

## CHAPTER 152

## DRUGS, CONTROLLED SUBSTANCES

152.01	Definitions.	152.024	Controlled substance crime in the fourth degree.
152.02	Schedules of controlled substances; administration of chapter.	152.029	Public information: school zones, park zones, public housing zones, and drug treatment facilities.
152.021	Controlled substance crime in the first degree.	152.125	Intractable pain.
152.022	Controlled substance crime in the second degree.	152.21	THC Therapeutic Research Act.
152.023	Controlled substance crime in the third degree.		

## 152.01 DEFINITIONS.

*[For text of subs 1 to 16a, see M.S.1996]*

Subd. 18. **Drug paraphernalia.** (a) Except as otherwise provided in paragraph (b), “drug paraphernalia” means all equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under this chapter or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in (1) manufacturing a controlled substance, (2) injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, (3) testing the strength, effectiveness, or purity of a controlled substance, or (4) enhancing the effect of a controlled substance.

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

*[For text of subs 19 to 21, see M.S.1996]*

Subd. 22. **Drug treatment facility.** “Drug treatment facility” means any facility in which a residential rehabilitation program licensed under Minnesota Rules, parts 9530.4100 to 9530.4450, is located, and includes any property owned, leased, or controlled by the facility.

**History:** 1997 c 239 art 4 s 1,2

## 152.02 SCHEDULES OF CONTROLLED SUBSTANCES; ADMINISTRATION OF CHAPTER.

*[For text of subd 1, see M.S.1996]*

Subd. 2. The following items are listed in Schedule I:

(1) Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alhamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylambutene; Dimenoxadol; Dimmepheptanol; Dimethylambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxeridine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacylmorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Racemoramide; Trimeperidine.

(2) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Acetylcodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphinol; Methylmorphine; Methylhydromorphine; Morphine methylbromide; Morphine methylsulfo-

nate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

(3) Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation: 3,4-methylenedioxy amphetamine; 4-bromo-2,5-dimethoxyamphetamine; 2,5-dimethoxyamphetamine; 4-methoxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 3,4,5-trimethoxy amphetamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; marijuana; Mescaline; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; 1-(1-(2-thienyl) cyclohexyl) piperidine; n-ethyl-1-phenyl-cyclohexylamine; 1-(1-phenylcyclohexyl) pyrrolidine.

(4) Peyote, providing the listing of peyote as a controlled substance in schedule I does not apply to the nondrug use of peyote in bona fide religious ceremonies of the American Indian Church, and members of the American Indian Church are exempt from registration. Any person who manufactures peyote for or distributes peyote to the American Indian Church, however, is required to obtain federal registration annually and to comply with all other requirements of law.

(5) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Mecloqualone;

Flunitrazepam.

(6) Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Cathinone;

Methcathinone.

*[For text of subs 3 and 4, see M.S.1996]*

Subd. 5. (a) The following items are listed in Schedule IV: Anabolic substances; Barbitol; Butorphanol; Carisoprodol; 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 subs 6 to 10, see M.S.1996]*

Subd. 12. If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the state board of pharmacy, the state board of pharmacy shall similarly control the substance under this chapter, after the expiration of 30 days from publication in the Federal Register of a final order designating a sub-

stance as a controlled substance or rescheduling or deleting a substance. Such order shall be filed with the secretary of state. If within that 30-day period, the state board of pharmacy objects to inclusion, rescheduling, or deletion, it shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the state board of pharmacy shall publish its decision, which shall be subject to the provisions of chapter 14.

In exercising the authority granted by this chapter, the state board of pharmacy shall be subject to the provisions of chapter 14. The state board of pharmacy shall provide copies of any proposed rule under this chapter to the advisory council on controlled substances at least 30 days prior to any hearing required by section 14.14, subdivision 1. The state board of pharmacy shall consider the recommendations of the advisory council on controlled substances, which may be made prior to or at the hearing.

Subd. 13. Annually, the state board of pharmacy shall study the implementation of this chapter in relation to the problems of drug abuse in Minnesota.

**History:** 1997 c 7 art 2 s 21; 1997 c 187 art 5 s 21; 1997 c 239 art 4 s 3,4

**NOTE:** The amendment to subdivision 5 by Laws 1997, chapter 239, article 4, section 4, is effective August 1, 1998. Laws 1997, chapter 239, article 4, section 15.

### 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 of a total weight of ten grams or more containing cocaine or heroin;

(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 other than cocaine or heroin;

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

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

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

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

(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.

*[For text of subd 3, see M.S.1996]*

**History:** 1997 c 239 art 4 s 5,6

### 152.022 CONTROLLED SUBSTANCE CRIME IN THE SECOND DEGREE.

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

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

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

(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 25 kilograms or more containing marijuana or Tetrahydrocannabinols;

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

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

(i) any amount of a schedule I or II narcotic drug, or lysergic acid diethylamide (LSD);

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

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

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

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

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

(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.

*[For text of subd 3, see M.S.1996]*

**History:** 1997 c 239 art 4 s 7,8

### 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) on one or more occasions within a 90-day period 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, to a person under the age of 18;

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

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

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

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

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

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

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

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

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

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

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

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

**History:** 1997 c 239 art 4 s 9–11

#### **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 a controlled substance classified in schedule IV or V 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 a controlled substance classified in schedule IV or V; or

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

*[For text of subs 2 and 3, see M.S.1996]*

**History:** 1997 c 239 art 4 s 12

#### **152.029 PUBLIC INFORMATION: SCHOOL ZONES, PARK ZONES, PUBLIC HOUSING ZONES, AND DRUG TREATMENT FACILITIES.**

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

**History:** 1997 c 239 art 4 s 13

**152.125 INTRACTABLE PAIN.**

Subdivision 1. **Definition.** For purposes of this section, "intractable pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated with the consent of the patient and in which, in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts. Reasonable efforts for relieving or curing the cause of the pain may be determined on the basis of, but are not limited to, the following:

(1) when treating a nonterminally ill patient for intractable pain, evaluation by the attending physician and one or more physicians specializing in pain medicine or the treatment of the area, system, or organ of the body perceived as the source of the pain; or

(2) when treating a terminally ill patient, evaluation by the attending physician who does so in accordance with the level of care, skill, and treatment that would be recognized by a reasonably prudent physician under similar conditions and circumstances.

Subd. 2. **Prescription and administration of controlled substances for intractable pain.** Notwithstanding any other provision of this chapter, a physician may prescribe or administer a controlled substance in schedules II to V of section 152.02 to an individual in the course of the physician's treatment of the individual for a diagnosed condition causing intractable pain. No physician shall be subject to disciplinary action by the board of medical practice for appropriately prescribing or administering a controlled substance in schedules II to V of section 152.02 in the course of treatment of an individual for intractable pain, provided the physician keeps accurate records of the purpose, use, prescription, and disposal of controlled substances, writes accurate prescriptions, and prescribes medications in conformance with chapter 147.

Subd. 3. **Limits on applicability.** This section does not apply to:

(1) a physician's treatment of an individual for chemical dependency resulting from the use of controlled substances in schedules II to V of section 152.02;

(2) the prescription or administration of controlled substances in schedules II to V of section 152.02 to an individual whom the physician knows to be using the controlled substances for nontherapeutic purposes;

(3) the prescription or administration of controlled substances in schedules II to V of section 152.02 for the purpose of terminating the life of an individual having intractable pain; or

(4) the prescription or administration of a controlled substance in schedules II to V of section 152.02 that is not a controlled substance approved by the United States Food and Drug Administration for pain relief.

Subd. 4. **Notice of risks.** Prior to treating an individual for intractable pain in accordance with subdivision 2, a physician shall discuss with the individual the risks associated with the controlled substances in schedules II to V of section 152.02 to be prescribed or administered in the course of the physician's treatment of an individual, and document the discussion in the individual's record.

**History:** 1997 c 124 s 1

**152.21 THC THERAPEUTIC RESEARCH ACT.**

*[For text of subs 1 and 2, see M.S.1996]*

Subd. 3. **Research grant.** The commissioner of health shall grant funds to the principal investigator selected by the commissioner pursuant to subdivision 4 for the purpose of conducting a research program under a protocol approved by the FDA regarding the therapeutic use of oral THC and other dosage forms, if available, according to the guidelines and requirements of the federal food and drug administration, the drug enforcement administration and the national institute on drug abuse. The commissioner shall ensure that the research principal investigator complies with the requirements of subdivision 5. The commissioner may designate the principal investigator as the sponsor.

*[For text of subs 4 to 7, see M.S.1996]*