

CHAPTER 152

PROHIBITED DRUGS

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152.01 DEFINITIONS.

[For text of subds 1 to 4, see M.S.1988]

Subd. 5a. **Hallucinogen.** "Hallucinogen" means any hallucinogen listed in section 152.02, subdivision 2, clause (3), or Minnesota Rules, part 6800.4210, item C, except marijuana and Tetrahydrocannabinols.

[For text of subd 6, see M.S.1988]

Subd. 7. **Manufacture.** "Manufacture," in places other than a pharmacy, means and includes the production, cultivation, quality control, and standardization by mechanical, physical, chemical, or pharmaceutical means, packing, repacking, tabletting, encapsulating, labeling, relabeling, filling, or by other process, of drugs.

[For text of subds 8 and 9, see M.S.1988]

Subd. 9a. **Mixture.** "Mixture" means a preparation, compound, mixture, or substance containing a controlled substance, regardless of purity.

[For text of subds 10 to 12, see M.S.1988]

Subd. 12a. **Park zone.** "Park zone" means an area designated as a public park by the federal government, the state, a local unit of government, a park district board, or a park and recreation board in a city of the first class. "Park zone" includes the area within 300 feet or one city block, whichever distance is greater, of the park boundary.

[For text of subds 13 and 14, see M.S.1988]

Subd. 14a. **School zone.** "School zone" means:

(1) any property owned, leased, or controlled by a school district or an organization operating a nonpublic school, as defined in section 123.932, subdivision 3, where an elementary, middle, secondary school, secondary vocational center or other school providing educational services in grade one through grade 12 is located, or used for educational purposes, or where extracurricular or cocurricular activities are regularly provided;

(2) the area surrounding school property as described in clause (1) to a distance of 300 feet or one city block, whichever distance is greater, beyond the school property; and

(3) the area within a school bus when that bus is being used to transport one or more elementary or secondary school students.

[For text of subd 15, see M.S.1988]

Subd. 15a. **Sell.** "Sell" means to sell, give away, barter, deliver, exchange, distribute or dispose of to another; or to offer or agree to do the same; or to manufacture.

[For text of subd 16, see M.S.1988]

Subd. 16a. **Subsequent controlled substance conviction.** "Subsequent controlled substance conviction" means that before commission of the offense for which the person is convicted under this chapter, the person was convicted in Minnesota of a felony violation of this chapter or a felony-level attempt or conspiracy to violate this chapter, or convicted elsewhere for conduct that would have been a felony under this chapter if committed in Minnesota. An earlier conviction is not relevant if ten years have elapsed since: (1) the person was restored to civil rights; or (2) the sentence has expired, whichever occurs first.

[For text of subds 17 and 18, see M.S.1988]

History: 1989 c 290 art 3 s 1-7

152.02 SCHEDULES OF CONTROLLED SUBSTANCES; ADMINISTRATION OF CHAPTER.

[For text of subds 1 to 4, see M.S.1988]

Subd. 5. (a) The following items are listed in Schedule IV: Anabolic substances; Barbital; Chloral betaine; Chloral hydrate; Chlordiazepoxide; Clonazepam; Clorazepate; Diazepam; Diethylpropion; Ethchlorvynol; Ethinamate; Fenfluramine; Flurazepam; Mebutamate; Methohexital; Meprobamate except when in combination with the following drugs in the following or lower concentrations: conjugated estrogens, 0.4 mg; tridihexethyl chloride, 25mg; pentaerythritol tetranitrate, 20 mg; Methylphenobarbital; Oxazepam; Paraldehyde; Pemoline; Petrichloral; Phenobarbital; and Phentermine.

(b) For purposes of this subdivision, "anabolic substances" means the naturally occurring androgens or derivatives of androstane (androsterone and testosterone); testosterone and its esters, including, but not limited to, testosterone propionate, and its derivatives, including, but not limited to, methyltestosterone and growth hormones, except that anabolic substances are not included if they are: (1) expressly intended for administration through implants to cattle or other nonhuman species; and (2) approved by the United States Food and Drug Administration for that use.

[For text of subds 6 to 13, see M.S.1988]

History: 1989 c 230 s 1

152.021 CONTROLLED SUBSTANCE CRIME IN THE FIRST DEGREE.

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

- (1) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures containing ten grams or more of cocaine base;
- (2) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing a narcotic drug;
- (3) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 50 grams or more containing methamphetamine, amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 200 or more dosage units; or
- (4) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of 100 kilograms or more containing marijuana or Tetrahydrocannabinols.

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

(1) the person unlawfully possesses one or more mixtures containing 25 grams or more of cocaine base;

(2) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug;

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

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

Subd. 3. Penalty. (a) A person convicted under subdivision 1 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 subdivision 1 or 2 shall be sentenced to imprisonment for not less than four years nor more than 40 years or to payment of a fine of not more than \$1,000,000, or both.

History: 1989 c 290 art 3 s 8

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 containing three grams or more of cocaine base;

(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;

(3) 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 methamphetamine, amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 50 or more dosage units;

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

(5) the person unlawfully sells any amount of a schedule I or II narcotic drug, and:

(i) the person unlawfully sells the substance 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

(ii) the sale occurred in a school zone or a park zone.

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

(1) the person unlawfully possesses one or more mixtures containing six grams or more of cocaine base;

(2) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing a narcotic drug;

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

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

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

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be sentenced to imprisonment for not less than three years nor more than 40 years or to payment of a fine of not more than \$500,000, or both.

History: 1989 c 290 art 3 s 9

152.023 CONTROLLED SUBSTANCE CRIME IN THE THIRD DEGREE.

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

- (1) the person unlawfully sells one or more mixtures containing a narcotic drug;
- (2) the person unlawfully sells one or more mixtures containing phencyclidine or hallucinogen, it is packaged in dosage units, and equals ten or more dosage units;
- (3) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule I, II, or III, except a schedule I or II narcotic drug, marijuana or Tetrahydrocannabinols, to a person under the age of 18; or
- (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, marijuana or Tetrahydrocannabinols.

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

- (1) the person unlawfully possesses one or more mixtures containing three grams or more of cocaine base;
- (2) the person unlawfully possesses one or more mixtures of a total weight of ten grams or more containing a narcotic drug;
- (3) the person unlawfully possesses one or more mixtures containing a narcotic drug with the intent to sell it;
- (4) 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; or
- (5) the person unlawfully possesses any amount of a schedule I or II narcotic drug in a school zone or a park zone.

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 sentenced to imprisonment for not less than two years nor more than 30 years or to payment of a fine of not more than \$250,000, or both.

History: 1989 c 290 art 3 s 10

152.024 CONTROLLED SUBSTANCE CRIME IN THE FOURTH DEGREE.

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

- (1) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule I, II, or III, except marijuana or Tetrahydrocannabinols;
- (2) the person unlawfully sells one or more mixtures containing marijuana or Tetrahydrocannabinols to a person under the age of 18;
- (3) the person conspires with or employs a person under the age of 18 to unlawfully sell one or more mixtures containing marijuana or Tetrahydrocannabinols;
- (4) the person unlawfully sells one or more mixtures containing a controlled substance classified in schedule IV or V to a person under the age of 18; or
- (5) the person conspires with or employs a person under the age of 18 to unlawfully sell a controlled substance classified in schedule IV or V.

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

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

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

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 sentenced to imprisonment for not less than one year nor more than 30 years or to payment of a fine of not more than \$100,000, or both.

History: 1989 c 290 art 3 s 11

152.025 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE.

Subdivision 1. Sale crimes. A person is guilty of controlled substance crime in the fifth degree 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.

Subd. 2. Possession and other crimes. A person is guilty of controlled substance crime in the fifth degree if:

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

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

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

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

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

Subd. 3. Penalty. (a) A person convicted under subdivision 1 or 2 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.

(b) If the conviction is a subsequent controlled substance conviction, a person convicted under subdivision 1 or 2 shall be sentenced to imprisonment for not less than six months nor more than ten years or to payment of a fine of not more than \$20,000, or both.

History: 1989 c 290 art 3 s 12

152.026 MANDATORY SENTENCES.

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

History: 1989 c 290 art 3 s 13

152.027 OTHER CONTROLLED SUBSTANCE OFFENSES.

Subdivision 1. Sale of schedule V controlled substance. A person who unlawfully sells one or more mixtures containing a controlled substance classified in schedule V may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

Subd. 2. Possession of schedule V controlled substance. A person who unlawfully possesses one or more mixtures containing a controlled substance classified in schedule V may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. The court may order that a person who is convicted under this subdivision and placed on probation be required to take part in a drug education program as specified by the court.

Subd. 3. Possession of marijuana in a motor vehicle. A person is guilty of a misdemeanor if the person is the owner of a private motor vehicle, or is the driver of the motor vehicle if the owner is not present, and possesses on the person, or knowingly keeps or allows to be kept within the area of the vehicle normally occupied by the driver or passengers, more than 1.4 grams of marijuana. This area of the vehicle does not include the trunk of the motor vehicle if the vehicle is equipped with a trunk, or another area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk. A utility or glove compartment is deemed to be within the area occupied by the driver and passengers.

Subd. 4. Possession or sale of small amounts of marijuana. (a) A person who unlawfully sells a small amount of marijuana for no remuneration, or who unlawfully possesses a small amount of marijuana is guilty of a petty misdemeanor punishable by a fine of up to \$200 and participation in a drug education program unless the court enters a written finding that a drug education program is inappropriate. The program must be approved by an area mental health board with a curriculum approved by the state alcohol and drug abuse authority.

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

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

History: 1989 c 290 art 3 s 14

152.028 PERMISSIVE INFERENCE OF KNOWING POSSESSION.

Subdivision 1. Residences. The presence of a controlled substance in open view in a room, other than a public place, under circumstances evincing an intent by one or more of the persons present to unlawfully mix, compound, package, or otherwise prepare for sale the controlled substance permits the factfinder to infer knowing possession of the controlled substance by each person in close proximity to the controlled substance when the controlled substance was found. The permissive inference does not apply to any person if:

- (1) one of them legally possesses the controlled substance; or
- (2) the controlled substance is on the person of one of the occupants.

Subd. 2. Passenger automobiles. The presence of a controlled substance in a passenger automobile permits the factfinder to infer knowing possession of the controlled substance by the driver or person in control of the automobile when the controlled substance was in the automobile. This inference may only be made if the defendant is charged with violating section 152.021, 152.022, or 152.023. The inference does not apply:

- (1) to a duly licensed operator of an automobile who is at the time operating it for hire in the lawful and proper pursuit of the operator's trade;

(2) to any person in the automobile if one of them legally possesses a controlled substance; or

(3) when the controlled substance is concealed on the person of one of the occupants.

History: 1989 c 290 art 3 s 15

152.029 PUBLIC INFORMATION: SCHOOL ZONES AND PARK ZONES.

The attorney general shall disseminate information to the public relating to the penalties for committing controlled substance crimes in park zones and school zones. The attorney general shall draft a plain language version of sections 152.022, 152.023, and 244.095, that describes in a clear and coherent manner using words with common and everyday meanings the contents of those sections. The attorney general shall publicize and disseminate the plain language version as widely as practicable, including distributing the version to school boards and local governments.

History: 1989 c 290 art 3 s 16

152.09 [Repealed, 1989 c 290 art 3 s 37]

152.096 CONSPIRACIES PROHIBITED.

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

[For text of subd 2, see M.S.1988]

History: 1989 c 290 art 3 s 17

152.097 SIMULATED CONTROLLED SUBSTANCES.

[For text of subds 1 to 3, see M.S.1988]

Subd. 4. **Penalty.** A person who violates this section may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$20,000, or both. Sentencing for a conviction for attempting to sell, transfer, or deliver a noncontrolled substance in violation of this section is governed by section 609.17, subdivision 4.

History: 1989 c 290 art 3 s 18

152.15 VIOLATIONS; PENALTIES.

Subdivision 1. [Repealed, 1989 c 290 art 3 s 37]

Subd. 2. [Repealed, 1989 c 290 art 3 s 37]

Subd. 2a. [Repealed, 1989 c 290 art 3 s 37]

Subd. 2b. [Repealed, 1989 c 290 art 3 s 37]

Subd. 3. [Repealed, 1989 c 290 art 3 s 37]

Subd. 4a. [Repealed, 1989 c 290 art 3 s 37]

Subd. 5. [Repealed, 1989 c 290 art 3 s 37]

152.151 REPORT TO LEGISLATURE.

The state alcohol and drug authority shall evaluate the drug education program required by section 152.027 and report directly each legislative session to the legislative standing committees having jurisdiction over the subject matter.

History: 1989 c 290 art 3 s 19

152.152 STAYED SENTENCE LIMITED.

If a person is convicted under section 152.021, 152.022, or 152.023, and the sentencing guidelines grid calls for a presumptive prison sentence for the offense, the court may stay imposition or execution of the sentence only as provided in this section. The sentence may be stayed based on amenability to probation only if the offender presents adequate evidence to the court that the offender has been accepted by, and can respond to, a treatment program that has been approved by the commissioner of human services. The court may impose a sentence that is a mitigated dispositional departure on any other ground only if the court includes as a condition of probation incarceration in a local jail or workhouse.

History: 1989 c 290 art 3 s 20

152.18 DISCHARGE AND DISMISSAL.

Subdivision 1. If any person is found guilty of a violation of section 152.024, 152.025, or 152.027 for possession of a controlled substance, after trial or upon a plea of guilty, the court may, without entering a judgment of guilty and with the consent of such 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 term of imprisonment provided for such 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 such person and discharge the person from probation before the expiration of the maximum period prescribed for such person's probation. If during the period of probation such person does not violate any of the conditions of the probation, then upon expiration of such period the court shall discharge such person and dismiss the proceedings against that person. Discharge and dismissal hereunder shall be without court adjudication of guilt, but a nonpublic record thereof shall be retained by the department of public safety solely for the purpose of use by the courts in determining the merits of subsequent proceedings against such person. The court shall forward a record of any discharge and dismissal hereunder to the department of public safety who shall make and maintain the nonpublic record thereof as hereinbefore provided. Such 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 text of subds 2 and 3, see M.S.1988]

History: 1989 c 290 art 3 s 21

152.20 PENALTIES UNDER OTHER LAWS.

Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

History: 1989 c 290 art 3 s 22

152.21 THC THERAPEUTIC RESEARCH ACT.

[For text of subds 1 to 5, see M.S.1988]

Subd. 6. **Exemption from criminal sanctions.** For the purposes of this section, the following are not violations under this chapter:

- (1) use or possession of THC, or both, by a patient in the research program;
- (2) possession, prescribing use of, administering, or dispensing THC, or any combination of these actions, by the principal investigator or by any clinical investigator; and
- (3) possession or distribution of THC, or both, by a pharmacy registered to handle

schedule I substances which stores THC on behalf of the principal investigator or a clinical investigator.

THC obtained and distributed pursuant to this section is not subject to forfeiture under sections 609.531 to 609.5316.

For the purposes of this section, THC is removed from schedule I contained in section 152.02, subdivision 2, and inserted in schedule II contained in section 152.02, subdivision 3.

[For text of subd 7, see M.S.1988]

History: 1989 c 290 art 3 s 23