confidence, or fiduciary relationships;

3.24 (viii) the offense involved the sale of a controlled substance to a minor or vulnerable
3.25 adult;

3.26 (ix) the defendant or an accomplice manufactured, possessed, or sold a controlled
3.27 substance in a school zone, park zone, correctional facility, or drug treatment facility; or

3.28 (x) the defendant or an accomplice possessed equipment, drug paraphernalia,
3.29 documents, or money evidencing that the offense involved the cultivation, manufacture,
3.30 distribution, or possession of controlled substances in quantities substantially larger than
3.31 the minimum threshold amount for the underlying offense.

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

3.35 (b) If the conviction is a subsequent controlled substance conviction, a person
3.36 convicted under subdivisions 1 to 2a, paragraph (a), shall be committed to the

4.1 commissioner of corrections for not less than four years nor more than 40 years and, in
4.2 addition, may be sentenced to payment of a fine of not more than \$1,000,000.

4.3 (c) If the defendant or an accomplice is convicted under subdivision 1 or 2 and sold
4.4 or possessed 100 or more grams or 500 or more dosage units of a mixture containing a
4.5 controlled substance, that person shall be committed to the commissioner of corrections
4.6 for not less than 65 months or the presumptive fixed sentence under the Minnesota
4.7 Sentencing Guidelines, whichever is greater, nor more than 40 years and, in addition, may
4.8 be sentenced to payment of a fine of not more than \$1,000,000, or both.

4.9 (d) A person convicted under subdivision 2b shall be committed to the commissioner
4.10 of corrections for not less than 86 months or the presumptive fixed sentence under the
4.11 Minnesota Sentencing Guidelines, whichever is greater, nor more than 40 years and, in
4.12 addition, may be sentenced to payment of a fine of not more than \$1,000,000, or both.

4.13 (e) In a prosecution under ~~subdivision~~ subdivisions 1 to 2b involving sales by the
4.14 same person in two or more counties within a 90-day period, the person may be prosecuted
4.15 for all of the sales in any county in which one of the sales occurred.

4.16 Sec. 3. Minnesota Statutes 2014, section 152.022, is amended to read:

4.17 **152.022 CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE.**

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

4.20 (1) on one or more occasions within a 90-day period the person unlawfully sells
4.21 one or more mixtures of a total weight of ~~three~~ ten grams or more containing ~~ecocaine,~~
4.22 a narcotic drug other than heroin, or methamphetamine;

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

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

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

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

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

5.3 (i) any amount of a Schedule I or II narcotic drug, lysergic acid diethylamide (LSD),
5.4 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine;

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

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

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

5.10 (1) the person unlawfully possesses one or more mixtures of a total weight of ~~six~~ 25
5.11 grams or more containing ~~cocaine, a narcotic drug other than heroin, or methamphetamine;~~

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

5.14 (3) the person unlawfully possesses one or more mixtures of a total weight of
5.15 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the
5.16 controlled substance is packaged in dosage units, equaling 100 or more dosage units; or

5.17 (4) the person unlawfully possesses one or more mixtures of a total weight of ~~50~~ 25
5.18 kilograms or more containing marijuana or Tetrahydrocannabinols, or possesses 100 or
5.19 more plants containing marijuana or Tetrahydrocannabinols.

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

5.23 Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced
5.24 to imprisonment for not more than 25 years or to payment of a fine of not more than
5.25 \$500,000, or both.

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

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

5.33 Sec. 4. Minnesota Statutes 2014, section 152.023, is amended to read:

5.34 **152.023 CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE.**

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

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

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

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

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

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

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

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

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

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

6.27 (4) on one or more occasions within a 90-day period the person unlawfully
6.28 possesses any amount of a schedule I or II narcotic drug or five or more dosage
6.29 units of lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or
6.30 3,4-methylenedioxymethamphetamine in a school zone, a park zone, a public housing
6.31 zone, or a drug treatment facility;

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

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

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

7.7 Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced
 7.8 to imprisonment for not more than 20 years or to payment of a fine of not more than
 7.9 \$250,000, or both.

7.10 ~~(b) If the conviction is a subsequent controlled substance conviction, a person~~
 7.11 ~~convicted under subdivision 1 or 2 shall be committed to the commissioner of corrections~~
 7.12 ~~for not less than two years nor more than 30 years and, in addition, may be sentenced to~~
 7.13 ~~payment of a fine of not more than \$250,000.~~

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

7.17 Sec. 5. Minnesota Statutes 2014, section 152.024, is amended to read:

7.18 **152.024 CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE.**

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

7.21 (1) the person unlawfully sells one or more mixtures containing a controlled
 7.22 substance classified in Schedule I, II, or III, except marijuana or Tetrahydrocannabinols;

7.23 (2) the person unlawfully sells one or more mixtures containing a controlled
 7.24 substance classified in Schedule IV or V to a person under the age of 18;

7.25 (3) the person conspires with or employs a person under the age of 18 to unlawfully
 7.26 sell a controlled substance classified in Schedule IV or V; or

7.27 (4) the person unlawfully sells any amount of marijuana or Tetrahydrocannabinols in
 7.28 a school zone, a park zone, a public housing zone, or a drug treatment facility, except a
 7.29 small amount for no remuneration.

7.30 Subd. 2. **Possession crimes.** A person is guilty of controlled substance crime in
 7.31 the fourth degree if:

7.32 (1) the person unlawfully possesses one or more mixtures containing phencyclidine
 7.33 or hallucinogen, it is packaged in dosage units, and equals ten or more dosage units; or

8.1 (2) the person unlawfully possesses one or more mixtures containing a controlled
8.2 substance classified in Schedule I, II, or III, except marijuana or Tetrahydrocannabinols,
8.3 with the intent to sell it.

8.4 Subd. 3. **Penalty.** (a) A person convicted under subdivision 1 or 2 may be sentenced
8.5 to imprisonment for not more than 15 years or to payment of a fine of not more than
8.6 \$100,000, or both.

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

8.11 Sec. 6. Minnesota Statutes 2014, section 152.025, is amended to read:

8.12 **152.025 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE.**

8.13 Subdivision 1. **Sale crimes.** (a) A person is guilty of a controlled substance crime
8.14 in the fifth degree and if ~~convicted~~ upon conviction may be sentenced to imprisonment
8.15 for not more than five years or to payment of a fine of not more than \$10,000, or both
8.16 as provided in subdivision 3 if:

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

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

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

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

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

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

9.1 Subd. 2. **Possession and other crimes.** (a) A person is guilty of controlled
9.2 substance crime in the fifth degree and if ~~convicted~~ upon conviction may be sentenced
9.3 ~~to imprisonment for not more than five years or to payment of a fine of not more than~~
9.4 ~~\$10,000, or both~~ as provided in subdivision 3 if:

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

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

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

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

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

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

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

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

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

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

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

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

10.1 Subd. 3. **Penalty.** (a) A person convicted under the provisions of subdivision 1 or 2,
 10.2 clause (1), may be sentenced to imprisonment for not more than five years or to payment
 10.3 of a fine of not more than \$10,000, or both, if the amount of the controlled substance sold
 10.4 or possessed, other than heroin, is 0.25 of a gram or more, or more than one dosage unit if
 10.5 the controlled substance is sold or possessed in dosage units.

10.6 (b) A person convicted under the provisions of subdivision 1 or 2, clause (1), may
 10.7 be sentenced to imprisonment for not more than one year or to payment of a fine of not
 10.8 more than \$3,000, or both, if the amount of controlled substance possessed, other than
 10.9 heroin, is less than 0.25 grams or one dosage unit or less if the controlled substance was
 10.10 sold or possessed in dosage units.

10.11 (c) A person convicted under the provisions of subdivision 2, clause (1), may be
 10.12 sentenced to imprisonment for not more than five years or to payment of a fine of not more
 10.13 than \$10,000, or both, if the controlled substance possessed is heroin and amount of
 10.14 heroin possessed is 0.10 grams or more.

10.15 (d) A person convicted under the provisions of subdivision 2, clause (1), may be
 10.16 sentenced to imprisonment for not more than one year or to payment of a fine of not more
 10.17 than \$3,000, or both, if the controlled substance possessed is heroin and the amount of
 10.18 heroin possessed is less than 0.10 grams.

10.19 (e) A person convicted under the provisions of subdivision 2, clause (2), may be
 10.20 sentenced to imprisonment for not more than five years or to payment of a fine of not
 10.21 more than \$10,000, or both.

10.22 Sec. 7. Minnesota Statutes 2014, section 152.026, is amended to read:

10.23 **152.026 MANDATORY SENTENCES.**

10.24 A defendant convicted and sentenced to a mandatory sentence under sections
 10.25 152.021 to ~~152.025~~, 152.022, and 152.0262 is not eligible for probation, parole, discharge,
 10.26 or supervised release until that person has served the full term of imprisonment as
 10.27 provided by law, notwithstanding sections 242.19, 243.05, 609.12, and 609.135. "Term of
 10.28 imprisonment" has the meaning given in section 244.01, subdivision 8.

10.29 Sec. 8. Minnesota Statutes 2014, section 152.092, is amended to read:

10.30 **152.092 POSSESSION OF DRUG PARAPHERNALIA PROHIBITED.**

10.31 It is unlawful for any person knowingly or intentionally to use or to possess drug
 10.32 paraphernalia. Any violation of this section is a petty misdemeanor. A person who violates
 10.33 this section on three or more occasions has committed a crime and may be sentenced to
 10.34 imprisonment for up to 90 days or to payment of a fine up to \$1,000, or both.

11.1 Sec. 9. Minnesota Statutes 2014, section 152.18, subdivision 1, is amended to read:

11.2 Subdivision 1. **Deferring prosecution for certain first time drug offenders.** If

11.3 (a) A court may defer prosecution as provided in paragraph (c) for any person who has
11.4 not previously participated in or completed a diversion program authorized under section
11.5 401.065 or who has not previously been placed on probation without a judgment of
11.6 guilty and thereafter been discharged from probation under this section is found guilty
11.7 of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027,
11.8 subdivision 2, 3, 4, or 6, paragraph (d), for possession of a controlled substance, after trial
11.9 or upon a plea of guilty, ~~and the court determines that the violation does not qualify as a~~
11.10 ~~subsequent controlled substance conviction under section 152.01, subdivision 16a,~~

11.11 (b) The court must defer prosecution as provided in paragraph (c) for any person
11.12 described in paragraph (a) who has not previously been convicted of a felony offense or of
11.13 a gross misdemeanor under section 152.025.

11.14 (c) In granting relief under this section, the court ~~may~~ shall, without entering a
11.15 judgment of guilty and with the consent of the person, defer further proceedings and
11.16 place the person on probation upon such reasonable conditions as it may require and for
11.17 a period, not to exceed the maximum sentence provided for the violation. The court
11.18 may give the person the opportunity to attend and participate in an appropriate program
11.19 of education regarding the nature and effects of alcohol and drug abuse as a stipulation
11.20 of probation. Upon violation of a condition of the probation, the court may enter an
11.21 adjudication of guilt and proceed as otherwise provided. The court may, in its discretion,
11.22 dismiss the proceedings against the person and discharge the person from probation before
11.23 the expiration of the maximum period prescribed for the person's probation. If during the
11.24 period of probation the person does not violate any of the conditions of the probation,
11.25 then upon expiration of the period the court shall discharge the person and dismiss the
11.26 proceedings against that person. Discharge and dismissal under this subdivision shall be
11.27 without court adjudication of guilt, but a not public record of it shall be retained by the
11.28 Bureau of Criminal Apprehension for the purpose of use by the courts in determining the
11.29 merits of subsequent proceedings against the person. The not public record may also be
11.30 opened only upon court order for purposes of a criminal investigation, prosecution, or
11.31 sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the
11.32 bureau shall notify the requesting party of the existence of the not public record and the
11.33 right to seek a court order to open it pursuant to this section. The court shall forward a
11.34 record of any discharge and dismissal under this subdivision to the bureau which shall
11.35 make and maintain the not public record of it as provided under this subdivision. The

12.1 discharge or dismissal shall not be deemed a conviction for purposes of disqualifications
 12.2 or disabilities imposed by law upon conviction of a crime or for any other purpose.

12.3 For purposes of this subdivision, "not public" has the meaning given in section
 12.4 13.02, subdivision 8a.

12.5 **Sec. 10. [241.90] COMMUNITY JUSTICE REINVESTMENT ACCOUNT.**

12.6 The community justice reinvestment account is an account in the state treasury.
 12.7 Money in the account must be used as directed by the legislature for specified purposes
 12.8 related to reinvesting savings from reforms in the criminal justice system towards
 12.9 targeted treatment, education, and reentry programs, enhanced community supervision,
 12.10 and specialty courts.

12.11 Sec. 11. Minnesota Statutes 2014, section 388.051, is amended to read:

12.12 **388.051 DUTIES.**

12.13 Subdivision 1. **General provisions.** The county attorney shall:

12.14 (a) appear in all cases in which the county is a party;

12.15 (b) give opinions and advice, upon the request of the county board or any county
 12.16 officer, upon all matters in which the county is or may be interested, or in relation to
 12.17 the official duties of the board or officer;

12.18 (c) prosecute felonies, including the drawing of indictments found by the grand
 12.19 jury, and, to the extent prescribed by law, gross misdemeanors, misdemeanors, petty
 12.20 misdemeanors, and violations of municipal ordinances, charter provisions and rules or
 12.21 regulations;

12.22 (d) attend before the grand jury, give them legal advice, and examine witnesses in
 12.23 their presence;

12.24 (e) request the court administrator to issue subpoenas to bring witnesses before the
 12.25 grand jury or any judge or judicial officer before whom the county attorney is conducting
 12.26 a criminal hearing;

12.27 (f) attend any inquest at the request of the coroner; and

12.28 (g) appear, when requested by the attorney general, for the state in any case instituted
 12.29 by the attorney general in the county attorney's county or before the United States Land
 12.30 Office in case of application to preempt or locate any public lands claimed by the state and
 12.31 assist in the preparation and trial.

12.32 Subd. 2. **Special provisions.** (a) In Anoka, Carver, Dakota, Hennepin, Scott,
 12.33 and Washington Counties, only the county attorney shall prosecute gross misdemeanor

13.1 violations of sections 289A.63, subdivisions 1, 2, 4, and 6; 297B.10; 609.255, subdivision
 13.2 3; 609.377; 609.378; 609.41; and 617.247.

13.3 (b) In Ramsey County, only the county attorney shall prosecute gross misdemeanor
 13.4 violations of sections 609.255, subdivision 3; 609.377; and 609.378.

13.5 (c) The county attorney shall prosecute failure to report physical or sexual
 13.6 child abuse or neglect as provided under section 626.556, subdivision 6, violations of
 13.7 fifth-degree criminal sexual conduct under section 609.3451, and environmental law
 13.8 violations under sections 115.071, 299F.098, and 609.671.

13.9 (d) Except in Hennepin and Ramsey Counties, only the county attorney shall
 13.10 prosecute gross misdemeanor violations of section 152.025.

13.11 Subd. 3. **Charging and plea negotiation policies and practices; written guidelines**
 13.12 **required.** (a) On or before January 1, 1995, each county attorney shall adopt written
 13.13 guidelines governing the county attorney's charging and plea negotiation policies and
 13.14 practices. The guidelines shall address, but need not be limited to, the following matters:

13.15 (1) the circumstances under which plea negotiation agreements are permissible;

13.16 (2) the factors that are considered in making charging decisions and formulating
 13.17 plea agreements; and

13.18 (3) the extent to which input from other persons concerned with a prosecution, such
 13.19 as victims and law enforcement officers, is considered in formulating plea agreements.

13.20 (b) Plea negotiation policies and procedures adopted under this subdivision are
 13.21 public data, as defined in section 13.02.

13.22 Subd. 4. **Firearms exemption.** Notwithstanding section 626.84, subdivision 2, a
 13.23 county attorney, or an assistant county attorney appointed under section 388.10, who
 13.24 lawfully possesses a permit to carry a pistol issued in accordance with section 624.714
 13.25 may possess and carry a firearm while on duty, unless restricted by the county attorney.

13.26 Sec. 12. **MINNESOTA SENTENCING GUIDELINES COMMISSION;**
 13.27 **CERTAIN RECOMMENDATIONS ON CONTROLLED SUBSTANCE OFFENSES**
 13.28 **REJECTED; ADDITIONAL MODIFICATIONS TO GUIDELINES.**

13.29 (a) The following modifications proposed by the Minnesota Sentencing Guidelines
 13.30 Commission in its January 15, 2016, report to the legislature are rejected and do not
 13.31 go into effect:

13.32 (1) the new presumptive sentence for first-degree possession of a controlled
 13.33 substance under Minnesota Statutes, section 152.021, subdivision 2, paragraph (a),
 13.34 described in 2.A. Non-Legislative Modifications to Controlled Substance offenses on
 13.35 pages 14 to 17 of the report;

14.1 (2) the severity level D8 found in the new drug offender grid on page 80 of the report
 14.2 and in the criminal history grids found on page 67 of the report; and

14.3 (3) related changes found in corresponding language in Appendix 2.2.A. on pages
 14.4 65 to 81 of the report.

14.5 (b) The Sentencing Guidelines Commission shall:

14.6 (1) modify the new drug offender grid found on page 80 of the report by renumbering
 14.7 D9 as D8 and renumbering D10 as D9;

14.8 (2) modify the criminal history grids on page 67 of the report by renumbering D8 as
 14.9 D7 and renumbering D9-D10 as D8-D9;

14.10 (3) re-rank first-degree possession of a controlled substance under Minnesota
 14.11 Statutes, section 152.021, subdivision 2, paragraph (a), at the renumbered severity level D8;

14.12 (4) rank the new offense of aggravated controlled substance crime in the first degree
 14.13 under Minnesota Statutes, section 152.021, subdivision 2b, at the renumbered severity
 14.14 level D9; and

14.15 (5) make changes in Appendix 2.2.A. consistent with this section.

14.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

14.17 **Sec. 13. APPROPRIATIONS.**

14.18 (a) \$..... for the fiscal year ending June 30, 2017, and \$..... for the fiscal year
 14.19 ending June 30, 2018, are appropriated from the general fund to the commissioner of
 14.20 corrections. The commissioner shall deposit the money from the appropriation into
 14.21 the community justice reinvestment account described in Minnesota Statutes, section
 14.22 241.90. The commissioner may retain up to 50 percent of the money in the account to add
 14.23 chemical dependency treatment beds in state prisons to serve offenders with an anticipated
 14.24 release date within five years, to enhance probation and supervised release services for
 14.25 controlled substance offenders in communities served by the department, and to enhance
 14.26 other controlled substance offender programs, including education programs, focused
 14.27 on reentry. The commissioner shall transfer the remaining money in the account to the
 14.28 commissioner of public safety. The commissioner of public safety, through the Office
 14.29 of Justice Programs, shall use this money to establish a grant program for local units
 14.30 of government or nonprofit organizations for chemical dependency and mental health
 14.31 treatment programs, programs that improve supervision, including pretrial and precharge
 14.32 supervision, and reduce recidivism of controlled substance offenders on probation or
 14.33 supervised release or participating in drug courts, and to fund local participation in drug
 14.34 court initiatives approved by the Judicial Council.

15.1 (b) By January 15, 2018, the commissioners of corrections and public safety
15.2 shall report to the chairs and ranking minority members of the senate and house of
15.3 representatives committees and divisions having jurisdiction over criminal justice funding
15.4 on how the appropriated money was distributed.

15.5 (c) By January 15, 2018, and January 15 of each subsequent odd-numbered year, the
15.6 commissioner of management and budget shall determine the savings to the state realized
15.7 in the preceding fiscal biennium due to this bill and add that amount to the base budget of
15.8 the Department of Corrections in the governor's proposed budget for the next biennium. If
15.9 the legislature appropriates this amount for the next biennium, the money must be used by
15.10 the commissioner as provided in paragraph (a).