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Marijuana Decrim Fix-It Bill HF1355 SF2348***Executive Summary of Bill******1. Updating Minnesota’s “small amount of marijuana” petty misdemeanor Statute.***

Minn. Stat. §152.027, subd. 4, Possession or sale of small amounts of marijuana, purported to make such a violation a non-criminal (decriminalized), petty misdemeanor violation.

But see, Minn. Stat. §152.01, Subd. 16. "'Small amount' as applied to marijuana means 42.5 grams or less. This provision shall not apply to the resinous form of marijuana." And it still applies to plant-form marijuana only (flower form).

Back in 1976, “the resinous form of marijuana” was relatively rare, and mostly imported hashish.

Now, in 2022, the reverse is true. “The resinous form of marijuana” predominates the market, mainly in the form of vape cartridges, edibles, and the like. Minnesota’s original medical cannabis law only allowed “the resinous form” based partly on safety arguments.

Problem? Possession of any amount, even a small amount of “the resinous form of marijuana” is a crime, usually a felony (over 0.25 grams).

Fix: Amend the statute redefine a “small amount of marijuana” decriminalization, to now include up to eight grams of “the resinous form of marijuana,” or “non-flower marijuana,” meaning marijuana concentrates with D-9-THC.

Rationale: Eight grams of marijuana concentrate, even if it could reach a theoretical limit of 100% THC, would be about equivalent to 42,5 grams of “flower marijuana” (plant-form) at a low-to-average 20% THC concentration.

So, these two weights would be roughly equivalent in terms of THC concentration, for “non-flower marijuana.” Issue: Marijuana edibles are common, but have much lower THC levels. As a result, the eight gram limit arguably is too low. But given Minnesota’s weight-based controlled substance crime statutes, this may be a reasonable compromise.

More in my article: ***Minnesota’s Incomplete Marijuana Decriminalization – Resinous Form Exception***

<https://gallagherdefense.com/2020/06/21/mn-incomplete-marijuana-decrim-resinous-form/>

2. Fixing the failure of the 1976 law to make a “small amount of marijuana” a true “petty misdemeanor.”

Federal courts have found that Minnesota’s “small amount of marijuana” decriminalization statute, failed to make a violation true “petty misdemeanor.” And the result was counting a Minnesota’s “small amount of marijuana” conviction as part of a defendant’s criminal history score, resulting in federal prison time. See, *US v. Foote*, 705 F. 3d 305 (U.S. 8th Circuit Court of Appeals 2013).

More about this in my article: ***Why Minnesota’s Marijuana Decrim Law Is Broken; How To Fix It***

<https://gallagherdefense.com/2021/01/12/decrim-law-repair/>

The definition of a “petty misdemeanor” appears in Minn. Stat. §609.02, subd. 4a. “‘Petty misdemeanor’ means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$300 may be imposed.”

The problem? Minn. Stat. §152.027, subd. 4,

(a) “...**and shall be required to** participate 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.”

Fix: Delete the above quoted language. The petty misdemeanor should be uniformly the same. Otherwise, as the federal courts have pointed out, it's not a petty misdemeanor, not decriminalized, is a “crime.”

3. New, expanded Gross Misdemeanor offense category

Core idea: double the weight thresholds in the new “small amount” amendment, to “defelonize” low weight level amounts.

Since 42.5 grams is the maximum weight threshold for a “flower marijuana” petty misdemeanor; and since 8 grams would be the maximum weight threshold for a “non-flower marijuana” petty misdemeanor;

the maximum weight threshold for a “flower marijuana” gross misdemeanor would be 85 grams; and the maximum weight threshold for a “non-flower marijuana” gross misdemeanor would be 16 grams.

This idea is similar to a Bill in 2019 supported by the Minnesota County Attorney's Association; a penalty reduction amendment for marijuana based on lower weights.

4. Affirmative defense for Medical Cannabis users in criminal cases

This would legislatively overrule *State vs. Hanson*, a 1991 Minnesota Court of Appeals case denying defendants the right to present a defense based on medical necessity.

Common situations include: people who are lawful medical cannabis users in other states; people who become lawful medical cannabis users in Minnesota after the date of offense.

For more on this, see my article: Medical Necessity Defense to Marijuana Charges in Minnesota

<https://gallagherdefense.com/crimes/mn-marijuana-lawyers/medical-marijuana-mn/medical-necessity-defense-marijuana-mn/>

5. Guns – civil rights – relief for ineligible persons convicted of felony marijuana crimes that would no longer be felonies under new law

Retroactive relief would be available for people convicted of a felony prior to the new law, if they can show that their conviction was based upon possession below the felony limits under the new law.