

HOUSE RESEARCH

Bill Summary

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Overview

This bill amends current drug law by adjusting drug thresholds and adding a sixth level of controlled substance offense to Minnesota criminal law. The bill requires courts to sentence certain qualified drug offenders to drug abuse treatment rather than probation or prison beginning in August of 2005. The bill creates a new gross misdemeanor offense for loitering with the purpose of selling or purchasing a controlled substance. The bill allows currently incarcerated drug offenders to apply for re-sentencing pursuant to the sentencing changes proposed in the bill. Finally, the bill requires the Executive Director of the Sentencing Guidelines Commission to convene a task force consisting of specified stakeholders to establish rules, procedures, guidelines, and recommendations for implementing the drug abuse treatment model.

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- 1** **Qualified drug offender.** Defines the term qualified drug offender. The definition includes persons convicted of committing a fourth, fifth, or sixth degree controlled substance possession offense and the offense did not involve a dangerous weapon or force. Only persons who are subject to a presumed probationary sentence under the sentencing guidelines grid are included. The definition does not include persons who have pending criminal charges involving a crime of violence or who have previously been convicted of a crime of violence, except that only provisions in chapter 152 that are punishable by a maximum sentence of 21 years or more are included as crimes of violence for purposes of this definition.

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2 **Controlled substance crime in the first degree.** Amends the current first-degree controlled substance crimes (sale and possession) by adjusting the threshold amounts of the drugs required for prosecution.

Subd. 1. Sale crimes. Threshold amounts for sale offenses involving cocaine, heroin, or meth are increased from 10 to 50 grams. Increases the threshold amount for selling dosage units of amphetamines and hallucinogens from 200 to 250.

Subd. 2. Possession crimes. Increases the threshold amount for possession of cocaine, heroin, or meth from 25 to 250 grams. Decreases the threshold amount for possession of other narcotic drugs, amphetamines, and hallucinogens from 500 to 250 grams.

Subd. 2a. Manufacture crimes. Strikes the crime of manufacturing meth. Under this proposal, manufacturing meth is a controlled substance crime in the second degree and is therefore housed in section 3 of the bill.

Subd. 3. Penalty. Maintains current penalties except for increasing the mandatory minimum for conviction of first-degree drug sale or possession after a previous controlled substance conviction from four to five years. Eliminates references to subdivision 2a, which is re-codified in section 3.

3 **Controlled substance crime in the second degree.** Amends the current second-degree controlled substance crimes (sale and possession) by adjusting the threshold amounts of the drugs required for prosecution.

Subd. 1. Sale crimes. Threshold amounts for sale offenses involving cocaine, heroin, or meth are increased from 3 to 10 grams. Increases the threshold amount for selling dosage units of amphetamines and hallucinogens from 50 to 100. Strikes language prohibiting the sale of schedule 1 drugs to minors and the sale of drugs in certain restricted zones. The stricken language is re-codified as a third-degree controlled substance crime (Section 4).

Subd. 2. Possession crimes. Increases the threshold amount for possession of cocaine, heroin, or meth from 6 to 25 grams. Decreases the threshold amount for possession of other narcotic drugs, amphetamines, and hallucinogens from 50 to 25 grams. Increases the threshold amount for possessing dosage units of amphetamines and hallucinogens from 100 to 200.

Subd. 2a. Manufacture crimes. Re-codifies and amends the attempted manufacture of methamphetamine crime to clarify that this crime is not an "attempt crime" but rather a crime of possession of "any chemical reagents or precursors with the intent to manufacture methamphetamine." Provides that the list of chemical reagents or precursors in the statute is not an exclusive one. Strikes the cross-referenced definition of "anhydrous ammonia."

Subd. 3. Penalty. Increases the mandatory minimum for conviction of second-degree drug sale or possession after a previous controlled substance conviction from three to four years. Re-codifies penalties for violating subdivision 2a (Manufacture Crimes).

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Increases the maximum criminal penalty for a violation of subdivision 2a from a three-year/\$5,000 felony to a ten-year/\$20,000 felony, and for a repeat offense from a four-year/\$5,000 felony to a 15-year/\$30,000 felony. Also requires a mandatory minimum sentence of not less than two years for a first offense and a sentence of not less than three years for a repeat offense. The court and prosecutors may waive the mandatory minimum sentence upon the finding of a substantial and compelling reason to do so. Such a waiver is a departure from the sentencing guidelines.

- 4** **Controlled substance crime in the third degree.** Amends the current third-degree controlled substance crimes (sale and possession) by adjusting the threshold amounts of the drugs required for prosecution.

Subd. 1. Sale crimes. Threshold amount for sale offenses involving all narcotics, including cocaine, heroin, or meth, as well as amphetamines and hallucinogens is any amount over 3 grams. The threshold amount for selling dosage units of amphetamines and hallucinogens is anything over 50. Prohibits the sale of 10-kilos or more of marijuana. Allows for aggregating sale amounts over a 90-day period. Re-codifies language prohibiting sale of schedule 1 drugs to minors and sale of drugs in certain restricted zones. This language is relocated from the current second-degree controlled substance crime.

Subd. 2. Possession crimes. Increases the threshold amount for possession of cocaine, heroin, or meth from 3 to 6 grams. Decreases the threshold amount for possession of other narcotic drugs, amphetamines, and hallucinogens from 10 to 6 grams. Prohibits possession of 6 grams or more of amphetamines and hallucinogens. Increases the threshold amount for possessing dosage units of amphetamines and hallucinogens from 50 to 100. Prohibits possession of 25 kilos or more of marijuana.

Subd. 3. Penalty. Maintains current penalties except for increasing the mandatory minimum for conviction of third-degree drug sale or possession after a previous controlled substance conviction from two to three years. Provides that an offender who is convicted of third degree possession may be sentenced to drug treatment if the offender has a criminal history score of two or less and the court determines that the offender is amenable to treatment.

- 5** **Controlled substance crime in the fourth degree.** Amends the current fourth-degree controlled substance crimes (sale and possession) by adjusting the threshold amounts of the drugs required for prosecution.

Subd. 1. Sale crimes. Prohibits the sale of any amount of a narcotic or meth. Prohibits the sale of 10 or more dosage units of amphetamines and hallucinogens in a 90-day period. Prohibits the sale of a schedule I, II, or III drug, other than narcotics, to a minor. Prohibits conspiring with or employing a minor to sell a schedule I, II, or III drug. Prohibits the sale of 5-kilos or more of marijuana over a 90-day period.

Subd. 2. Possession crimes. Prohibits the possession of 3 grams or more of cocaine, heroin, or meth, and prohibits possession of ten grams or more of any other narcotic drug. Prohibits the possession of 50 or more dosage units of a narcotic drug. Prohibits possessing drugs in certain protected areas. Prohibits possession of 10-kilos or more of

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marijuana.

Subd. 3. Penalty. Maintains current penalties except for increasing the mandatory minimum for conviction of fourth-degree drug sale or possession after a previous controlled substance conviction from one year to two years. Requires that offenders convicted of fourth degree possession who have a criminal history score of two or less be sentenced to drug treatment.

6 **Controlled substance crime in the fifth degree.** Amends the current fifth-degree controlled substance crimes (sale and possession) by adjusting the threshold amounts of the drugs required for prosecution.

Subd. 1. Sale crimes. Prohibits the sale of any amount of a schedule I, II, or III drug, except marijuana. Prohibits the sale of any amount of a schedule IV or V drug to a minor. Prohibits conspiring with or employing a minor to sell a schedule IV or V drug. Prohibits the sale of any amount of marijuana in one of the protected zones.

Subd. 2. Possession crimes. Prohibits the possession of 10 or more dosage units of phencyclidine or a hallucinogen. Prohibits possessing any amount of a schedule I, II, or III drug, except marijuana, with the intent to sell it. Strikes the crime of obtaining drugs under false pretenses. This crime is re-codified in the newly created crime of sixth-degree drug possession.

Subd. 3. Penalty. Increases current penalties from a five to a 10-year felony. Increases the maximum fine from \$10,000 to \$50,000. Increases the maximum penalty for conviction of fifth-degree drug sale or possession after a previous controlled substance conviction from ten years to twenty years. Increases the mandatory minimum for conviction of fifth-degree drug sale or possession after a previous controlled substance conviction from six months to one year. Increases the fine for a subsequent conviction from \$10,000 to \$50,000. Requires that offenders convicted of fifth degree possession who have a criminal history score of three or less be sentenced to drug treatment.

7 **Controlled substance crime in the sixth degree.** Creates a new sixth degree controlled substance offense.

Subd. 1. Sale crimes. Prohibits the sale of any amount of marijuana, except a small amount for no remuneration. Prohibits the sale of any amount of a schedule IV drug.

Subd. 2. Possession crimes. Prohibits the possession of 10 or more dosage units of a hallucinogen. Prohibits possessing any amount of a schedule I, II, III, IV, or V drug, except a small amount of marijuana. Prohibits procuring a drug by false pretenses (*e.g.*, forged prescription). This offense is currently a fifth-degree controlled substance offense.

Subd. 3. Penalty. Establishes a 5-year felony for violation and a fine of not more than \$10,000. Establishes the maximum penalty for conviction of sixth-degree drug sale or possession after a previous controlled substance conviction as up to ten years in prison. Establishes the mandatory minimum for conviction of sixth-degree drug sale or possession after a previous controlled substance conviction of six months in jail.

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Requires that offenders convicted of fifth degree possession who have a criminal history score of three or less be sentenced to drug treatment.

- 8 **Loitering with the purpose to sell or purchase a controlled substance offense.** Creates a new crime of loitering with the purpose to sell or purchase a controlled substance. A person violates this provision when they loiter in a place open to the public and their conduct manifests a purpose to sell or purchase a controlled substance. Violation is a gross misdemeanor and a defendant must be sentenced to a minimum of 90 hours of sentence-to-serve or community service.

- 9 **Non-prison sentence of drug abuse treatment for certain offenders.**

Subd. 1. Sentence of drug abuse treatment. Requires sentencing of certain qualified offenders to drug treatment for up to 18 months. If the court concludes that the individual is unamenable to treatment, the individual must be sentenced according to the penalty provided in statute.

Subd. 2. Treatment assessment. Mandates pre-sentence drug abuse assessments for certain qualified offenders. Requires the party conducting the assessment to submit the assessment to the sentencing court.

Subd. 3. Intermediate sanctions. Provides that a court may impose non-prison sanctions for not complying with treatment. Proposes a non-inclusive list of possible intermediate sanctions.

Subd. 4. Grounds for discharge. Establishes grounds for which a court must discharge an offender from the program. A court must discharge an offender from the program if the offender is convicted of new felony (other than drug possession), convicted of a third felony, or intentionally refuses to comply with the treatment program. Requires that discharged offenders must serve at least one year and a day. Prohibits offenders who enter drug treatment with three or more felony drug possession offenses to be eligible for a future drug treatment sentence.

This section is effective August 1, 2005.

- 10 **Application for relief from drug sentence.** Allows current drug offenders to apply for relief from their sentences based on the fact that a significant change in substantive or procedural law has occurred and, in the interest of justice, should be applied retrospectively to the offender's sentence. Court must make specific findings of fact that re-sentencing does not present a danger to public welfare.

- 11 **Drug treatment task force.**

Subd. 1. Task force established. Instructs the executive director of the sentencing guidelines commission to convene a task force to develop guidelines, criteria, and procedures for implementing the drug offender treatment program

Subd. 2. Members. Identifies the 22 voting members of the task force.

Subd. 3. Report required. Mandates that by December 15, 2005, the executive director shall submit a report containing the task force's recommended guidelines, criteria, and procedures for implementing the drug offender treatment program. The task force's recommendations will become effective August 1, 2005, unless the

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legislature accepts, modifies, or rejects the contents of the report before that time.

Subd. 4. Expiration. Disbands the task force upon submission of the report to the legislature.

This section is effective the day following enactment.

- 12** **Revisor instruction.** Instructs the revisor of statutes to make cross-reference corrections. If certain cross-reference changes are not clear and involve policy determinations, the Revisor, in consultation with house research, is directed to prepare a bill for the 2004 legislative session that corrects the cross-references consistent with the coding and controlled substance degree changes made in this act.
- 13** **Appropriation.** Appropriates an unspecified amount from the general fund to the executive director of the sentencing guidelines commission to fund the report, and the staff and resources necessary to prepare the report, mandated by this act. The appropriation is available for the biennium ending June 30, 2005.