

2016 Minnesota Session Laws

Key: (1) ~~language to be deleted~~ (2) new language

CHAPTER 160--S.F.No. 3481

An act relating to criminal justice; modifying the thresholds for certain controlled substance crimes; creating new offenses specific to the possession of marijuana plants; creating a new offense for possessing trace amounts of certain controlled substances; eliminating mandatory minimum sentences for lower level controlled substance crimes; establishing a new account in the state treasury; appropriating money while reducing other appropriations; amending Minnesota Statutes 2014, sections 152.01, subdivision 16a, by adding a subdivision; 152.021; 152.022; 152.023; 152.024; 152.025; 152.026; 152.092; 152.18, subdivision 1; 244.0513, subdivisions 2, 5; 244.09, subdivision 6; 388.051; 609.11, subdivisions 5a, 8; proposing coding for new law in Minnesota Statutes, chapter 299A; repealing Minnesota Statutes 2014, section 244.0513, subdivision 6.

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

Section 1. Minnesota Statutes 2014, section 152.01, subdivision 16a, is amended to read:

Subd. 16a. **Subsequent controlled substance conviction.** ~~Notwithstanding section 152.18, subdivision 1, A "subsequent controlled substance conviction" means that before commission of the offense for which the person is convicted under this chapter, the person received a disposition for a felony level offense under section 152.18, subdivision 1, was convicted in Minnesota of a felony violation of this chapter or a felony level attempt or conspiracy to violate this chapter was convicted of a violation of section 152.021 or 152.022, including an attempt or conspiracy, or was convicted elsewhere for conduct that would have been a felony under this chapter if committed in Minnesota. An earlier disposition for a felony level offense under section 152.18, subdivision 1, or an earlier conviction is not relevant if of a similar offense by the United States or another state, provided that ten years have not elapsed since discharge from sentence or stay of adjudication.~~

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 2. Minnesota Statutes 2014, section 152.01, is amended by adding a subdivision to read:

Subd. 24. **Aggravating factor.** Each of the following is an "aggravating factor":

(1) the defendant, within the previous ten years, has been convicted of a violent crime, as defined in section 609.1095, subdivision 1, paragraph (d), other than a violation of a provision under this chapter, including an attempt or conspiracy, or was convicted of a similar offense by the United States or another state;

(2) the offense was committed for the benefit of a gang under section 609.229;

(3) the offense involved separate acts of sale or possession of a controlled substance in three or more counties;

(4) the offense involved the transfer of controlled substances across a state or international border and into Minnesota;

(5) the offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to sell or transfer;

(6) the circumstances of the offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(7) the defendant used a position or status to facilitate the commission of the offense, including positions of trust, confidence, or fiduciary relationships;

(8) the offense involved the sale of a controlled substance to a person under the age of 18 or a vulnerable adult as defined in section 609.232, subdivision 11;

(9) the defendant or an accomplice manufactured, possessed, or sold a controlled substance in a school zone, park zone, correctional facility, or drug treatment facility; or

(10) the defendant or an accomplice possessed equipment, drug paraphernalia, documents, or money evidencing that the offense involved the cultivation, manufacture, distribution, or possession of controlled substances in quantities substantially larger than the minimum threshold amount for the offense.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 3. Minnesota Statutes 2014, section 152.021, is amended to read:

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~~ 17 grams or more containing cocaine, ~~heroin,~~ or methamphetamine;

(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 cocaine or methamphetamine and:

(i) the person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm; or

(ii) the offense involves two aggravating factors;

(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 heroin;

~~(2)~~ (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 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

~~(3)~~ (5) 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 amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 200 or more dosage units; or

~~(4)~~ (6) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~50~~ 25 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) 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~~ 50 grams or more containing cocaine, ~~heroin~~, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing cocaine or methamphetamine and:

(i) the person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm; or

(ii) the offense involves two aggravating factors;

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

~~(2)~~ (4) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

~~(3)~~ (5) the person unlawfully possesses one or more mixtures of a total weight of 500 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 500 or more dosage units; or

~~(4)~~ (6) the person unlawfully possesses one or more mixtures of a total weight of ~~400~~ 50 kilograms or more containing marijuana or Tetrahydrocannabinols, or possesses 500 or more marijuana plants.

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

Subd. 2a. Methamphetamine manufacture crime. (a) Notwithstanding subdivision 1, sections [152.022, subdivision 1](#), [152.023, subdivision 1](#), and [152.024, subdivision 1](#), a person is guilty of controlled substance crime in the first degree if the person manufactures any amount of methamphetamine.

(b) [Renumbered [152.0262, subdivision 1](#)]

Subd. 2b. Aggravated controlled substance crime in the first degree. A person is guilty of aggravated controlled substance crime in the first degree if the person violates subdivision 1, clause (1), (2), (3), (4), or (5), or subdivision 2, paragraph (a), clause (1), (2), or (3), and the person or an accomplice sells or possesses 100 or more grams or 500 or more dosage units of a mixture containing the controlled substance at issue and:

(1) the person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm; or

(2) the offense involves two aggravating factors.

Subd. 3. Penalty. (a) A person convicted under subdivisions 1 to 2a, paragraph (a), 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 subdivisions 1 to 2a, paragraph (a), shall be committed to the

commissioner of corrections for not less than four years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$1,000,000.

(c) If the defendant is convicted under subdivision 1, clause (1), (2), (3), (4), or (5), or subdivision 2, paragraph (a), clause (1), (2), or (3), and the defendant or an accomplice sold or possessed 100 or more grams or 500 or more dosage units of a mixture containing the controlled substance at issue, that person shall be committed to the commissioner of corrections for not less than 65 months or the presumptive fixed sentence under the Minnesota Sentencing Guidelines, whichever is greater, nor more than 40 years and may be sentenced to payment of a fine of not more than \$1,000,000, or both. If a person to be sentenced under this paragraph for a conviction under subdivision 2, paragraph (a), clause (1), (2), or (3), has not previously been convicted of an offense under section 152.021, 152.022, or 152.023, or of a similar offense by the United States or another state, the prosecutor may, prior to the time of sentencing, file a motion to have the person sentenced without regard to the mandatory minimum sentence established by this paragraph. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the person without regard to this mandatory minimum sentence if the court finds substantial and compelling reasons to do so; such a sentence is a departure from the Sentencing Guidelines.

(d) A person convicted under subdivision 2b shall be committed to the commissioner of corrections for not less than 86 months or the presumptive fixed sentence under the Minnesota Sentencing Guidelines, whichever is greater, nor more than 40 years and may be sentenced to payment of a fine of not more than \$1,000,000, or both.

(e) In a prosecution under subdivisions 1 to 2b involving sales by the same person in two or more counties within a 90-day period, the person may be prosecuted for all of the sales in any county in which one of the sales occurred.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 4. Minnesota Statutes 2014, section 152.022, is amended to read:

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 ten~~ three grams or more containing ~~ecaine, a narcotic drug other than~~ heroin, or methamphetamine;

(2) 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 methamphetamine and:

(i) the person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm; or

(ii) the offense involves three aggravating factors:

(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 three~~ ten grams or more containing ~~a narcotic drug other than cocaine, heroin, or methamphetamine;~~

~~(3)~~ (4) 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 amphetamine,

phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 50 or more dosage units;

~~(4)~~ (5) on one or more occasions within a 90-day period the person unlawfully sells one or more mixtures of a total weight of ~~25~~ ten kilograms or more containing marijuana or Tetrahydrocannabinols;

~~(5)~~ (6) 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)~~ (7) 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, lysergic acid diethylamide (LSD), 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine;

(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) 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~~ 25 grams or more containing cocaine, ~~heroin~~, or methamphetamine;

(2) the person unlawfully possesses one or more mixtures of a total weight of ten grams or more containing cocaine or methamphetamine and:

(i) the person or an accomplice possesses on their person or within immediate reach, or uses, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm; or

(ii) the offense involves three aggravating factors;

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

~~(2)~~ (4) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing a narcotic drug other than cocaine, heroin, or methamphetamine;

~~(3)~~ (5) the person unlawfully possesses one or more mixtures of a total weight of 50 grams or more containing amphetamine, phencyclidine, or hallucinogen or, if the controlled substance is packaged in dosage units, equaling 100 or more dosage units; or

~~(4)~~ (6) the person unlawfully possesses one or more mixtures of a total weight of ~~50~~ 25 kilograms or more containing marijuana or Tetrahydrocannabinols, or possesses 100 or more marijuana plants.

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

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 committed to the commissioner of corrections for not less than three years nor more than 40 years and, in addition, may be sentenced to payment of a fine of not more than \$500,000.

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

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 5. Minnesota Statutes 2014, section 152.023, is amended to read:

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) 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 ten~~ ten grams or more containing ~~ecaine, a narcotic drug other than heroin, or methamphetamine;~~
- (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 three~~ three grams or more containing a ~~narcotic drug other than cocaine, heroin, or methamphetamine;~~
- (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), 3,4-methylenedioxy amphetamine, or 3,4-methylenedioxymethamphetamine 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.

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

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)~~ (b) 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.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 6. Minnesota Statutes 2014, section 152.024, is amended to read:

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.

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 committed to the commissioner of corrections or to a local correctional authority for not less than one year nor more than 30 years and, in addition, may be sentenced to payment of a fine of not more than \$100,000.~~

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 7. Minnesota Statutes 2014, section 152.025, is amended to read:

152.025 CONTROLLED SUBSTANCE CRIME IN THE FIFTH DEGREE.

Subdivision 1. **Sale crimes.** ~~(a) A person is guilty of a controlled substance crime in the fifth degree and if convicted upon conviction 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 as provided in subdivision 3 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.~~

~~(b) Except as provided in paragraph (c), if a person is guilty of a controlled substance crime in the fifth degree and the conviction is a subsequent controlled substance conviction, the person convicted shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months nor more than ten years and, in addition, may be sentenced to payment of a fine of not more than \$20,000 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.~~

~~(c) Prior to the time of sentencing, the prosecutor may file a motion to have the person sentenced without regard to the mandatory minimum sentence established by paragraph (b). The motion must be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the person without regard to the mandatory minimum sentence if the court finds, on the record, substantial and compelling reasons to do so.~~

Subd. 2. **Possession and other crimes.** ~~(a) A person is guilty of controlled substance crime in the fifth degree and if convicted upon conviction 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 as provided in subdivision 3 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.~~

~~(b) Except as provided in paragraph (c), if a person is guilty of a controlled substance crime in the fifth degree and the conviction is a subsequent controlled substance conviction, the person convicted shall be committed to the commissioner of corrections or to a local correctional authority for not less than six months nor more than ten years and, in addition, may be sentenced to payment of a fine of not more than \$20,000 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.

(c) Prior to the time of sentencing, the prosecutor may file a motion to have the person sentenced without regard to the mandatory minimum sentence established by paragraph (b). The motion must be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the person without regard to the mandatory minimum sentence if the court finds, on the record, substantial and compelling reasons to do so.

Subd. 3. Penalty. (a) A person convicted under the provisions of subdivision 2, clause (1), who has not been previously convicted of a violation of this chapter or a similar offense in another jurisdiction, is guilty of a gross misdemeanor if: (1) the amount of the controlled substance possessed, other than heroin, is less than 0.25 grams or one dosage unit or less if the controlled substance was possessed in dosage units; or (2) the controlled substance possessed is heroin and the amount possessed is less than 0.05 grams.

(b) A person convicted under the provisions of subdivision 1; subdivision 2, clause (1), unless the conduct is described in paragraph (a); or subdivision 2, clause (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.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 8. Minnesota Statutes 2014, section 152.026, is amended to read:

152.026 MANDATORY SENTENCES.

A defendant convicted and sentenced to a mandatory sentence under ~~sections section 152.021 to 152.025 and 152.026~~ or 152.022 is not eligible for probation, parole, discharge, or supervised release until that person has served the full term of imprisonment as provided by law, notwithstanding sections 242.19, 243.05, 609.12, and 609.135. "Term of imprisonment" has the meaning given in section 244.01, subdivision 8.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 9. Minnesota Statutes 2014, section 152.092, is amended to read:

152.092 POSSESSION OF DRUG PARAPHERNALIA PROHIBITED.

(a) It is unlawful for any person knowingly or intentionally to use or to possess drug paraphernalia. Any violation of this section is a petty misdemeanor.

(b) A person who violates paragraph (a) and has previously violated paragraph (a) on two or more occasions has committed a crime and may be sentenced to imprisonment for up to 90 days or to payment of a fine up to \$1,000, or both.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 10. Minnesota Statutes 2014, section 152.18, subdivision 1, is amended to read:

Subdivision 1. **Deferring prosecution for certain first time drug offenders.** ~~¶ (a)~~
A court may defer prosecution as provided in paragraph (c) for any person found guilty, after trial or upon a plea of guilty, of a violation of section 152.023, subdivision 2, 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, 4, or 6, paragraph (d), for possession of a controlled substance, who:

(1) has not previously participated in or completed a diversion program authorized under section 401.065;

~~or who (2) has not previously been placed on probation without a judgment of guilty and thereafter been discharged from probation under this section is found guilty of a violation of section 152.024, subdivision 2, 152.025, subdivision 2, or 152.027, subdivision 2, 3, 4, or 6, paragraph (d), for possession of a controlled substance, after trial or upon a plea of guilty, and the court determines that the violation does not qualify as a subsequent controlled substance conviction under section 152.01, subdivision 16a.; and~~

(3) has not been convicted of a felony violation of this chapter, including a felony-level attempt or conspiracy, or been convicted by the United States or another state of a similar offense that would have been a felony under this chapter if committed in Minnesota, unless ten years have elapsed since discharge from sentence.

(b) The court must defer prosecution as provided in paragraph (c) for any person found guilty of a violation of section 152.025, subdivision 2, who:

(1) meets the criteria listed in paragraph (a), clauses (1) to (3); and

(2) has not previously been convicted of a felony offense under any state or federal law or of a gross misdemeanor under section 152.025.

(c) In granting relief under this section, the court may shall, without entering a judgment of guilty and with the consent of the 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 sentence provided for the 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 the person and discharge the person from probation before the expiration of the maximum period prescribed for the person's probation. If during the period of probation the person does not violate any of the conditions of the probation, then upon expiration of the period the court shall discharge the person and dismiss the proceedings against that person. Discharge and dismissal under this subdivision shall be without court adjudication of guilt, but a not public record of it shall be retained by the Bureau of Criminal Apprehension for the purpose of use by the courts in determining the merits of subsequent proceedings against the person. The not public record may also be opened only upon court order for purposes of a criminal investigation, prosecution, or sentencing. Upon request by law enforcement, prosecution, or corrections authorities, the bureau shall notify the requesting party of the existence of the not public record and the right to seek a court order to open it pursuant to this section. The court shall forward a record of any discharge and dismissal under this subdivision to the bureau which shall make and maintain the not public record of it as provided under this subdivision. The 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 purposes of this subdivision, "not public" has the meaning given in section [13.02, subdivision 8a](#).

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 11. Minnesota Statutes 2014, section 244.0513, subdivision 2, is amended to read:

Subd. 2. **Conditional release of certain nonviolent controlled substance offenders.** An offender who has been committed to the commissioner's custody may petition the commissioner for conditional release from prison before the offender's scheduled supervised release date or target release date if:

(1) the offender is serving a sentence for violating section [152.021, subdivision 2](#) or 2a; [152.022, subdivision 2](#); [152.023, subdivision 2](#); ~~[152.024, subdivision 2](#)~~; or ~~[152.025, subdivision 2](#)~~;

(2) the offender committed the crime as a result of a controlled substance addiction;

(3) the offender has served at least:

(i) 18 months or one-half of the offender's term of imprisonment, whichever is less, if the offense for which the offender is seeking conditional release is a violation of section 152.024 or 152.025; or

(ii) 36 months or one-half of the offender's term of imprisonment, whichever is less, if the offense for which the offender is seeking conditional release is a violation of section 152.021, subdivision 2 or 2a, 152.022, subdivision 2, or 152.023, subdivision 2;

(4) the offender successfully completed a chemical dependency treatment program of the type described in this section while in prison;

(5) the offender has not previously been conditionally released under this section; and

(6) the offender has not within the past ten years been convicted or adjudicated delinquent for a violent crime as defined in section [609.1095](#) other than the current conviction for the controlled substance offense.

EFFECTIVE DATE. This section is effective August 1, 2016.

Sec. 12. Minnesota Statutes 2014, section 244.0513, subdivision 5, is amended to read:

Subd. 5. **Additional requirements.** To be eligible for release under this section, an offender shall sign a written contract with the commissioner agreeing to comply with the requirements of this section and the conditions imposed by the commissioner. ~~In addition to other items, the contract must specifically refer to the term of imprisonment extension in subdivision 6.~~ In addition, the offender shall agree to submit to random drug and alcohol tests and electronic or home monitoring as determined by the commissioner or the offender's supervising agent. The commissioner may impose additional requirements on the offender that are necessary to carry out the goals of this section.

EFFECTIVE DATE. This section is effective August 1, 2016.

Sec. 13. Minnesota Statutes 2014, section 244.09, subdivision 6, is amended to read:

Subd. 6. **Clearinghouse and information center.** The commission, in addition to establishing Sentencing Guidelines, shall serve as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices, and shall conduct ongoing research regarding Sentencing Guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system. The commission shall from time to time make recommendations to the legislature regarding changes in the Criminal Code, criminal procedures, and other aspects of sentencing.

This information shall include information regarding the impact of statutory changes to the state's criminal laws related to controlled substances, including those changes enacted by the legislature in this act.

EFFECTIVE DATE. This section is effective August 1, 2016.

Sec. 14. **299A.707 COMMUNITY JUSTICE REINVESTMENT ACCOUNT.**

Subdivision 1. **Account established.** The community justice reinvestment account is established in the special revenue fund.

Subd. 2. **Account purpose, grants.** Money in this account shall be allocated by a grant program administered by the commissioner of public safety through the Office of Justice Programs. Local units of government and nonprofit organizations are eligible for grants to establish or operate chemical dependency and mental health treatment programs, programs that improve supervision, including pretrial and precharge supervision, and programs to reduce recidivism of controlled substances offenders on probation or supervised release or participating in drug courts or to fund local participation in drug court initiatives approved by the Judicial Council.

Subd. 3. **Reporting.** By January 15, in each even-numbered year, the commissioner shall report to the chairs and ranking minority members of the senate and house of representatives committees and divisions having jurisdiction over criminal justice funding on grants made in the preceding two years from the account.

Subd. 4. **Legislative intent.** It is the legislature's intent that savings to the state realized as a result of the passage of this act be used to fund the transfers from the general fund to this account.

Subd. 5. **Appropriation.** The amounts transferred to the account are appropriated to the commissioner to make grants under subdivision 2.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 15. Minnesota Statutes 2014, section 388.051, is amended to read:

388.051 DUTIES.

Subdivision 1. **General provisions.** The county attorney shall:

- (a) appear in all cases in which the county is a party;
- (b) give opinions and advice, upon the request of the county board or any county officer, upon all matters in which the county is or may be interested, or in relation to the official duties of the board or officer;
- (c) prosecute felonies, including the drawing of indictments found by the grand jury, and, to the extent prescribed by law, gross misdemeanors, misdemeanors, petty misdemeanors, and violations of municipal ordinances, charter provisions and rules or regulations;

(d) attend before the grand jury, give them legal advice, and examine witnesses in their presence;

(e) request the court administrator to issue subpoenas to bring witnesses before the grand jury or any judge or judicial officer before whom the county attorney is conducting a criminal hearing;

(f) attend any inquest at the request of the coroner; and

(g) appear, when requested by the attorney general, for the state in any case instituted by the attorney general in the county attorney's county or before the United States Land Office in case of application to preempt or locate any public lands claimed by the state and assist in the preparation and trial.

Subd. 2. Special provisions. (a) In Anoka, Carver, Dakota, Hennepin, Scott, and Washington Counties, only the county attorney shall prosecute gross misdemeanor violations of sections [289A.63, subdivisions 1, 2, 4, and 6](#); [297B.10](#); [609.255, subdivision 3](#); [609.377](#); [609.378](#); [609.41](#); and [617.247](#).

(b) In Ramsey County, only the county attorney shall prosecute gross misdemeanor violations of sections [609.255, subdivision 3](#); [609.377](#); and [609.378](#).

(c) The county attorney shall prosecute failure to report physical or sexual child abuse or neglect as provided under section [626.556, subdivision 6](#), violations of fifth-degree criminal sexual conduct under section [609.3451](#), and environmental law violations under sections [115.071](#), [299F.098](#), and [609.671](#).

(d) Except in Hennepin and Ramsey Counties, only the county attorney shall prosecute gross misdemeanor violations of section 152.025.

Subd. 3. Charging and plea negotiation policies and practices; written guidelines required. (a) On or before January 1, 1995, each county attorney shall adopt written guidelines governing the county attorney's charging and plea negotiation policies and practices. The guidelines shall address, but need not be limited to, the following matters:

(1) the circumstances under which plea negotiation agreements are permissible;

(2) the factors that are considered in making charging decisions and formulating plea agreements; and

(3) the extent to which input from other persons concerned with a prosecution, such as victims and law enforcement officers, is considered in formulating plea agreements.

(b) Plea negotiation policies and procedures adopted under this subdivision are public data, as defined in section [13.02](#).

Subd. 4. Firearms exemption. Notwithstanding section [626.84, subdivision 2](#), a county attorney, or an assistant county attorney appointed under section [388.10](#), who lawfully possesses a permit to carry a pistol issued in accordance with section [624.714](#) may possess and carry a firearm while on duty, unless restricted by the county attorney.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 16. Minnesota Statutes 2014, section 609.11, subdivision 5a, is amended to read:

Subd. 5a. Drug offenses. Notwithstanding section [609.035](#), whenever a defendant is subject to a mandatory minimum sentence for a felony violation of chapter 152, other than a violation of section 152.021, subdivision 2b, clause (1), or a violation of chapter

152 sentenced under section 152.021, subdivision 3, paragraph (c), and is also subject to this section, the minimum sentence imposed under this section shall be consecutive to that imposed under chapter 152.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 17. Minnesota Statutes 2014, section 609.11, subdivision 8, is amended to read:

Subd. 8. **Motion by prosecutor.** (a) Except as otherwise provided in ~~paragraph~~ paragraphs (b) and (c), prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced without regard to the mandatory minimum sentences established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the defendant without regard to the mandatory minimum sentences established by this section if the court finds substantial and compelling reasons to do so. A sentence imposed under this subdivision is a departure from the Sentencing Guidelines.

(b) The court may not, on its own motion or the prosecutor's motion, sentence a defendant without regard to the mandatory minimum sentences established by this section if the defendant previously has been convicted of an offense listed in subdivision 9 in which the defendant used or possessed a firearm or other dangerous weapon.

(c) The court may not, on its own motion or the prosecutor's motion, sentence a defendant without regard to the mandatory minimum sentences established by subdivision 5, if the defendant was convicted of a crime under section 152.021, subdivision 1, or 152.022, subdivision 1, and the person or an accomplice possessed on their person or within immediate reach, or used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm.

EFFECTIVE DATE. This section is effective August 1, 2016, and applies to crimes committed on or after that date.

Sec. 18. **MINNESOTA SENTENCING GUIDELINES COMMISSION;
CERTAIN RECOMMENDATIONS ON CONTROLLED SUBSTANCE OFFENSES
REJECTED; ADDITIONAL MODIFICATIONS TO GUIDELINES.**

(a) The following modifications proposed by the Minnesota Sentencing Guidelines Commission in its January 15, 2016, report to the legislature are rejected and do not go into effect:

(1) the new presumptive sentence for first-degree possession of a controlled substance under Minnesota Statutes, section 152.021, subdivision 2, paragraph (a), described in 2.A. Non-Legislative Modifications to Controlled Substance offenses on pages 14 to 17 of the report;

(2) the severity level D8 found in the new drug offender grid on page 80 of the report and in the criminal history grids found on page 67 of the report;

(3) the presumptive sentences for severity level D7 offenses found in the new drug offender grid on page 80 of the report; and

(4) related changes found in corresponding language in Appendix 2.2.A. on pages 65 to 81 of the report.

(b) The Sentencing Guidelines Commission shall:

(1) modify the new drug offender grid found on page 80 of the report by renumbering D9 as D8 and renumbering D10 as D9;

(2) modify the criminal history grids on page 67 of the report by renumbering D8 as D7 and renumbering D9-D10 as D8-D9;

(3) modify the presumptive sentences for severity level D7 offenses found in the new drug offender grid found on page 80 of the report as follows:

(i) for zero criminal history points, a presumptive stayed sentence of 48 months;

(ii) for one criminal history point, a presumptive stayed sentence of 58 months;

(iii) for two criminal history points, a presumptive executed sentence of 68 months and a range of 58 to 81 months;

(iv) for three criminal history points, a presumptive executed sentence of 78 months and a range of 67 to 93 months;

(v) for four criminal history points, a presumptive executed sentence of 88 months and a range of 75 to 105 months;

(vi) for five criminal history points, a presumptive executed sentence of 98 months and a range of 84 to 117 months; and

(vii) for six criminal history points, a presumptive executed sentence of 108 months and a range of 92 to 129 months;

(4) re-rank first-degree possession of a controlled substance under Minnesota Statutes, section 152.021, subdivision 2, paragraph (a), at the renumbered severity level D8;

(5) rank the new offense of aggravated controlled substance crime in the first degree under Minnesota Statutes, section 152.021, subdivision 2b, at the renumbered severity level D9; and

(6) make changes in Appendix 2.2.A. consistent with this section.

EFFECTIVE DATE. This section is effective the day following final enactment.

Sec. 19. TRANSFER; COMMUNITY JUSTICE REINVESTMENT ACCOUNT.

In fiscal year 2017, the commissioner of management and budget shall transfer \$488,000 from the general fund to the community justice reinvestment account in the special revenue fund. The base for this transfer is \$461,000 in each of fiscal years 2018 and 2019, and thereafter.

Sec. 20. APPROPRIATIONS.

(a) \$325,000 in fiscal year 2017 is appropriated from the general fund to the commissioner of public safety for two forensic scientists, equipment, and supplies to implement this act. Of this amount, \$40,000 is a onetime appropriation for lab equipment.

(b) \$750,000 in fiscal year 2017 is appropriated from the general fund to the commissioner of corrections for 70 new chemical dependency/mental health beds.

(c) \$250,000 in fiscal year 2017 is appropriated from the general fund to the commissioner of corrections for two chemical dependency release planners, one at MCF-Stillwater and the other at MCF-Shakopee.

(d) \$37,000 in fiscal year 2017 is appropriated from the general fund to the Minnesota Sentencing Guidelines Commission to implement this act.

Sec. 21. REDUCTIONS TO PREVIOUS APPROPRIATIONS.

The appropriations made in article 9 of the first unofficial engrossment to House File No. 2749, passed by the senate on April 28, 2016, are reduced as follows:

(1) for the 70 new chemical dependency/mental health beds in section 6, subdivision 2, paragraph (g), the appropriation for fiscal year 2017 is reduced to \$0;

(2) for the chemical dependency release planner at MCF-Shakopee in section 6, subdivision 2, paragraph (h), the appropriation for fiscal year 2017 is reduced to \$0;

(3) for the chemical dependency release planner at MCF-Stillwater in section 6, subdivision 2, paragraph (i), the appropriation for fiscal year 2017 is reduced to \$0;

(4) for the information technology upgrades and staffing in section 6, subdivision 4, paragraph (b), the base for this activity is \$0 in each of fiscal years 2018 and 2019, and thereafter; and

(5) for the safe and secure courthouse grant program in section 2, the appropriation for fiscal year 2017 is reduced by \$850,000.

Sec. 22. **REPEALER.**

Minnesota Statutes 2014, section 244.0513, subdivision 6, is repealed.

EFFECTIVE DATE. This section is effective August 1, 2016.

Presented to the governor May 22, 2016

Signed by the governor May 22, 2016, 5:01 p.m.

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