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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 3123

03/17/2014 Authored by Paymar

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

1.1 A bill for an act
1.2 relating to public safety; adjusting criminal sentences for certain controlled
1.3 substance offenses; amending Minnesota Statutes 2012, sections 152.01,
1.4 subdivision 16a; 152.021, subdivisions 1, 2; 152.022, subdivisions 1, 2; 152.023,
1.5 subdivisions 1, 2; 244.09, subdivisions 2, 3, 11; proposing coding for new law in
1.6 Minnesota Statutes, chapter 152.

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

1.8 Section 1. Minnesota Statutes 2012, section 152.01, subdivision 16a, is amended to read:

1.9 Subd. 16a. **Subsequent controlled substance conviction.** ~~Notwithstanding section~~
1.10 ~~152.18, subdivision 1,~~ A "subsequent controlled substance conviction" means that before
1.11 commission of the offense for which the person is convicted under this chapter, the person
1.12 ~~received a disposition for a felony-level offense under section 152.18, subdivision 1,~~ was
1.13 convicted in Minnesota of a felony violation of this chapter or a felony-level attempt or
1.14 conspiracy to violate this chapter, or was convicted elsewhere for conduct that would have
1.15 been a felony under this chapter if committed in Minnesota. ~~An earlier disposition for a~~
1.16 ~~felony-level offense under section 152.18, subdivision 1, or an~~ earlier conviction is not
1.17 relevant if ten years have elapsed since discharge from sentence or stay of adjudication. A
1.18 disposition under section 152.18, subdivision 1, is not a subsequent controlled substance
1.19 conviction.

1.20 Sec. 2. Minnesota Statutes 2012, section 152.021, subdivision 1, is amended to read:

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

2.1 (1) on one or more occasions within a 90-day period the person unlawfully sells one
 2.2 or more mixtures of a total weight of ~~ten~~ 20 grams or more containing cocaine, heroin, or
 2.3 methamphetamine;

2.4 (2) on one or more occasions within a 90-day period the person unlawfully sells one
 2.5 or more mixtures of a total weight of ~~50~~ 100 grams or more containing a narcotic drug
 2.6 other than cocaine, heroin, or methamphetamine;

2.7 (3) on one or more occasions within a 90-day period the person unlawfully sells one
 2.8 or more mixtures of a total weight of ~~50~~ 100 grams or more containing amphetamine,
 2.9 phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units,
 2.10 equaling 200 or more dosage units; or

2.11 (4) on one or more occasions within a 90-day period the person unlawfully sells one
 2.12 or more mixtures of a total weight of ~~50~~ 100 kilograms or more containing marijuana or
 2.13 Tetrahydrocannabinols, or one or more mixtures of a total weight of ~~25~~ 50 kilograms or
 2.14 more containing marijuana or Tetrahydrocannabinols in a school zone, a park zone, a
 2.15 public housing zone, or a drug treatment facility.

2.16 Sec. 3. Minnesota Statutes 2012, section 152.021, subdivision 2, is amended to read:

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

2.19 (1) the person unlawfully possesses one or more mixtures of a total weight of ~~25~~ 50
 2.20 grams or more containing cocaine, heroin, or methamphetamine;

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

2.24 (3) the person unlawfully possesses one or more mixtures of a total weight of ~~500~~
 2.25 ~~grams~~ one kilogram or more containing amphetamine, phencyclidine, or hallucinogen
 2.26 or, if the controlled substance is packaged in dosage units, equaling ~~500~~ 1,000 or more
 2.27 dosage units; or

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

2.30 (5) the person unlawfully possesses 200 or more marijuana plants. This clause
 2.31 does not limit the power of the state to punish a person for conduct that constitutes a
 2.32 crime under other laws of this state.

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

3.1 Sec. 4. Minnesota Statutes 2012, section 152.022, subdivision 1, is amended to read:

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

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

3.7 (2) on one or more occasions within a 90-day period the person unlawfully sells one
3.8 or more mixtures of a total weight of ~~ten~~ 20 grams or more containing a narcotic drug
3.9 other than cocaine, heroin, or methamphetamine;

3.10 (3) on one or more occasions within a 90-day period the person unlawfully sells one
3.11 or more mixtures of a total weight of ~~ten~~ 20 grams or more containing amphetamine,
3.12 phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units,
3.13 equaling ~~50~~ 100 or more dosage units;

3.14 (4) on one or more occasions within a 90-day period the person unlawfully sells one
3.15 or more mixtures of a total weight of ~~25~~ 50 kilograms or more containing marijuana or
3.16 Tetrahydrocannabinols;

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

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

3.22 (i) any amount of a Schedule I or II narcotic drug, lysergic acid diethylamide (LSD),
3.23 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine;

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

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

3.27 Sec. 5. Minnesota Statutes 2012, section 152.022, subdivision 2, is amended to read:

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

3.30 (1) the person unlawfully possesses one or more mixtures of a total weight of ~~six~~ 12
3.31 grams or more containing cocaine, heroin, or methamphetamine;

3.32 (2) the person unlawfully possesses one or more mixtures of a total weight of ~~50~~ 100
3.33 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

4.1 (3) the person unlawfully possesses one or more mixtures of a total weight of 50
 4.2 100 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the
 4.3 controlled substance is packaged in dosage units, equaling ~~100~~ 200 or more dosage units; or

4.4 (4) the person unlawfully possesses one or more mixtures of a total weight of 50 100
 4.5 kilograms or more containing marijuana or Tetrahydrocannabinols; or

4.6 (5) the person unlawfully possesses 100 or more marijuana plants. This clause
 4.7 does not limit the power of the state to punish a person for conduct that constitutes a
 4.8 crime under other laws of this state.

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

4.12 Sec. 6. Minnesota Statutes 2012, section 152.023, subdivision 1, is amended to read:

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

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

4.16 (2) on one or more occasions within a 90-day period the person unlawfully sells one
 4.17 or more mixtures containing phencyclidine or hallucinogen, it is packaged in dosage units,
 4.18 and equals ~~ten~~ 20 or more dosage units;

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

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

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

4.28 Sec. 7. Minnesota Statutes 2012, section 152.023, subdivision 2, is amended to read:

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

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

5.1 (2) on one or more occasions within a 90-day period the person unlawfully possesses
 5.2 one or more mixtures of a total weight of ~~ten~~ 20 grams or more containing a narcotic drug
 5.3 other than cocaine, heroin, or methamphetamine;

5.4 (3) on one or more occasions within a 90-day period the person unlawfully possesses
 5.5 one or more mixtures containing a narcotic drug, it is packaged in dosage units, and
 5.6 equals ~~50~~ 100 or more dosage units;

5.7 (4) on one or more occasions within a 90-day period the person unlawfully
 5.8 possesses any amount of a schedule I or II narcotic drug or five or more dosage
 5.9 units of lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or
 5.10 3,4-methylenedioxymethamphetamine in a school zone, a park zone, a public housing
 5.11 zone, or a drug treatment facility;

5.12 (5) on one or more occasions within a 90-day period the person unlawfully possesses
 5.13 one or more mixtures of a total weight of ~~ten~~ 20 kilograms or more containing marijuana
 5.14 or Tetrahydrocannabinols; ~~or~~

5.15 (6) on one or more occasions with a 90-day period the person unlawfully possesses
 5.16 50 or more marijuana plants. This clause does not limit the power of the state to punish a
 5.17 person for conduct that constitutes a crime under other laws of this state; or

5.18 (7) the person unlawfully possesses one or more mixtures containing
 5.19 methamphetamine or amphetamine in a school zone, a park zone, a public housing zone,
 5.20 or a drug treatment facility.

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

5.24 Sec. 8. **[152.0215] AGGRAVATED CONTROLLED SUBSTANCE CRIME.**

5.25 Subdivision 1. **Offense.** A person is guilty of a felony if:

5.26 (1) on one or more occasions within a 90-day period the person unlawfully sells one
 5.27 or more mixtures of a total weight of 100 grams or more containing cocaine, heroin, or
 5.28 methamphetamine;

5.29 (2) on one or more occasions within a 90-day period the person unlawfully sells one
 5.30 or more mixtures of a total weight of 500 grams or more containing a narcotic drug other
 5.31 than cocaine, heroin, or methamphetamine;

5.32 (3) on one or more occasions within a 90-day period the person unlawfully sells
 5.33 one or more mixtures of a total weight of 500 grams or more containing amphetamine,
 5.34 phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units,
 5.35 equaling 1,000 or more dosage units;

6.1 (4) on one or more occasions within a 90-day period the person unlawfully sells one
6.2 or more mixtures of a total weight of 500 kilograms or more containing marijuana or
6.3 Tetrahydrocannabinols; or

6.4 (5) the person unlawfully possesses 750 or more marijuana plants. This clause
6.5 does not limit the power of the state to punish a person for conduct that constitutes a
6.6 crime under other laws of this state.

6.7 Subd. 2. **Penalty.** (a) A person convicted under subdivision 1 may be sentenced
6.8 to imprisonment for not more than 40 years or to payment of a fine of not more than
6.9 \$5,000,000, or both.

6.10 (b) If the conviction is a subsequent controlled substance conviction, a person
6.11 convicted under subdivision 1 shall be committed to the commissioner of corrections for
6.12 not less than ten years nor more than 50 years and, in addition, may be sentenced to
6.13 payment of a fine of not more than \$10,000,000.

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

6.17 Sec. 9. Minnesota Statutes 2012, section 244.09, subdivision 2, is amended to read:

6.18 Subd. 2. **Members.** The Sentencing Guidelines Commission shall consist of the
6.19 following:

6.20 (1) the chief justice of the Supreme Court or a designee;

6.21 (2) one judge of the Court of Appeals, appointed by the chief justice of the Supreme
6.22 Court;

6.23 (3) one district court judge appointed by the chief justice of the Supreme Court;

6.24 (4) one public defender appointed by the governor upon recommendation of the
6.25 state public defender;

6.26 (5) one county attorney appointed by the governor upon recommendation of the
6.27 board of directors of the Minnesota County Attorneys Association;

6.28 (6) the commissioner of corrections or a designee;

6.29 (7) one peace officer as defined in section 626.84 appointed by the governor;

6.30 (8) one probation officer or parole officer appointed by the governor; and

6.31 (9) three public members appointed by the governor, one of whom shall be a victim
6.32 of a crime defined as a felony.

6.33 When an appointing authority selects individuals for membership on the
6.34 commission, the authority shall make reasonable efforts to appoint qualified members of
6.35 protected groups, as defined in section 43A.02, subdivision 33.

7.1 One of the public members shall be designated by the governor as chair of the
7.2 commission.

7.3 Sec. 10. Minnesota Statutes 2012, section 244.09, subdivision 3, is amended to read:

7.4 Subd. 3. **Appointment terms.** Each appointed member shall be appointed for
7.5 four years and shall continue to serve during that time as long as the member occupies
7.6 the position which made the member eligible for the appointment. Each member shall
7.7 continue in office until a successor is duly appointed. Members shall be eligible for
7.8 reappointment, and appointment may be made to fill an unexpired term. ~~The term of any~~
7.9 ~~member appointed or reappointed by the governor before the first Monday in January~~
7.10 ~~1991 expires on that date. The term of any member appointed or reappointed by the~~
7.11 ~~governor after the first Monday in January 1991 is coterminous with the governor. The~~
7.12 terms of members appointed by the governor on January 1, 2015, shall be staggered, so as
7.13 four members shall be appointed for four years, and three members shall be appointed
7.14 for two years. Members appointed by the chief justice of the Supreme Court shall be
7.15 appointed to four-year terms. The members of the commission shall elect any additional
7.16 officers necessary for the efficient discharge of their duties.

7.17 Sec. 11. Minnesota Statutes 2012, section 244.09, subdivision 11, is amended to read:

7.18 Subd. 11. **Modification.** The commission shall meet as necessary for the purpose
7.19 of modifying and improving the guidelines. To assist in establishing and modifying
7.20 guidelines sentences and ranking crimes proportionally, the commission shall develop
7.21 objective criteria based upon:

7.22 (1) the interest protected by a particular statute; and

7.23 (2) the types of harm targeted by the statute and the level of potential harm that
7.24 results from violations of the subdivisions of the statute.

7.25 The commission shall assign a numerical score to each criterion. The commission
7.26 may develop separate criteria for controlled substance and criminal sexual conduct crimes.
7.27 The criteria and scores assigned to specific crimes based on the criteria will not be binding
7.28 on the commission, but the commission must articulate the reasons for ranking a particular
7.29 crime outside the scope of the criteria. The criteria must be presented to the legislature
7.30 by January 15, 2015. Any modification which amends the Sentencing Guidelines grid,
7.31 including severity levels and criminal history scores, or which would result in the
7.32 reduction of any sentence or in the early release of any inmate, with the exception of a
7.33 modification mandated or authorized by the legislature or relating to a crime created or
7.34 amended by the legislature in the preceding session, shall be submitted to the legislature

8.1 by January 15 of any year in which the commission wishes to make the change and shall
8.2 be effective on August 1 of that year, unless the legislature by law provides otherwise. All
8.3 other modifications shall take effect according to the procedural rules of the commission.
8.4 On or before January 15 of each year, the commission shall submit a written report to the
8.5 committees of the senate and the house of representatives with jurisdiction over criminal
8.6 justice policy that identifies and explains all modifications made during the preceding 12
8.7 months and all proposed modifications that are being submitted to the legislature that year.